

# The Alabama Municipal JOURNAL

January 2008

Volume 65, Number 7

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## Cover Photo:

***First Place, 2008 Photo Contest  
Photographer: Frank Williams,  
Wetumpka***

Bibb Graves Bridge was built in 1931 and is the focal point of many photographs. When thinking of Wetumpka, the bridge usually comes to mind.

# A Message from the Editor



The holidays are over and now it's time to honor New Years' resolutions – unless you're like me and don't make one. I have more than enough daily challenges without adding a self-induced stressor to the list!

As many of you now know, Thanksgiving quickly became a sad, difficult time for the League family when we learned Jason Humphries of our Loss Control division had been killed in a tractor accident that afternoon. Jason, who turned 32 in September, had a nine-year-old daughter and had recently remarried. We're still trying to overcome the void because – as any of you who had met Jason know – his smile was infectious and he truly loved people. Please keep Jason's family in your thoughts as they make the overwhelmingly somber transition into the New Year.

In spite of our bleak Thanksgiving, the League continues to grow and in early October we welcomed Krystle Bell as the newest addition to our staff. Krystle graduated magna cum laude from Jacksonville State University and provides direct support for our Member Services Department as the Member Services Assistant. We all look forward to working with her.

Congratulations to photographer Frank Williams who won the League's 2008 Photo Contest and whose photograph of Wetumpka's Bibb Graves Bridge appears on the cover of this issue of the *Journal* as well as the *2008 Directory and Vendor Listings*, a copy of which will be sent to all mayors and clerks this month. Congratulations also to 1<sup>st</sup> Runner Up Councilmember Tom Seale of Columbiana for his beautiful picture of the Shelby County Courthouse and 2<sup>nd</sup> Runner Up photographer Vaughn Bowers of Opp for an intriguing photo of the old Dean's Pharmacy building which now serves as Opp's Cultural Arts Center. I'd also like to thank everyone who shared their municipal photos. With more than 35 entries, we are now on our way to establishing a wonderful pictorial database. Several of the images are already gracing the opening page of our website at [www.alalm.org](http://www.alalm.org). Be sure to visit when you have a chance.

Back to the *2008 Directory* ... keep in mind that this annual publication is an extremely valuable resource. In addition to listing the contact information for Alabama's municipalities, it also includes information on the League and our staff as well as frequently contacted state and federal agencies. A member list of the Alabama Senate and House of Representatives is also included as are a number of municipal vendors providing goods and services to Alabama's cities and towns. We encourage you to access the vendor listings in the *2008 Directory* (pages 17-29 – which are easily identifiable as they are actually yellow) when searching for suppliers.

Congratulations to the City of Hoover for receiving two international awards recognizing practices making communities better places to live. The LivCom Awards, which began in 1997, presented Hoover with a silver award for cities with populations of 20,001 to 75,000 in its Whole City competition for "livable communities." Hoover also received a bronze award for environmentally sensitive practices for its use of alternative fuels in city vehicles. Mayor Tony Petelos and Councilmember Gene Smith traveled to London for the November awards ceremony.

Rainbow City recently held a ribbon-cutting ceremony dedicating Sue Glidewell Parkway. Fondly known as "Mayor Sue" to us at the League, she served six terms as Rainbow City's mayor before announcing in 2004 that she would not seek another term. Mayor Sue was extremely active with the League, serving as League President from 1994 to 1995 and chairing AMIC's board of directors for many years. There is no finer person, in our humble opinion, more deserving of such an honor. Congratulations, Mayor Sue!

And now I'd like to take a moment of personal privilege to commend my husband, Craig (see picture above), on the recent completion of his J.D. from Jones School of Law. Craig, who was an environmental/chemical engineer with GE Plastics for 13 years, decided in 2004 that he needed a career change and applied to law school (causing me to briefly question his sanity). He was offered a full academic scholarship to Jones and graduated first in his class. Throughout the first half of his academic venture, he continued to work full time for GE. Finally – when I became fed up being third behind school and work – we made the decision for him to become a full-time student. I'm extremely proud of Craig and want to thank those of you who offered encouragement throughout this endeavor. I've no doubt he'll be a fine attorney. (Is there such a thing?) Of course, he must pass the Bar in February and there's also the small hurdle of finding gainful employment, but so far, so good!

Carrie

# The President's Report



Charles W. "Sonny" Penhale  
Mayor of Helena

## US Communities Program Uses Collective Purchasing Power

As many of you are aware, the Alabama League of Municipalities has joined the National League of Cities (NLC) as a sponsor of the US Communities Government Purchasing Alliance. This program provides Alabama's cities and towns with the opportunity to piggyback on competitively bid contracts, take advantage of the enormous collective purchasing power of public agencies nationwide, and leverage these savings to their own advantage.

US Communities was jointly founded by the National League of Cities, National Association of Counties, National Institute of Government Purchasing, United States Conference of Mayors, and the Association of School Business Officials International to provide high quality government contracts to all U.S. local governments.

Through contracts with such nationally recognized companies as Office Depot, Auto Zone, Home Depot, GTSI, Little Tikes, Herman Miller, Ricoh-Savin, and many other suppliers, U.S. Communities currently offers thousands of products in the categories of office supplies, furniture, computers and technology, electrical and data supplies, janitorial supplies, carpeting and flooring, parks and play equipment, public safety and homeland security solutions, and auto parts and accessories.

The U.S. Communities program is easy to use. There is no fee to participate, no minimum spending and only a simple electronic registration is required. This flexible program is a wonderful tool for your purchasing and procurement officials. (See ad, page 8.)

Section 41-16-51(16), Code of Ala. 1975, and Attorney General Opinion 2007-011 give Alabama municipalities authority to use this program provided certain criteria are met. Such purchases may only be made if all of the following occur:

- a. The goods being purchased are available as a result of a competitive bid process approved by the Alabama Department of Examiners of Public Accounts for each bid.
- b. The goods are either not at the time available on the state purchasing program or are available at a price equal to or less than that on the state purchasing program.
- c. The purchase is made through a participating Alabama vendor holding an Alabama business license if such a vendor exists.

The League recommends that you visit our website at [www.alalm.org](http://www.alalm.org) to review a list of suggested procedures for using the US Communities purchasing program.

### Companies Participating in the US Communities Purchasing Program For Which There is No State Bid\* or For Which the Company Will Honor the State Bid Price \*\*

- **Homeland Security\*** (Hagemeyer NA)
- **Park and Playground Equipment\*** (Gametime, Landscape Structures and Little Tikes Commercial)
- **Carpet and Flooring\*** (Milliken Carpet)
- **Physical Education Supplies\*** (Sportime)
- **Janitorial Supplies\*** (Zep)
- **Maintenance, Repair and Operating Supplies\*** (Home Depot Supply/The Home Depot)
- **School-related Furniture\*\***(Virco)
- **Office Furniture\*\*** (Haworth, Herman Miller, Steelcase and Knoll)
- **Electrical and Data Communications (including light bulbs, etc.)\*\*** (Graybar) ■



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# Municipal Overview

## 2008 League Legislative Package



Perry C. Roquemore, Jr.  
Executive Director

The Alabama League of Municipalities Committee on State and Federal Legislation met at League Headquarters on Thursday, November 8, 2007. The committee, which is chaired by Councilmember Charles Woods of Childersburg and composed of elected municipal officials from throughout the state, considered a multitude of legislative recommendations from the League's five policy committees, member municipalities and the League staff. At the conclusion of their meeting, the committee unanimously approved the following package of bills (in no particular order of priority) to be introduced during the 2008 Regular Session.

### **Publication of Municipal Ordinances**

State law requires municipalities to publish ordinances of general and permanent operation. In some instances, publication expenses can be extremely high even though only a few minor changes are made to the ordinance. In an effort to protect both the public's right to know and the public's money, the League will propose permissive legislation to authorize an alternate method of publishing license, zoning and planning ordinances by means of a synopsis published in the newspaper.

### **Pre-zoning of Territory Proposed for Annexation**

Municipalities have the legal authority to zone territory within their corporate limits. Currently, newly-annexed territory comes into the municipality either "unzoned" or zoned for a classification as set out in

the zoning ordinance for newly-annexed territory. The League will offer legislation to authorize municipalities to establish a zoning classification for territory proposed to be annexed prior to the actual annexation. The zoning action would only become effective upon annexation of the land to the municipality.

### **Clarification of Mayor's Voting Powers**

An Alabama Supreme Court decision has created confusion as to the ability of the mayor of a municipality of less than 12,000 inhabitants to vote on all issues coming before the Council. The League will offer a bill to amend Section 11-43-160 of the Code of Alabama 1975 to clearly provide that in municipalities with a population of less than 12,000 inhabitants, the mayor is a voting member of the Council whose vote may be included in the required two-thirds vote of the Council needed to discipline or terminate employees.

### **Residency of Industrial Development Board Members**

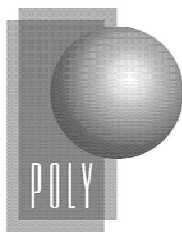
Many Alabama cities and towns have established industrial development boards which exercise authority both within and without the city or town that created the board. Under current law, the board members are appointed by the council and must be residents of the municipality. The League will propose legislation to amend Section 11-54-80, Code of Alabama 1975, which relates to the appointment of board members to an incorporated industrial development board, so as to provide that the municipal governing body may, in



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its discretion, appoint any person who resides within the boundaries of the board's jurisdiction to serve on the board.

### **Planning Commission Jurisdiction**

Current Alabama law states that a municipal planning commission can enforce subdivision regulations in the corporate limits of the municipality and in any territory located within five miles of the corporate limits. The League proposes legislation to make it clear that a municipal governing body may adopt an ordinance to limit the enforceability of subdivision regulations to an area less than the five-mile limit established by law.

### **Municipal Approval of Beer and Wine Licenses**

Currently, municipal consent is required before the State Alcoholic Beverage Control Board can grant a liquor license. The League will offer legislation to place the same condition on the granting of beer and wine licenses by the State ABC Board.

### **Penalty for Violation of Municipal Ordinances**

Section 11-45-9, Code of Alabama 1975, provides that the maximum fine that can be assessed for violation of a municipal ordinance is \$500 and/or six months in jail. The sole exception is DUI offenses where the fine can be as high as \$5,000. The DUI penalties have been increased as have fines for reckless driving. In order for the municipal court to be in line with other courts for the same offenses, the League will ask the Legislature to amend the Code of Alabama so as to provide that the maximum fine for violation of a municipal ordinance shall be \$500 or the maximum allowed by state law for the offense, whichever is higher.

### **Corrections Fund**

Section 11-47-7.1, Code of Alabama 1975, authorizes municipalities to levy additional court costs and establish a corrections fund for the operation of municipal jails and court complexes. Legislation will be sought to provide that 60% of the money in the corrections fund must be expended for municipal court purposes and that the remaining 40% of the money in the corrections fund may be spent for municipal court systems, jails or law enforcement purposes. The bill will also allow for the payment of debt service in relation to allowed expenditures.

### **Appropriation for Wastewater Treatment SRF and the Alabama Drinking Water Finance Authority**

Many years ago, the Alabama Legislature established a State Revolving Loan Fund for Wastewater Treatment (SRF) and the Alabama Drinking Water Finance Authority. The purpose of these programs was to take state funds and match them with federal dollars to create a loan fund to offer low interest loans to governmental entities for wastewater treatment and drinking water projects. Each year, the League seeks additional matching funds from the Legislature to continue these nationally recognized programs.

### **Incorporation Law Changes**

Several new municipalities are incorporated in Alabama each year. A provision in the recently amended law contains a loophole which could be used by opponents to make the cost of incorporation of a new municipality too costly. The League will offer legislation to close this loophole.

### **Subdivision Regulations – County Engineer Approval**

Section 11-52-30(b), Code of Alabama 1975, requires municipal subdivision regulations to be approved by the county engineer. The League will seek an amendment to the law to allow approval of a subdivision located in the corporate limits of a municipality by a city engineer, whether employed full-time or by contract, in lieu of the approval of the county engineer. The bill would also allow the city engineer to approve subdivisions outside of the corporate limits but within the city planning jurisdiction when the county engineer does not give approval within a reasonable period of time.

### **Crime Package**

The League, working with city officials and other interested individuals, endorses a package of bills designed to reduce crime in our cities and towns.

### **Conclusion**

The Committee on State and Federal Legislation has adopted an ambitious Legislative Package for 2008. The Regular Session will begin on February 5, 2008, and all municipal officials are encouraged to get behind this package and push for its passage during the session. ■



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# The Legal Viewpoint

By Ken Smith  
Deputy Director/General Counsel



## A Day with the Clerks: Questions and Answers on Municipal Elections

On November 29, 2007, the League's legal staff took part in an unprecedented day-long panel session for Alabama's municipal clerks on how to conduct a municipal election. Along with League attorneys Lori Lein, Tracy Roberts and myself, participants on the panel included Brenda Smith, Assistant Attorney General, Glenda Morgan, City Clerk for Mobile, Rob Johnston, Elections Attorney with the Secretary of State's Office and Trey Granger, Director of Elections, Montgomery Elections Center.

The morning session was devoted to an overview of the municipal election process, from start to finish. During this time, each of the panelists provided an in-depth discussion of a specific topic related to the election. Throughout the afternoon session, the panelist's answered election questions from the clerks. The questions in this article represent a small sample of the more than 100 questions answered that day.

**Question:** Our town plans to annex unoccupied territory. Does this have to be precleared by the U.S. Justice Department before the election?

**Answer:** This question arises due to the fact that under Section 5 of the Voting Rights Act, election changes in Alabama have to be precleared by the U.S. Justice Department prior to being implemented. Changes that must be precleared include annexations and de-annexations, because shifts in the population often can impact the outcome of an election. As the Alabama Supreme Court noted in *Singer v. City of Alabaster*, 821 So.2d 954 (Ala. 2001), votes from residents in annexed territory may not be included in election totals until the annexations are precleared. Essentially, for purposes of federal law, annexed territory is not considered part of the municipality for election purposes until the Justice Department approves the annexation. Note that although the procedure is called preclearance, the Justice Department will not consider any annexation or other change until all other procedures related to the implementation have been completed, so you must annex territory pursuant to state law, then submit it for preclearance after completing all other necessary steps.

From a practical standpoint, if the territory will remain unoccupied it is obviously irrelevant whether the annexation has been precleared. No vote will have to be rejected because the annexation was not precleared. On the other hand, if the municipality will annex occupied property that is contiguous to the city limits only through this unoccupied property, then it must be precleared because the Justice Department won't preclear an annexation unless all annexations related to that property were also precleared. Similarly, if it is possible that someone will move onto the property and either run for office or vote, it is imperative that the property be precleared as quickly as possible.

This question also presents an opportunity to discuss problems related to annexations and deannexations during election years. The Justice Department has 60 days to preclear any item submitted to it. If the Department asks any questions (and they frequently will ask for clarification of one or more items), the 60 day period begins again. As you can see, the closer to the election date you attempt to annex territory, the more difficult it will be to obtain preclearance in time for residents on the territory to vote.

It is also important that all previous annexations have been precleared. The League recommends that all municipalities examine their previous annexations and deannexations to be sure that they have been precleared. If not, we encourage you to submit them to the U.S. Justice Department for preclearance. More information on the preclearance can be found in the *Selected Readings for the Municipal Official*, or at [www.usdoj.gov/crt/voting/sec\\_5/about.htm](http://www.usdoj.gov/crt/voting/sec_5/about.htm).

**Question:** Can an elected official's salary be tied to a percentage of the salary paid to department heads? In this case, the officials in question vote to approve department head pay raises.

**Answer:** The salary paid to elected officials must be approved by a general and permanent ordinance adopted by the council at least six months before the election. Many items can be made part of the salary ordinance, including



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benefits (such as health insurance) that an official will receive for serving. Almost any benefit the municipality could provide its employees can be included in the ordinance, but in order for the municipality to provide the benefit as part of the elected official's salary, it MUST be included in the salary ordinance adopted at least six month prior to the election.

As suggested by this question, it is also possible to provide for adjustments to the elected officials' salaries, but these adjustments must be tied to some objective standard that will be applied at a specific time in the future. Municipal officials should have no discretion as to the amount or timing of the possible salary adjustment that will be made. For instance, the salary ordinance might provide that the salary will be adjusted according to any changes in the Producer Price Index and apply that adjustment each January 1. Thus, every January 1, the elected official's salary would be automatically adjusted according to changes in the Produce Price Index.

Dealing with the specific facts raised in this question, there are a couple of problems associated with tying the official's salary to that paid to department heads. First, the officials in question have discretion in how much to pay the department heads. By tying their salaries to that of the department heads, the officials are arguably exercising discretion in determining their own salary. Additionally, the Ethics Law prohibits officials from taking any action that benefit themselves financially. For this reason, if the officials whose salary will be affected have any input in the salary that will be used to adjust their own salary, the League would recommend applying some other, more objective, adjustment mechanism.

**Question:** Can a salary ordinance provide that an official will be paid only for meetings he or she attends?

**Answer:** Yes. In fact, the League recommends that municipalities strongly consider amending their salary ordinances to include a provision tying the salary to council meetings that the officials attend. Such a provision should, of course, limit the number of paid meetings that may be held during the month. This action encourages officials to attend the meetings and participate in governing the municipality. A sample ordinance paying officials for meetings attended is provided in the Appendix to the 2008 Elections Manual, available from our office and as a PDF from our website at [www.alalm.org](http://www.alalm.org).

**Question:** How much can we charge for a qualification fee?

**Answer:** Pursuant to Section 11-46-2, Code of Alabama 1975, a municipality may adopt an ordinance requiring candidates who wish to run for municipal office to pay a qualification fee. The fee cannot be less than 10 dollars (\$10.00) nor more than 50 dollars (\$50.00). The ordinance must contain a provision allowing indigents to become

candidates.

**Question:** The League recommends not refunding qualification fees to candidates who withdraw from the race. Should we establish this procedure in an ordinance or resolution and also provide that if a candidate wishes to requalify, they must pay a new qualification fee?

**Answer:** Although probably not legally necessary, this isn't a bad idea. Putting this in writing puts all applicants on notice that if they withdraw, they will not receive a refund, and if they then attempt to requalify before the deadline passes, they will have to pay a new fee.

**Question:** We have a contract, part-time employee who fills in on an "as needed" basis. If this individual runs for office will he be able to come to work when needed?

**Answer:** Section 17-1-4, Code of Alabama 1975, provides that in order to run for office in the municipality where he or she works, an employee must take an unpaid leave of absence or use personal leave or compensatory time from the time they qualify as a candidate until they are no longer a candidate. This rule does not apply to unpaid volunteers, such as unpaid reserve officers or firefighters, who do not have to take a leave of absence to run for municipal office unless the council establishes a policy requiring them to do so. Attorney General's Opinion 1997-00034.

There does not appear to be any exception for contract employees. However, the answer to this question probably depends upon whether the individual would be truly classified as an "employee." Under the common-law, a person is classified as an employee if he or she is subject to the will and control of the employer. If not, the individual would probably be considered an independent contractor and would not be subject to this limitation.

The key factor that determines this is the amount of independence they have in the performance of their jobs. If there is a great deal of oversight, they should probably be considered employees for this purpose. You should look to all the surrounding issues to make this determination. For example, does he have a license for the work being performed? If so, he is more likely to be considered an independent contractor.

The bottom line is that each time a person who works for a municipality wants to run for office in that municipality, the municipality will have to determine whether he or she is an employee, and this will have to be determined on a case-by-case basis. If the person is called to work as needed, but works under the same control and supervision as other employees, then he would be considered an employee as well. If found to be an employee, he will have to take a leave of absence; or, in the present situation, because the person in question doesn't earn leave and only works when called in, if he meets the definition of "employee," the municipality would not be able to call him in to work while he is running

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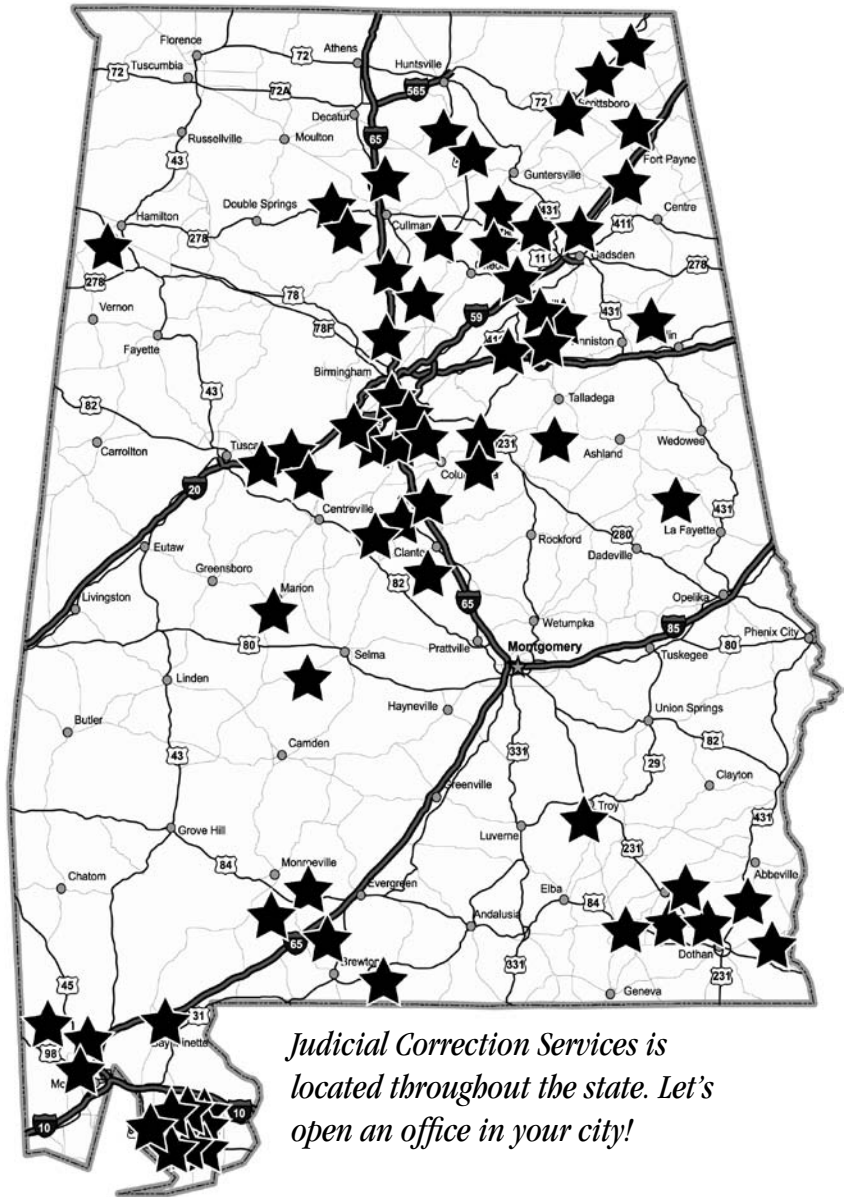
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for office.

**Question:** Is the municipality responsible for maintaining its voter's list, or is this the responsibility of the board of registrars?

**Answer:** To some extent, both entities maintain the voter's list. The county board of registrars is responsible for registering voters within the county and for updating the list as needed. The municipality obtains a copy of this list (or a list from the Secretary of State's Office – this procedure varies from county to county), then creates from this information its own list of voters that becomes the official municipal voter list. In other words, a person cannot vote a regular ballot in the municipality election unless they have properly registered with the county board of registrars and been included on the municipality's list (or have been validated by the board of registrars pursuant to law). An individual who is not on the list could, of course, vote a provisional ballot.

**Question:** Do you need a resolution to appoint the clerk the absentee elections manager?

**Answer:** No. The clerk is designated as the absentee elections manager by Section 17-11-15, Code of Alabama, 1975. This Section provides that the duties of the absentee elections manager are performed "by the town clerk, city clerk, or other officer performing the duties of the clerk. If such clerk or other officer is also a candidate in such election, the governing body of the city or town shall appoint a qualified elector of the city or town to perform the duties."

**Question:** Can the absentee elections manager take absentee ballot applications and ballots to a voter's home and allow the voter to vote?

**Answer:** Before answering this question, please note that this response does not address ballots and applications submitted pursuant to the federal Uniformed and Overseas Citizens Absentee Voting Act (under UOCAVA). Nor does it address the emergency absentee voting procedures. These issues are discussed further in the 2008 Elections Manual.

This question raises a number of significant issues. First, anyone can obtain and distribute as many absentee ballot applications as they want. However, they cannot do the same for the ballot itself. Applications must be returned either through the U.S. Mail or hand delivered by the voter. The absentee election manager may not accept multiple applications which are mailed in one envelope. Separate applications for absentee ballots are required for elections which are more than 30 days apart.

The absentee ballot itself must be either handed to the voter or mailed directly to the address the voter requests on the application. The ballot cannot be given to a "designee" of the voter.

That said, it would be possible for the absentee elections manager to fulfill all legal requirements by personally

delivering the absentee applications to a voter's home, allowing the voter to complete the application, then handing the ballot to the voter so that a vote can be cast and given back to the manager by the voter. But while this satisfies the legal requirements, taking an absentee ballot to someone's home and permitting them to vote absentee creates practical problems. For example, if the manager does this for one voter, she must do the same for all voters in similar situations. Plus, taking ballots from the office and returning with cast votes can raise suspicions that something illegal has taken place. These issues must be weighed carefully before assuming the responsibility of personally delivering absentee ballots to a voter.

**Question:** Can someone with a power of attorney vote an absentee ballot for someone else?

**Answer:** No. A voter may not give a power of attorney to authorize another person to mark the person's ballot. Attorney General's Opinion to Hon. Don Siegelman, July 13, 1984.

**Question:** Can we post and enforce signs prohibiting cell phone use in the polling place?

**Answer:** In the League's opinion, you can. Use of cell phones in the polling place creates numerous problems. At a minimum, they are a distraction to the officials and other voters. At worse, the use may violate the law. Many cell phones contain built in cameras. According to a November 3, 1994 letter from the Secretary of State, the Justice Department has ruled that videotaping at a polling place may intimidate voters and may constitute a violation of the Voting Rights Act. Use of cell phone cameras creates the same problems, and enforcing this during busy hours at a polling place can be difficult if voters (or election officials or poll watchers) are using cell phones. Similarly, although we have found no rulings specifically on this point, using cell phones to report that someone has or has not cast a vote may also intimidate voters and violate the Voting Rights Act. The simplest way to prevent violations would be to completely prohibit the use of cell phones by anyone while they are in the polling place.

**Question:** Is the canvassing of election results following the election subject to the Open Meetings Act (OMA)?

**Answer:** Yes. The canvas takes place at a meeting of the council and that meeting is subject to the OMA.

**Question:** Our council has always met the night of the election to canvas the results. Can they do so in 2008? What happens if there isn't a quorum at the meeting to canvas the votes?

**Answer:** In the past, municipal election results had to be canvassed by noon the day after the election. This year, due to provisional voting, the date for canvassing results was moved back seven days. Thus, results must be canvassed on September 2 for the election that will be held on August 26.

*continued on page 21*

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# Six Ways to Create a Positive City

Reprinted with permission from Nov. 2007 *Amazing Cities Newsletter*

by Jim Hunt, [www.amazingcities.org](http://www.amazingcities.org)

- Bad things sometime happen in spite of everything we do. Although we can't change the situation, we can change how we react to what happens. When the snow is falling and three of the six snow plows are broken, don't spend time crying. Make a plan and get busy. Get out front and don't let them see you sweat. Rearrange the schedules and communicate. You will find that a positive attitude can take the place of five or six snow plows.
- Get organized. So many cities are like so many individuals. Junk stacks up and takes up more and more space and time. Do a "house cleaning". Get rid of old equipment and unneeded vehicles. Some cities have discovered that they can significantly reduce insurance costs by cleaning out unused or obsolete equipment.
- Make meetings enjoyable. Sure there are serious issues facing your city, but treating everything as a crisis wears down even the most positive people. Lighten Up. You will find that even the most hardened citizen will soften if the mood is a little lighter. Be serious when it is warranted, but don't conduct your meetings as the Watergate hearings.
- Surround your city with inspiration. On your website, in City Hall, at your parks, place positive messages that create a feeling that your city is a place that cherishes positive attitudes. Instead of a sign that says "Do Not Litter," consider one that states: "Our Citizens Love A Clean City". Doesn't the message still come across?
- Write handwritten notes to citizens and employees. We send so many form letters that our citizens feel disconnected from the governing process. You would be surprised how many positive comments I receive when I send a handwritten note to a citizen. Don't forget to acknowledge younger citizens for their accomplishments.
- Practice Empathy. Try to understand what it is like to be in someone else's shoes. Reflect back to them how you think they are feeling, such as "It sounds like that was a difficult situation for you." Remember that empathy does not mean that you accept blame, only that you can relate to how someone feels. Let's face it, we can all relate to a basement full of raw sewage, even when the engineer says that it wasn't the city's fault.

## INTRODUCING.....



## Krystle Bell

The League welcomes Krystle Bell, who was hired this past October as our Member Services Assistant providing direct support to the Member Services Department. Born and raised in Roanoke, Alabama, Krystle was the 2003 Co-Valedictorian of Handley High School and graduated magna cum laude from Jacksonville State University in 2007 with a BA in Political Science and a double minor in Spanish/Business and Technical Writing. She currently resides in Montgomery and is a member of the JSU Alumni Association and Alpha Kappa Alpha Sorority, Incorporated.





# LEGAL CLEARINGHOUSE

**NOTE:** Legal summaries are provided within this column; however, additional background and/or pertinent information will be added to some of the decisions, thus calling your attention to the summaries we think are particularly significant. We caution you *not* to rely solely on a summary, or any other legal information, found in this column. You should read each case in its entirety for a better understanding.

## ALABAMA COURT DECISIONS

**Discrimination:** At all times, the plaintiff in an age-discrimination case under the Alabama Age Discrimination and Employment Act bears the burden of persuasion on the ultimate question of whether the defendant acted with an unlawful motive. *Robinson v. Alabama Cent. Credit Union*, 964 So.2d 1225 (Ala.2007)

**Schools:** An elementary school principal and an instructional assistant were entitled to State-agent immunity with regard to claims of negligent supervision of students, in a lawsuit brought by an 11-year-old student's mother after the student was sexually assaulted when she was permitted to leave school grounds with an individual who said he was the student's brother. The Principal was also entitled to State-agent immunity with regard to a claim of negligent supervision of personnel. *Ex parte Trotman*, 965 So.2d 780 (Ala.2007)

**Zoning:** A zoning administrator's statement in a letter sent to a land developer that the "approval period" on the developer's modified planned residential area (PRD) began anew when the zoning commission approved the proposed modifications to the PRD was not a separate determination that was appealable to the board of zoning adjustment so as to start a new 30-day limitations period on the appeals period applicable to a party challenging the commission's approval of the PRD. The zoning administrator had no power, under the zoning regulations, to determine the date of approval of a PRD final plan, such that the letter represented an opinion rather than an appealable determination. *Hodges v. Gulf Highlands Development, L.L.C.*, 965 So.2d 795 (Ala.Civ.App.2007)

## UNITED STATES COURT DECISIONS AFFECTING ALABAMA

**Disability Discrimination:** Non-economic compensatory damages, that is, damages for emotional distress, are available for intentional violations of the 1973 Rehabilitation Act provision prohibiting discrimination against the disabled by recipients of federal funds. The plaintiff's claims for injunctive and declaratory relief under the ADA and the Rehabilitation Act were not moot, despite the defendant's purported voluntary cessation of the allegedly wrongful conduct. *Sheely v. MRI Radiology Network, P.A.*, 505 F.3d 1173 (11<sup>th</sup> Cir.2007)

## DECISIONS FROM OTHER JURISDICTIONS

**Discrimination:** The owners of a roller rink/dance hall were allowed to proceed with their civil rights suit alleging that a suburban municipality amended their special use permit arbitrarily and irrationally in breach of substantive due process in an attempt to exclude black teenagers from a nearby metropolis. To prevail on an equal protection claim based on a theory of selective enforcement, the plaintiff must show both that: (1) it was treated differently from other similarly situated individuals or entities, and (2) such differential treatment was based on impermissible considerations such as race, religion, intent to inhibit or punish exercise of constitutional rights, or malicious or bad faith intent to injure person. *Cine SK8, Inc. v. Town of Henrietta*, --- F.3d ----2007 WL 3286903 (2<sup>nd</sup> Cir.2007)

**First Amendment:** Provision of Alaska's Official English Initiative (OEI), requiring the use of English by all government officers and employees in all government functions and actions, unconstitutionally restricted the ability of

Tracy Roberts  
Assistant General Counsel



citizens to petition the government, and violated First Amendment free speech rights of non-English speaking citizens by prohibiting the use of other languages by government employees capable and willing to provide services in such other languages. *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183 (Alaska,2007)

#### **ATTORNEY GENERAL'S OPINIONS**

**Ad Valorem Taxes:** Section 40-7-25.1 of the Code of Alabama specifically requires the owner of Class III property to request appraisal on the basis of current use and states that failure of the owner to do so means that the property must be appraised based on its fair and reasonable market value. A Class III taxpayer who fails to timely request appraisal on the basis of current use and consequently pays ad valorem taxes on the fair market value of the property is not entitled to a refund under section 40-10-160. AGO 2008-012

**Expense Allowance:** A Park Board, formed and operating pursuant to section 11-86-1, et seq., of the Code of Alabama may create an expense account to pay travel and other expenses incurred by the director and staff of the Board while in performance of their official duties if the expense allowance bears a reasonable and substantially accurate relationship to the expenses incurred. To the extent an expense allowance exceeds actual expenses, however, it is an unauthorized increase in salary and violates sections 68 and 281 and Amendment 92 of the Constitution of Alabama. AGO 2008-016

**Utilities:** A County Water Authority organized and existing under section 11-88-1, et seq., is exempt from payment of a gross receipts license tax imposed by a municipality under an ordinance adopted pursuant to section 11-51-129 of the Code of Alabama. Section 11-88-16 of the Code of Alabama, exempts Water, Sewer and Fire Protection Authorities from any license or excise tax imposed on such authorities with respect to the privilege of engaging in any of the activities authorized by that chapter. AGO 2008-015

#### **ALABAMA DEPARTMENT OF REVENUE RULINGS**

**Sales Tax:** A taxpayer may control where a sale occurs by indicating that title to goods purchased passes at the distribution center and thus determine which local sales taxes are due to be collected. ADOR Rev. Ruling 06-001

#### **ETHICS COMMISSION ADVISORY OPINIONS**

**AO No. 2007-17(B):** The language contained in Section 36-25-1(31)(c), Code of Alabama, 1975, which excludes disclosure of a personal gift made to a public official or public employee from a spouse, intended spouse, dependent, adult child, sibling, parent, grandparent, uncle, aunt, nieces, nephews or cousins of the public official or public employee, when read in conjunction with Section 36-25-1(31)(b)(3), which contains no exclusions based on familial or other relationships, requires all hospitality provided to public officials/ public employees to be reported to the Ethics Commission, if it exceeds the \$250 threshold reporting requirement, regardless of the nature of the relationship between the provider and the public official/public employee. Therefore, there is no exception for hospitality provided by friends or neighbors.

**AO No. 2007-19:** Alabama Power Company may award tickets to a concert or other items in recognition of a teacher being selected as "Teacher of the Year" without any reporting requirements under the Ethics Law being triggered, provided, the school system employing the teacher has a policy in place that recognizes and allows this practice. The school board policy should provide guidance and set guidelines, in order to maintain control of the practice.

**AO No. 2007-20:** Members of the Town Council may serve on the board of directors of a non-profit organization,

*continued on page 23*

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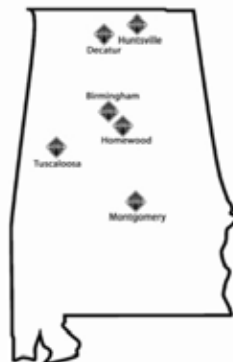
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(The same number of days exists between the run-off election and the canvas date). So, the council will NOT be able to meet the night following the election to conduct the official canvas. This is true even if no provisional votes are cast.

Regarding the second question, the council must meet to canvas the results. If they fail to assemble a quorum, then they would be subject to a court order forcing them to canvas the results and possibly opening themselves or the municipality to money damages. If a quorum cannot be obtained at the time prescribed by state law, hold the meeting as soon after that time as possible. This may satisfy the court that all legal procedures relating to the canvas have been met.

**Question:** Could the League provide clerks with a list of agencies and web sites where information related to the municipal election can be found?

**Answer:**

- Alabama League of Municipalities – (334) 262-2566. Web: [www.alalm.org](http://www.alalm.org).
- Secretary of State’s Office – (334) 242-7210 or 1-800-274-8683. Web: [www.sos.state.al.us/Elections/Default.aspx](http://www.sos.state.al.us/Elections/Default.aspx)
- Attorney General’s Office – (334) 242-7300. Web: [www.ago.state.al.us/](http://www.ago.state.al.us/)

Additionally, the League recommends that you take the time to get the names and numbers of other clerks who can help you answer questions. Other clerks who have been through an election have probably already confronted similar issues and can provide excellent advice and answers.

Next, you should get the names and numbers for contacts

with your local probate judge’s office and the board of registrars. They can help answer questions related to voting devices, the Fair Campaign Practices Act, absentee voting, and provisional balloting, among others.

Finally, don’t overlook the company or group that provided your election supplies. Frequently, they are the best source of information regarding the use of these supplies, as well as issues such as the number of election officials you will need, because this number varies depending on the elections equipment you’re using.

**Conclusion**

The municipal election seminar where these questions were raised was an excellent start to training that will be conducted prior to the 2008 elections. The League will participate in many other training sessions during the upcoming year and, of course, we will attempt to answer any questions you have relating to the election.

We encourage all clerks and other individuals who will be involved in the 2008 municipal elections to attend as many training sessions as you can. Seek opportunities to learn as much about elections as possible. For instance, it would be good to sit in on training being conducted for the election officials, even if the election involved is a county, state or federal election. Just be aware that some procedures in the municipal election are different from those in other elections. You may even want to serve as an election official in one of these elections. The information and experience you obtain will be invaluable in helping you conduct your municipal election fairly and legally. ■

# Congratulations

Jill Bright, CMC, Assistant City Clerk/Treasurer of Boaz and Brenda Austin, CMC, Town Clerk/Treasurer of Woodville for earning the prestigious Certified Municipal Clerk (CMC) designation from the International Institute of Municipal Clerks!

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and may be compensated for their service. However they may not vote, attempt to influence or otherwise participate in any votes to appropriate funds to, or contract with the non-profit organization, as their service on the board of directors makes the non-profit organization a business with which they are associated.

**AO No. 2007-21:** A newly-elected member of the County Commission may continue to provide accounting services to the County E-911 Board whose members are appointed by the County Commission. However the County Commissioner should not vote, attempt to influence or otherwise participate in any dealings between the County Commission and the E-911 Board, including, but not limited to appointments by the County Commission to the E-911 Board. Should new or an increased amount of services including, but not limited to compensation be desired from the County Commissioner by the E-911 District, they must be obtained through some type of bid process. Further, a copy of the contract must be filed with the Ethics Commission within ten days after its having been entered into.

**AO No. 2007-22:** Hospitality, where the expenditure is made to, or on behalf of, the City Zoo or any other organization to which a federal income tax deduction is permitted under Section 170 of the Internal Revenue Code of 1986, or any charitable, education or eleemosynary cause of Section 501 of Title 26 of the U.S. Code, does not have to be reported under the reporting requirements of Section 36-25-1(31)(b)(3) of the Code of Alabama, 1975, if the public official or public employee does not receive any direct financial benefit, and the expenditure is legitimately made to, or on behalf of, the charitable organization. "Dinner mementos" in the form of paperweights with the Zoo logo, or other similar items, may be accepted by public officials/public employees if the "dinner memento" is a promotional item created expressly for the purpose of distributing to the general public and is of a nominal value.

**AO No. 2007-23:** A retired public official may accept employment with a private company upon his retirement, when that company is under contract with the governmental entity that employed the public official, if he was not involved in the contractual process between the company and the governmental entity. Provided, however, that for a period of two years after his retirement, the former employee does not interact on behalf of the company in any manner, either in person or on-line, with the governmental entity. ■



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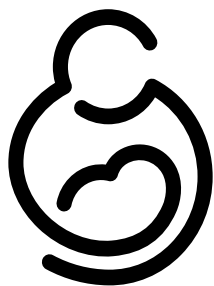
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## League Employee Receives NLC Service Award

Edith "Edye" P. Goertz, Member Services Director for the Alabama League, was presented with the John, G. Stutz award by the National League of Cities during its Congress of Cities held in New Orleans this past November.

Edye has been an employee with the Alabama League of Municipalities for 26 years. She began her tenure as the League's receptionist and is currently serving as the Member Services Director where she is responsible for planning all League board meetings, policy committees meetings, coordinating the League's Annual Convention and making all arrangements for the League's NLC registration, receptions and other functions. Edye also serves as Administrative Assistant to the Executive Director, handling special projects and supervising the League's support staff.

Each year since 1961, the National League of Cities (NLC) has presented the John G. Stutz award to individuals who have served a total of 25 or more years on the staff of a state municipal league, state league risk pool and/or NLC. Designed to recognize the contributions of long-time league and pool staff members, the award is named in honor of John Stutz, who convened representatives from 10 state municipal leagues in 1924 in Lawrence, Kansas for the first meeting of what was to become the American Municipal Association and, subsequently, the National League of Cities.

This year, NLC presented the Stutz Award to nine individuals who have completed 25 or more years of service to their respective state leagues. All nine names will be added to a large plaque at NLC headquarters containing the names of more 150 recipients since the award was first bestowed in 1981. ■

————— **CONGRATULATIONS, EDYE!** —————

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**September 18, 1975 – November 22, 2007**

## **League Mourns Death of Coworker Jason Humphries**

It is with heavy hearts that the League family informs you of the tragic death of Jason Humphries who was killed Thanksgiving Day after a fall from a tractor near his home in Mathews, Alabama. He is survived by his wife, Brooke; daughter, Tyler Ann; stepson, Will; his parents Bob and Maralon Humphries; and two brothers, Scott and Brian Humphries. He is also survived by his niece, Kaila; nephew, Mason; and a host of uncles, aunts and cousins. He was preceded in death by his infant son Forrest Humphries and grandparents Harry and Betty Wheeler.

Jason, who was never without an infectious smile and warm greeting, joined the League's staff on October 1, 2001, as a Loss Control Representative – one of the first positions filled in the joint Loss Control Department created by the Alabama Municipal Insurance Corporation and the Municipal Workers Compensation Fund, Inc. His territory included a number of counties in the central and eastern portion of Alabama where he frequently visited cities, towns and other municipal entities. Jason was a graduate of Auburn University at Montgomery where he earned a B.S. degree in Justice and Public Safety. Prior to joining the League's Loss Control Division, he worked four years with The Parks and Recreation Department of Montgomery.

## **OBITUARIES**

### **JIM ARMSTRONG**

Former Gadsden councilmember, Jim Armstrong, has died. He was 71. Armstrong served as a councilmember from 2002 until 2006. He also was very active in the community as captain of the Etowah County Rescue Squad.

### **BILLY LITTON**

First term Centreville councilmember, Billy Litton, passed away on October 25, 2007.

### **DAWSON PARTEE**

Former Gadsden Councilmember, Dawson Partee, died October 2007. He was 81. Partee served three terms on the city council from 1990-2002.

# AMFund

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