

The Alabama Municipal JOURNAL

March 2011

Volume 68, Number 9



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The Alabama Municipal JOURNAL

Official Publication, Alabama League of Municipalities

March 2011 • Volume 68, Number 9

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The Alabama Municipal Journal is published monthly by the Alabama League of Municipalities, 535 Adams Avenue, Montgomery, Alabama 36104.

Telephone (334) 262-2566. Website: www.alalm.org.

Single copies, \$2.00. By subscription, \$24.00 per year. Advertising rates and circulation statement available at www.alalm.org or by calling the above number. Statements or expressions of opinions appearing within this publication are those of the authors and not necessarily those of the Alabama League of Municipalities. Publication of any advertisement should not be considered an endorsement of the product or service involved. Material from this publication may not be reprinted without permission.

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On the Cover:

Spiral staircases, Alabama State Capitol, Montgomery, AL

by Jon Cook
 (joncook.zenfolio.com)

These magnificent double spiral, three-story staircases are located in the original Entrance Hall of the 1851 Alabama State Capitol and are believed to have been constructed in 1851 by Horace King, a bridge builder, engineer and freed slave, who used bridge-building techniques to design the staircases such that central supports were not required. After the Civil War, King became one of the first African Americans to serve in the Alabama Legislature.



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A Message from the

Editor



Have you registered for the Municipal Legislative Advocacy CMO session that will be held on March 29th in Montgomery? If not, I encourage you to – *right now* – download the registration form from the League’s website at www.alalm.org and secure your spot. You’ll find the link posted at the bottom of the Events Calendar on the homepage under CMO Session 32: Municipal Legislative Advocacy.

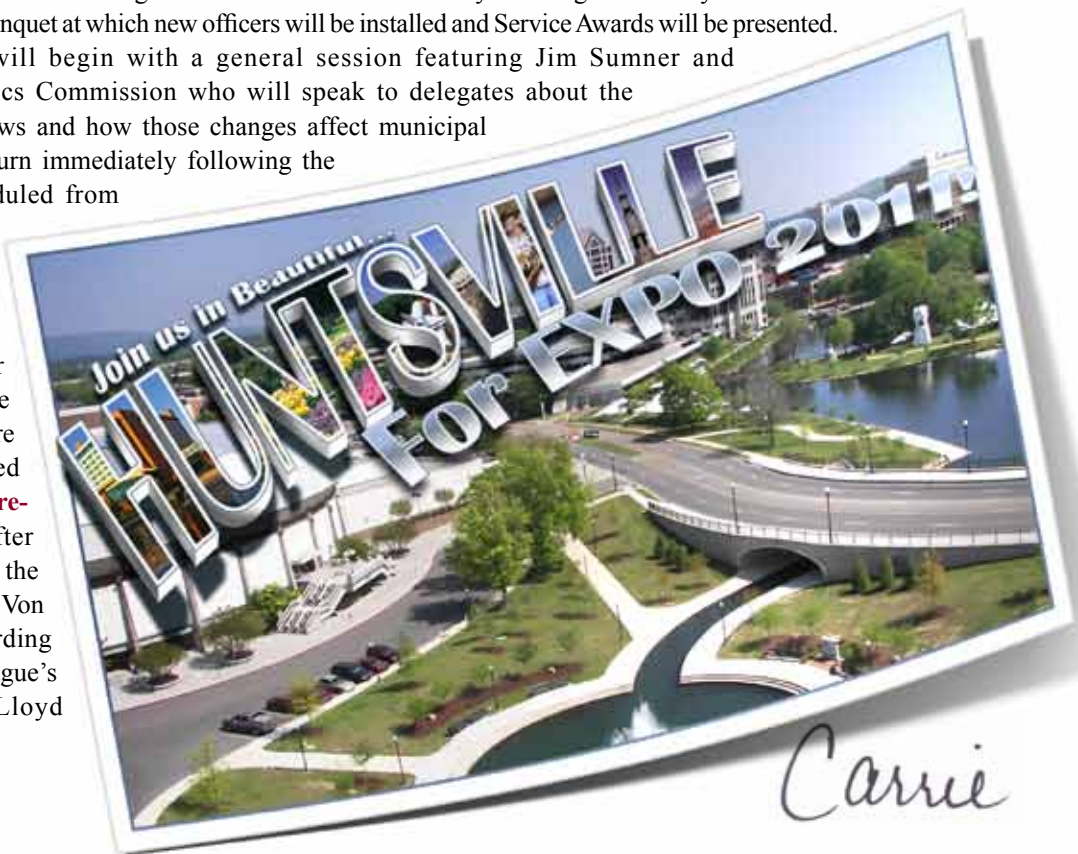
As you well know, we are entering uncharted territory following the unprecedented elections this past November and the sweeping reform to Alabama’s Ethics Laws – changes that will affect how you serve as locally elected officials and how the League represents the interests of municipalities at the State Legislature. More than ever we will need to speak with a collective, concise voice to spread our message: “Strong Communities Make for a Strong Alabama”. See Mayor Murphy’s column on the next page as well as Greg Cochran’s article on page 9 for more information about this very important upcoming CMO Session – and please plan to work closely with the League as we continue our 75+-year history of constructive dialogue with Alabama’s Legislature to protect and enhance our communities.

Annual Convention Scheduled for April 30-May 3 in Huntsville

This year’s Annual Convention has been revamped slightly from previous years. The Opening Session will now take place on Saturday afternoon, April 30, from 3 to 5 p.m. and will feature remarks from the League’s President, Mayor Charles Murphy of Robertsdale and NLC’s President, Councilmember James E., Mitchell, Jr., of Charlotte, NC. The 2011 Quality of Life Awards presentations will also be given during the Opening Session. The ever-popular roundtable discussions will be held Sunday afternoon, May 1, followed by a reception in the Expo Hall and Monday, May 2, will begin with a special general session followed by concurrent sessions featuring a variety of topics including: Redistricting, Municipal Finance, MS4 Permitting and New Drinking Water Standards, Working with Boards, the 2010 Census and Voting Rights Act Bailout Issues and Brownfield Redevelopment Opportunities in Alabama. Governor Robert Bentley will address delegates and guests during the Monday luncheon at 12:15. The Annual Business Meeting has been moved from Tuesday morning to Monday afternoon from 3:45 to 5:30 followed by the President’s Banquet at which new officers will be installed and Service Awards will be presented.

Tuesday morning, May 3, will begin with a general session featuring Jim Sumner and Hugh Evans of the Alabama Ethics Commission who will speak to delegates about the changes to the Alabama Ethics Laws and how those changes affect municipal officials. The convention will adjourn immediately following the “Ask Your Attorney Panel” scheduled from 10:30 until Noon.

You may register for the convention online via the League’s website at www.alalm.org. Click on the link under the Events Calendar on the homepage. To make the convention registration process more efficient, delegates are encouraged to pre-register. **The deadline for pre-registration is April 8, 2011.** After April 8, delegates must register at the convention registration desk in the Von Braun Center. For questions regarding registration, please contact the League’s Membership Director, Theresa Lloyd at 334-262-2566. ■



Carrie

The President's Report

Charles Murphy • Mayor of Robertsdale



Annual Municipal Legislative Advocacy CMO Session Scheduled for March 29th

The League has scheduled its *Annual Municipal Legislative Advocacy CMO* for Tuesday, March 29th at the Embassy Suites in downtown Montgomery (registration forms can be downloaded from the League's home page at www.alalm.org). Greg Cochran, the League's Director of Intergovernmental Relations, has planned a full day that will include presentations from Senate Pro Tem Del Marsh and House Speaker Mike Hubbard as well as the Chairs of the House and Senate Budget Committees and Lt. Governor Kay Ivey. The League staff will discuss the League's legislative agenda and other critical issues affecting municipal governments that will likely be debated this session and we'll conclude the afternoon with visits to our perspective legislators at the Alabama State House.

Please note that you will need to make appointments to visit your state legislators on the afternoon of the 29th. To schedule visits with House members, call 334-242-7600 and to visit Senate members, call 334-242-7800. Schedule your visits between 2:00 and 3:30 p.m. If the weather permits, we'll have a group photo taken on the Capitol steps at 1:45 p.m.

In every session of the Alabama Legislature since 1935, the League has served as the guardian and the voice of municipal interests. Through the years, League legislative programs have produced more than 400 general acts which directly benefit municipal government and its citizens. Cities and towns in Alabama now receive many millions of dollars each year in state-shared revenues as a direct result of the League's legislative efforts. In addition to working for passage of League legislative proposals, the League staff continually monitors and reports on all types of legislation, at both the state and federal levels, which may affect cities and towns.

With the historical changes to Alabama's Ethics Laws and the unprecedented turnover in both the House and Senate this past November, it will *be more important than ever* for locally elected officials to work with the League to pass legislation critical to the maintenance and welfare of our communities. Perhaps even more importantly, we will need to be prepared to work collectively to stop any legislation

that could be detrimental to our municipalities.

This Certified Municipal Official (CMO) session is approved for 5 hours of Basic, Advanced or Continuing CMO credit. In early 1994, the Executive Committee of the Alabama League of Municipalities unanimously voted to appoint a subcommittee to study the feasibility of establishing a certification program for elected municipal officials. In July 1994, the Executive Committee agreed to the subcommittee's recommendation and approved the League's CMO program. The League's CMO program was the second elected municipal officials training program in the country.

The CMO Program is voluntary and open to all elected municipal officials. The League conducts one-day training sessions at least twice a year at four regional sites. Participants earn 5 credit hours by attending these sessions. Credit hours may also be earned by attending other League or National League of Cities conferences or through service on League committees and boards. Outside credit is also awarded for attendance of approved seminars.

Any official who earns 40 credit hours in the program will be awarded the designation of Certified Municipal Official (CMO). Currently, 3401 elected municipal officials are enrolled in this program. There have been 900 elected municipal officials to complete the basic 40 hours of training required for the CMO designation. There have been 406 officials to complete their advanced hours.

In response to requests from CMO graduates, an Advanced CMO Program was established in early 1997. This program allows elected municipal officials who have achieved the basic CMO designation to obtain additional training. Several seminars are conducted each year for the Advanced CMO Program.

Graduates of the Advanced CMO program can retain their status by obtaining 10 hours of continuing CMO credit during a two year period. For more information on the League's CMO program, or to download the registration form for the Municipal Legislative Advocacy session on March 29th, visit www.alalm.org. ■



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Large Municipal Court

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- Judge
Alabama Court

Benefiting the Defendants...

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- Emma G., Defendant
Florida State Court

"...thank you for getting me into a treatment program. I'm loving my sobriety. It's a wonderful life. It does work One Day At A Time."

- Danny B., Defendant
Marshall County, Alabama

"Thank you for everything. Even though you did not have to do it, you did it anyway and it was much appreciated. You kept me out of jail."

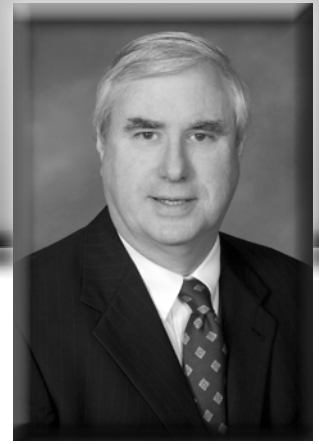
- Craig A., Defendant
Foley, Alabama

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Municipal Overview

Perry C. Roquemore, Jr.
Executive Director



Minutes from the Mid-Winter Executive Committee Meeting

The Mid-Winter Meeting of the Executive Committee Meeting of the Alabama League of Municipalities was called to order at 10:00 a.m. on Thursday, January 27, 2011, by Mayor Charles Murphy, Robertsdale, League President. Mayor Murphy asked everyone to remember former Mayor Ken Williams of Saraland who passed away in December. He welcomed those members present and wished them a safe and prosperous 2011. Councilmember Thomas Moore, Demopolis, Vice Chair, also welcomed those present.

The President called upon Mr. Lee Sentell, Director, Alabama Department of Tourism and Travel for a special presentation. Mr. Sentell told the committee that the 2010 Year of Small Towns and Downtowns was the most successful program ever run by his agency. Over 250 municipalities held events during 2010. He presented the League with a replica of the Alabama State Capitol Building as appreciation for the League's efforts on this project. The gift will be displayed in the League Archives room.

In my report to the Executive Committee, I informed attendees that League dues notices for the September 1, 2010 - August 31, 2011 League Fiscal Year were mailed in August. Dues have been received from 437 municipalities. As of the date of the committee meeting, the League had 443 member cities and towns out of the 461 municipalities in the state. A list of the 18 Non-Member cities and towns was provided in each member's packet. Members were encouraged to contact any non-members in their area and recommend that they join the league.

It was reported that the League's Committee on State and Federal Legislation met on January 13 and adopted the League Legislative Package for 2011. I also reported briefly on the results of the 1st Special Session of 2010, which dealt with ethics legislation.

Approximately 167 municipal officials and guests attended the NLC Congress of Cities in Denver, CO, in December. Councilmember David Hooks of Homewood is the new chair of the NLC FAIR Committee. Mayor Leon Smith of Oxford, Mayor Ted Jennings of Brewton, and Councilmember Debbie Quinn of Fairhope serve on the

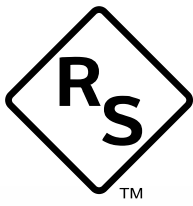
NLC Advisory Committee.

Board members and other municipal officials were encouraged to attend the NLC Congressional City Conference in Washington, DC, on March 12-16, 2011. The Alabama caucus will be held on Sunday afternoon, March 13, at 5:30 p.m. The seven congressional dinners will be held on Monday evening. The chair for each district is as follows: District 1 (Mayor Ted Jennings of Brewton), District 2 (Councilmember Tommy Johnson of Enterprise), District 3 (Mayor Gary Fuller of Opelika), District 4 (Mayor Max Townsend of Cullman), District 5 (City Clerk Bob Leyde of Florence), District 6 (Mayor Sonny Penhale of Helena) and District 7 (Councilmember Thomas Moore of Demopolis). On Wednesday morning, our two U.S. Senators have been invited to join the Alabama delegates for breakfast.

The League's annual convention, which will be held April 30 through May 3, 2011 in Huntsville, is shaping up well. Several staff members recently met with Huntsville officials. The Opening Session for this year's convention will be held on Saturday afternoon, April 30. Our League President Charles Murphy will give his address at this time. He will be joined by NLC President James Mitchell of Charlotte, NC. The Quality of Life Awards will also be presented at this time. Governor Bentley has agreed to speak to delegates at the Monday luncheon. This year, the President's banquet will be held on Monday evening during which new League officers will be introduced. Tuesday morning will begin with a General Session program on the New Ethics Law followed by the popular Ask Your Attorney session. The convention will conclude following the Ask Your Attorney session on Tuesday morning. There will be no Tuesday luncheon this year. Online registration and a Convention Quick Guide are available through the League's website at www.alalm.org. Registrations will be accepted online or by mail. For security reasons, No FAX registrations will be accepted.

A report on the CMO Program was then presented. To date, 3,401 municipal officials have enrolled in the program with 1407 being active officials. Since 1996, we have had 900 officials complete the basic program and since 1999,

continued on page 19



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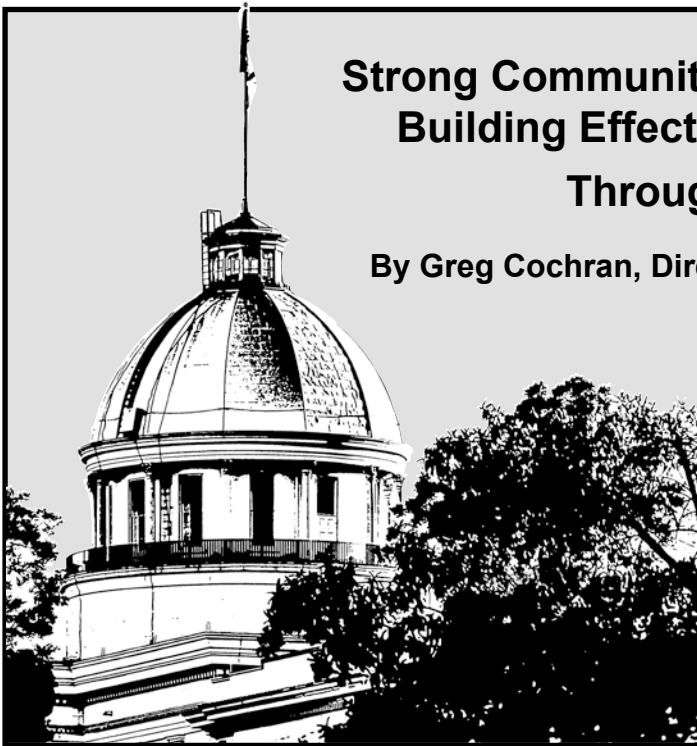
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Strong Communities Make for a Strong Alabama: Building Effective Legislative Relationships Through a United Message

By Greg Cochran, Director, Intergovernmental Relations, ALM



Alabama, along with most of the nation, witnessed unprecedented election turnover this past November – and many of the freshmen legislators are coming into office for their first taste of public service. Hundreds of legislative proposals affecting municipal governments will be introduced when the Legislature convenes in Montgomery on March 1st. During the 105 calendar days the Legislature is in session, many of the proposals will be fiercely debated by the House and Senate. And, by Sine Die on June 13th, some of these proposals will pass both bodies and be enacted into Law. It is our responsibility – the League and its membership – to ensure that those proposals which are debated and passed are representative of our communities’ needs.

As I write this column (February 9th), many legislators are in Montgomery to discuss the State budgets. Each State department and agency is providing our legislators with an analysis of the status of their economic crisis and projected budget needs for next year. Much work will be put into these presentations and the legislators will be challenged to make their best decisions on where to spend state tax dollars over the next several months.

You may be asking yourself, how does all this relate to Alabama’s municipalities? My response: “Strong communities make for a strong Alabama.” By uniting our voice through this common message and using our strength as a whole (strength in numbers), we – the League and its membership – can make a difference! Municipal leaders have an excellent opportunity to follow the examples of the state agencies and invite your local legislators into *your* city or town halls and provide them with an overview of what it takes to manage your communities. Many legislators are from a business background. Some are practicing attorneys or physicians. Many have a limited perspective of what it takes to maintain the quality of life in a community –

their only experience is that of the citizen – someone who uses the services of the community in which they and their families live, work and play. Many may only have the perspective of being a consumer, tax remitter and business license purchaser. And, as we all know, it is difficult to relate to another person’s circumstances if we don’t have their perspective.

Now is the time for you as locally elected officials to share with your legislators where municipal revenues are derived and how they are utilized in your community. Discuss your community’s short and long range plans and how you expect to reach those goals with your legislators. Invite them to be part of that process. Share with them the natural resources your community has in place and which resources your community will need to reach its goals. Take the opportunity to allow the municipal department heads – such as parks and recreation, finance, sanitation, police and fire – to provide your legislators with information on the challenges they face delivering needed services to your citizens. The better informed and educated legislators are in what it takes to manage a municipality and provide its citizens with the services they demand, the better advocate they can be for your community.

The League is presenting its Annual Municipal Legislative Advocacy CMO in Montgomery on Tuesday, March 29th. We have invited, Senate Pro Tem, Del Marsh and House Speaker Mike Hubbard to join us, along with the Chairs of the House and Senate Budget Committees. Lt. Governor Kay Ivey will be our luncheon speaker. We will also discuss the League’s legislative agenda and other issues affecting municipal governments that will surely be debated this session. We hope you will attend this informative CMO program and join your peers in visiting with our State Legislators in Montgomery immediately following the program. *It is imperative that we work closely with our legislative colleagues to safeguard the communities we love.* It’s our responsibility to take this opportunity and help them understand our challenges and issues. Therefore, I challenge *you* to help spread our message: “Strong Communities make for a Strong Alabama.”

Please keep in mind that your League staff is available to help you in determining communication strategies, defining your message and setting appointments with your legislators. Once you’ve set meetings with your legislators in your communities, we would greatly appreciate the opportunity to attend those meetings as well. We also want to hear about your visits with local legislators, your success stories and your ideas on how, together, we can make a positive difference. ■



RDS
Smart Government Awards

2010
Small Municipality Award Winner

Presented to
City of Guntersville, Alabama



From left to right: Pete Yonce (RDS); Councilman Wayne Sellers; Stephen Morris (RDS); Lesa Bellin (Recycling Coordinator); Carl Fulmer (Ordinance Enforcement Officer); Milla Sachs (Executive Assistant to the Mayor); Councilman Rudy Cornelius; Dan Warnes (City Attorney); Mayor Robert L. Hembree, Jr.; Councilman Charlie Williams; Renea Bradley (Personnel Director); Councilman Randy Whitaker; Betty Jones (City Clerk); Grant DeMuth (Director Economic Development); Leigh Dollar (City Auditor, Dollar & Watson, Sponsor of the State of the City).

Revenue Discovery Systems (RDS) presented its final 2010 Smart Government Award (SGA) in the Small Municipality category to the City of Guntersville, Ala. Under the leadership and direction of Mayor Robert L. Hembree, Jr., the city expanded recycling collection efforts, implemented “paperless” practices in the police department, and motivated community members to contribute to litter prevention among other

cleanup efforts.

City of Guntersville officials made recycling and waste reduction a priority. Existing environmental efforts were further enhanced in a cost effective manner through revised procedures and practices. Many recycling programs have been in place for some time, including the collection of paper, glass, aluminum cans, tin/steel cans, plastics, cardboard, motor oil, and scrap metal.

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The Legal Viewpoint

By Ken Smith
Deputy Director/ General Counsel



An Overview of Parliamentary Procedure for Smaller Entities

Section 36-25A-5 of the Alabama Open Meetings Act (OMA) requires that all meetings of entities subject to the OMA must be conducted according to rules of parliamentary procedure. Any municipal board or agency that has the power to expend or appropriate municipal funds must conduct open meetings pursuant to the requirements of the OMA. Additionally, the OMA applies to any instrumentality, including separate corporations, whose membership is composed of at least a majority of members who were appointed by the municipality. Thus, most municipal boards and committees are covered and must apply some type of parliamentary procedure rules.

But what does this mean? The main purpose behind parliamentary procedure is to conduct meetings in an orderly and harmonious manner. In small boards the detail that is required in larger or more formal meetings (such as council meetings) may not be necessary or even desirable. Municipal committees and boards are formed to investigate or exert authority over specific areas of government. Often, these meetings are attended by small numbers of individuals and following all the detailed rules of a manual like *Robert's Rules of Order* or *Mason's Manual of Legislative Procedure* could even hinder participation in the meeting. As long as the rules that are followed enable the entity to conduct business in a timely and orderly manner, the rules satisfy the requirement of applying some form of parliamentary procedure.

Many people, though, believe that parliamentary procedure rules must be complicated and difficult to understand and apply. Instead, the opposite is true. In fact, even *Robert's* recognizes the need to modify its own rules when the entity conducting the meeting is small.

But even though the rules may be simplified, the entity must still conform to some set of rules and structure. Even if the Open Meetings Act didn't require following rules of parliamentary procedure, those attending a meeting have a right to know how business will be conducted and that business will be done "by the book" – whatever "book" or

policy will be followed. This article examines parliamentary procedure with the goal of helping those who will serve on smaller, less formal, boards adopt and apply rules of procedure.

Keep in mind that municipal councils, boards and agencies operate under the authority granted by state law and generally have the power to adopt their own rules of order, as long as those rules do not conflict with state law. In some cases, rules of parliamentary procedure may conflict with state laws or a locally adopted rule of order. In those instances, state law prevails. If the entity has adopted its own rules of procedure, that local rule prevails (as long as it doesn't conflict with state law), even if it conflicts with a parliamentary procedural manual. *Robert's* and other manuals are intended to supplement state and local rules of order, and to help address questions that are not otherwise addressed.

Principles of Parliamentary Procedure

It is essential, of course, that the entity adopt whatever rules it will follow in advance so that the attendees know what to expect during the meeting. Rules should not be developed "on the fly" or applied in an ad hoc manner. Advance notice may be as simple as announcing that the entity will follow *Robert's* or some other manual. Be aware, though, that the complete version of *Robert's* is over 700 pages long. If the entity doesn't have a trained parliamentarian, the group may waste so much time looking up the answers to questions to be sure they are properly following the manual that, again, the meeting will be hindered rather than moving smoothly forward. And, as noted above, parliamentary procedure should not make the meeting more difficult.

The primary principle of procedure is to facilitate the transaction of business and to promote cooperation and harmony. Procedure should not be used to entangle and confound the uninformed but rather to expedite business, to avoid confusion and unfair advantage and to protect the rights of members.

Several basic procedural rules have been developed to assure the simplest and most direct procedure for accomplishing a purpose is observed.

First, motions have a fixed order of precedence and only one motion may be considered at a time.

Second, all members have equal rights, privileges and obligations. The presiding officer must be impartial and should use his or her authority to protect and preserve the equal rights of all members to propose motions, speak, ask questions, vote, etc.

Third, the ultimate authority in an organization is vested in the majority. A primary purpose of procedure is to determine the will of the majority and to carry it out. Once a question has been voted upon, the decision becomes that of the organization. Each member should accept and abide by the result.

Fourth, the minority is entitled to the same consideration and respect as members who are in the majority. The protection of the rights of all, both majority and minority, should be the concern of each member.

Fifth, each member is entitled to full and free discussion. Each has the right to express his or her opinion fully and freely without interruption and interference within the framework of the rules.

Sixth, each member is entitled to know the meaning and effect of each question presented. The presiding officer should keep the pending motion clearly before the assembly at all times. Upon request, the presiding officer should explain any procedural motion and its effect so that every member may understand the proceedings.

Finally, it is important to remember that all meetings must be characterized by fairness and good faith. Trickery, dilatory tactics, dealing in personalities and railroading are, or should be, taboo. Fraud, unfairness or absence of good faith may be grounds for a court to invalidate action taken.

I Move We Do . . . Something!

Despite the length of *Robert's* and other procedural manuals, a basic understanding of the rules of parliamentary procedure is not difficult. In fact, there are relatively few rules that must be grasped. At least 95 percent of all the situations that might conceivably arise in the conduct of an average meeting by the governing body of a municipality can be summarized briefly.

Entities and boards composed of more than one person can act only by taking a tally of the membership. In most cases, the majority rules, although statutes may change voting requirements in some instances; in these situations,



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please consult your attorney to determine if voting requirements have been satisfied. There must, then, be a mechanism for bringing matters before the consideration of the members. That mechanism is the motion.

Motions are designed to help the entity determine consensus on issues. In order to facilitate orderly consideration of these matters, motions are classified and ranked so that the entity can deliberate them in proper order. For instance, it would be a waste of time for a board to vote on a motion before considering any amendments to that motion. Until the amendments are dispensed with, the main motion under consideration is not in a final form. Similarly, if several of the members desire to have a committee consider a matter, the motion to refer the issue to the committee should be voted on first. If it passes, there is no need to even consider the main motion.

Rules governing motions are definite and logical. If a member understands the purpose of a motion, he or she can usually ascertain the rules governing it. The following questions should be asked about each motion: What is its precedence? Can the motion interrupt the speaker? Is a second required? Is it a debatable motion? Can it be amended? What are the requirements to pass this particular motion? To what other (usually previous and pending) motion does this motion apply? What other motions (which could be proposed) can be applied to the motion?

Most motions require a seconding motion. It makes little sense to consider matters that are not supported by at least two members. All that is required is for a member to say, "I second the motion." Requests by members to the presiding officer do not require seconds. For example, point of order, inquiry and withdrawal of a motion or question of privilege do not require seconds. Even in this cases, though, seconds of motions may be required by local agreement or customs notwithstanding the general rule.

Motions fall roughly into four types – main, subsidiary, incidental, and privileged motions.

Only One Main Motion May be Pending. One of the most common misunderstandings of parliamentary procedure is that there can be only one motion pending at a time. Instead, there can be only one "main" motion pending at one time. However, there may be many other motions of a different character applied to the main motion all pending at one time.

Definition of Main Motion. The main motion seeks to accomplish some concrete objective or specific item of business on the agenda. It introduces an action to the group for its consideration. It is always debatable and amendable, and it ranks below all other motions. Once the main motion is made, it is subject to three other classes of motions: subsidiary motions, incidental motions and privileged motions.

Subsidiary Motions. Subsidiary motions can be made only when there is a main motion on the floor. This type of motion is supplemental to the main motion. Examples of a subsidiary motion would be to amend, alter, postpone, or temporarily dispose of the main motion. Subsidiary motions rank right below privileged motions, and above the main motion. When a subsidiary motion is made, it must be disposed of before the main motion can be disposed of.

Incidental Motions. The next group of motions to which a main motion is subject are the incidental motions. These are often procedural in nature, dealing with matters such as the method of voting, closing nominations, or an appeal of a decision of the chair. "Incidental" carries with it the thought that it is a minor or subordinate factor, rather than a primary or major one. Again, this motion must also be disposed of before the main motion can be acted upon.

Privileged Motions. Finally, main motions are subject to privileged motions. These motions are considered the most urgent and generally deal with special or important matters not related to pending business. A motion to adjourn, or a motion related to the comfort of the meeting facility, would be considered privileged motions. Once more, this type of motion must likewise be disposed of before a main motion can be acted upon.

Unclassified Motions. Some motions, of course, are considered as unclassified motions. These include motions to "reconsider," "take from the table," "to ratify," "to rescind" and others.

Enumeration of Subsidiary Motions. It is also important to know which motions take precedence over the other, when they yield to another motion and similar matters.

Here are several of the most commonly used subsidiary motions in the order of their priority. They are as follows:

- Lay on the table.
- The previous question
- Limit or extend debate
- Postpone debate until a specified time
- Refer to the committee
- Substitute for the whole
- To amend the amendment
- To amend the main motion
- To postpone indefinitely

Any one or all of these motions could conceivably be applied to any pending main motion. These motions would have to be disposed of before the main motion could be acted upon.

Enumeration of Incidental Motions. In some respects, these incidental motions are similar to subsidiary motions in the sense that they apply to the matter or question immediately pending before the meeting.

- Leave to withdraw motion
- Parliamentary and other inquiries
- Division of question
- Division of vote
- Objection of consideration of question
- Suspension of rules
- Point of order
- Appeal

Since these motions arise out of the pending question, it is logical that they must be disposed of before the main motion out of or because of which they arose. While they take precedence over the main question and most of the subsidiary motions, they yield to and are subordinate to all privileged motions.

Enumeration of Privileged Motions. Privileged motions differ from both the subsidiary and the incidental motions because they do not necessarily relate directly to the pending question. They have to do with the efficient functioning of the meeting and usually pertain to its orderly progress in a manner which will promote the good and welfare of the group as a whole.

The most commonly used privileged motions, in the order of their priority, are the following:

- Motion fixing time to which the meeting shall adjourn.
- Motion to adjourn
- Motion of recess
- Question of privilege
- Call for the order of the day

These motions take precedence not only over the main motions, but over the subsidiary and incidental motions as well. Consequently, they must be disposed of before proceeding with business.

Unclassified Motions. For all practical purposes, unclassified motions should be treated as main motions. All of them pertain to taking further action upon some matter which has already been previously

considered and either acted upon favorably or adversely or upon which final action has been deferred. Among the most commonly used are the following:

- To take from the table
- To ratify
- To rescind
- To reconsider

It may help to think of motions according to their objectives:

Motions to change – Such as to amend or to refer to a committee.

Motions to delay – Such as to postpone consideration to a specific time or to lay on the table.

Motions to limit debate – Such as the motion to limit or to move the previous question.

Motions to suppress the question – Such as to object to the consideration of the question, to postpone consideration indefinitely or to lay on the table.

Motions to bring a question to immediate vote – Such as the motion for the previous question.

Motions to take further action on a matter – Such as the motion to ratify, to rescind or reconsider.

Chart

In addition to deciding the order in which motions can be considered, it is also important to know when motions can be made, whether a second is required, whether the motion is debatable, who determines the result of the motion (chair or membership and the vote required), and whether the motion can be reconsidered.

The chart on the next page lists some of the more common motions and can help board members determine which actions can be applied to various motions. Motions at the top of the chart generally must be dispensed with before motions lower on the chart can be considered.

Committees and other entities should determine the rules that they will follow in their meetings and, if necessary, any amendments to the rules that they wish to adopt. Armed with this knowledge, a member of any board can protect his or her rights to participate in the debate and know how and when to communicate their desires. Presiding officers can determine the will of the membership while protecting the rights of the minority.

This chart is based on *Robert's* and should be considered only as a general guideline. If the entity in question follows a different parliamentary procedure manual, the rules may be different. Additionally, local and state laws may modify these rules. ■

Parliamentary Procedure Motions Chart

(Based on Robert's Rules of Order)

MOTION (in order of precedence)	Interrupt Speakers to Make?	Second?	Debatable?	Amendable?	Can it be Reconsidered?	Vote
Main Motion	N	Y	Y	Y	Y	Majority
Amend	N	Y	If motion amended is Debatable	Y	Y	Majority
Adjourn	N	Y	N	N	N	Majority
Recess	N	Y	Y, only if Question Before Body When Made	Y	N	Majority
Question of Privilege	Y, if unavoidable	N	N	N	N	Chair
Personal Privilege	Y, if unavoidable	N	N	N	N	Chair
Parliamentary Inquiry	Y	N	N	N	N	Chair
Point of Information	Y	N	N	N	N	Chair
Lay on the table	N	Y	N	N	N	Majority
Previous Question (Close Debate)	N	Y	N	N	Only on Negative Vote	2/3
Limit or extend debate	N	Y	N	Y	Y	2/3
Postpone to a certain time	N	Y	Y	Y	Y	Majority
Refer to committee	N	Y	Y	Y	Only If Committee Hasn't Started	Majority
Postpone Indefinitely	N	Y	Y	N	Only on Affirmative Vote	Majority
Reconsider	Not While Speaking	Y	If motion being reconsidered is Debatable	N	N	Majority
Rescind	N	Y	Y	Y	Only on Negative Vote	2/3 or (majority— See Robert's)
Amend Motion Previously Adopted	N	Y	Y	Y	Only on Negative Vote	2/3 or (majority— See Robert's)

LEGAL CLEARINGHOUSE

In 2010 the League's Legal Department fielded nearly 8000 legal questions. In an effort to help disseminate pertinent information as widely as possible, we will include a new "Frequently Asked Question" section to the Legal Clearinghouse each month (see box bottom right).

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

Courts: A defendant who escapes after conviction, but before sentencing, and is later returned to custody before filing a notice of appeal, would not have his or her appeal automatically dismissed, but the defendant may forfeit his statutory right to appeal his convictions. *Dubose v. State*, 47 So.3d 831 (Ala. Crim.App.2009)

Courts: Under the identity exception and the common plan, scheme, or design exception to the general exclusionary rule prohibiting the admission of other or collateral crimes as substantive evidence of the guilt of the accused, the prior crime is not relevant to prove identity unless both that and the now-charged crime are signature crimes having the accused's mark and the peculiarly distinctive modus operandi so that they may be said to be the work of the same person. *Moore v. State*, 49 So.3d 228 (Ala.Crim.App.2009)

Streets: Section 23-4-2(b) of the Code of Alabama, indicating that, upon vacation of a public right-of-way, title and all public rights "shall vest in the abutting landowners," did not alter the common law so as to require that every abutting landowner is entitled to a share of a vacated right-of-way. The common law applied to permit the landowner abutting the vacated right-of-way, whose predecessor in interest contributed all the property for the right-of-way, to retake full ownership of the vacated right of way in fee simple. *Keeton v. Kelly Co., LLC*, 47 So.3d 1262 (Ala.Civ.App.2010)

Tort Liability: The element of malice required to establish a malicious prosecution claim may be inferred by the trier of fact from a lack of probable cause in instituting the underlying criminal proceeding. When a public official rests a determination to bring charges against an accused upon information furnished by particular complainants, if it is shown by competent evidence that those complainants only misrepresented the facts in order

to induce action, it may be said that they did aid and abet in bringing about the prosecution. *Grantham v. Bynum*, 48 So.3d 657 (Ala.Civ.App.2010)

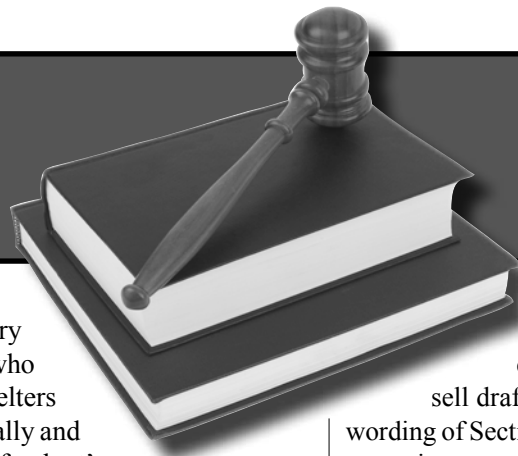
Worker's Compensation: A workers' compensation claimant, a city firefighter, was not entitled to recover benefits for post-traumatic stress disorder (PTSD), where the claimant's PTSD resulted exclusively from emotional trauma, and not due to any physical injury. In accidental-injury cases, in order for a worker to recover for a psychological disorder, the worker must have suffered a physical injury and that physical injury must have proximately caused the psychological disorder. *Cocking v. City of Montgomery*, 48 So.3d 647 (Ala.Civ.App.2010)

United States Court Decisions Affecting Alabama

Criminal Law: The Computer Fraud and Abuse Act makes it a crime to intentionally access information in any protected computer without authorization or exceed authorized access, and thereby obtain unauthorized information. The Act defines the phrase "exceeds authorized access" as "to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled to obtain or alter. The Computer Fraud and Abuse Act is violated even if the defendant never used the personal information he accessed without authorization to defraud anyone or to gain financially. *U.S. v. Rodriguez*, --- F.3d ----, 2010 WL 5253231 (11th Cir.2010)

Discrimination: An employer's alleged act of firing an employee in retaliation against the employee's fiancé, who also worked for the employer, for filing a charge of discrimination with the EEOC, if proven, fell within zone of interests protected by Title VII, such that the employee was a person "aggrieved" with standing to sue the employer for retaliation. *Thompson v. North American Stainless, LP*, --- S.Ct. ----, 2011 WL 197638 (U.S.2011)

Employees: Judicial review of portions of employment background checks required of certain federal contract employees had to take into account the context in which the challenged inquiries arose, namely, in the government's capacity as proprietor and manager of its internal operation, as opposed to in its capacity as a sovereign exercising its power to regulate or license. When the government requests job-related personal information in an employment background check, it does not have a constitutional burden to demonstrate that its questions are "necessary" or the least restrictive means of furthering its interests. *National Aeronautics and Space Admin. v. Nelson*, 131 S.Ct. 746 (U.S.2011)



Tort Liability: When summary judgment is denied to a defendant who urges that qualified immunity shelters her from suit, the court's order finally and conclusively disposes of the defendant's claim of right not to stand trial, and an immediate appeal may be pursued. Immediate appeal from denial of summary judgment on qualified immunity plea is available when the appeal presents a purely legal issue, such as whether the law was clearly established at the time that the civil rights defendant acted. However, immediate appeal is not available when the district court determines that factual issues genuinely in dispute preclude summary adjudication. Also, a defendant may not appeal an order denying summary judgment on qualified immunity grounds after full trial on merits. *Ortiz v. Jordan*, --- S.Ct. ----, 2011 WL 197801 (U.S.2011)

Decisions from Other Jurisdictions

Firearms: In determining whether a defendant's conviction for possessing a firearm after being convicted of a misdemeanor crime of domestic violence abridged his Second Amendment right to keep and bear arms, intermediate scrutiny, rather than strict scrutiny, applied. Given his criminal history, the defendant's asserted right to possess a firearm did not fall within the Second Amendment's core right of law-abiding, responsible citizens to possess and carry weapons for self-defense. Accordingly, the government must demonstrate under the intermediate scrutiny standard that there is a "reasonable fit" between the challenged regulation and a "substantial" government objective. *U.S. v. Chester*, --- F.3d ----, 2010 WL 5396069 (4th Cir.2010)

Attorney General's Opinions

Alabama Trust Fund: Oil and gas capital payments are not excluded from the definition of unrealized capital gains of the Alabama Trust Fund as set forth in section 219.04(II) of article XI of the Alabama Constitution of 1901. The methods for correcting the improper transfer of unrealized capital gains are the same as those allowed for realized capital gains set forth in AGO 2010-098. AGO 2011-025

Alcoholic Beverages: The process for the sale of draft beer in wet cities and counties begins with a legislative act authorizing the same. Provided, however, that the Alcoholic Beverage Control Board may issue a special permit for the sale of draft beer without such an act, either if, in its judgment, the municipality is a rural community that currently has a predominantly foreign population and the consumption of draft

beer is in accordance with their habits and customs, or if a civic center authority wishes to sell draft beer for consumption in the civic center. The wording of Section 28-3A-23(h) requires that, for either of these exceptions to apply, the circumstances that allow the exception must exist at the time the permit is granted. AGO 2011-029

continued on page 18

FAQ. "Who is responsible for maintaining County roads inside the municipality?"

If a county was in control of and maintained county roads and rights-of-way in the corporate limits of a municipality on July 7, 1995, it is to continue the maintenance and upkeep of these roads unless the procedures of section 11-49-80(a) and 11-49-81 of the Code of Alabama have been followed. In the absence of an agreement, a county cannot insist that a municipality's share of the gasoline tax proceeds be used for the upkeep of county roads in a municipality. A county, by virtue of its exclusive authority to maintain and control its roads, is under a common-law duty to keep its roads in repair and in reasonably safe condition for their intended use. A county has a statutory obligation to maintain the safety of its roadways pursuant to §22-1-80 of the Code of Alabama. See *Holt v. Lauderdale County*, 26 So.3d 401 (Ala.2008). If a municipality has not accepted roads for maintenance under the procedure set out in Sections 11-49-80 and 11-49-81 of the Code of Alabama, nor has it assumed responsibility by exercising sole authority over those roads, then the municipality is not responsible for the material costs of maintenance, paving, and scraping of roads within its corporate limits. See AGO 2003-034.

The annexation of unincorporated territory into a municipality, after July 7, 1995, shall result in the municipality assuming responsibility to control, manage, supervise, regulate, repair maintain and improve all public streets or parts thereof lying within the territory annexed, if such public streets or parts thereof were controlled, managed, supervised, regulated, repaired, maintained and improved by the county for a period of one year prior to the effective date of the annexation. ■

Conflicts of Interest: A correctional officer who is the spouse of the owner of a bail bonding company has a direct or indirect financial interest in the bail company. Thus, if the duties of the correctional officer include the authority to approve appearance bonds, the bail bond company should not be approved to execute bonds in the jail where the spouse is employed as a correctional officer. AGO 2011-024

Crime Victims Compensation Act: The Alabama Crime Victims' Compensation Commission may not exclude life insurance as a collateral source of benefits for which compensation should be diminished or denied while maintaining all other forms of insurance as a collateral source. AGO 2011-035

Leases: A rural water authority incorporated under section 11-88-1, *et seq.*, of the Code of Alabama is not authorized to purchase a plaza/strip mall whereby one office space would be used by the water authority and the other office spaces would be rented out to various businesses. AGO 2011-036

Payroll Deductions: The Alabama Peace Officers' Annuity and Benefit Fund is a state agency and is not a membership organization as that term is used in Act 2010-761. Thus, the Fund can continue to receive retirement contributions from members through automatic payroll deduction from payroll checks issued by the state, counties, cities, or other governmental agencies, without certifying to the appropriate governmental entity that none of the retirement contributions will be used for political activity. AGO 2011-034

Ethics Commission Advisory Opinions

AO No. 2011-01: Public officials and employees may attend receptions, breaks, meal functions and other activities such as a golf tournament or fishing event sponsored by participating companies or held in conjunction with, or as a part of, an official conference such as a widely attended event, educational function or economic development function, etc., which is related to the work of the public officials and employees. Following the conclusion of the day's official conference activities, public officials and employees may interact with representatives of sponsoring companies, or those companies which participate in the conference and may have funds expended for meals and other food and beverages, excluding hospitality, when that evening meal is directly related to the conference; provided however, that the meal is not used as an opportunity to influence official action on the part of the official/employee. If the non-participating company or vendor is not participating or attending the conference, they may provide meals or other food and beverages to a public official/public employee attending the conference. However, they may not use the opportunity to lobby or as a sales opportunity. If the meals and other food and beverages are being provided by a lobbyist, the lobbyist may only expend \$25 per meal on a public official/public employee with an annual limit of \$150. If the meals and other food and beverages are being provided by a principal, the

principal may only expend \$50 per meal on a public official/public employee with an annual limit of \$250. Public officials/public employees may not participate in strictly social events (unless they pay for their participation just as the general public would) such as golf tournaments, unless the event is part of an educational function, widely attended event or economic development function, etc., and is not, and cannot reasonably be perceived as a subterfuge for a purely social, recreational or entertainment function.

AO No. 2011-02: Individuals and entities that engage in sales activities with the executive, legislative and judicial branches of state government in the ordinary course of conducting their business are not considered to be lobbying when such activities are solely related to the sales of goods and services as part of their normal job responsibilities as set out in Section 36-25-31(20)(b)(5). Individuals and entities hired by a company seeking a contract for the sale of goods or services with an executive, legislative or judicial branch of state government who were hired solely for the purpose of influencing an official decision by an executive, legislative or judicial agency of state government are considered to be lobbying and must register. Individuals and entities who merely respond to a request for proposal are not considered to be lobbying and do not have to register as lobbyists. ■



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we have had 406 officials complete the Advanced Program. I want to thank Mayor David Frings of Alabaster and Samford University for putting together an excellent CMO Session on environmental issues in January at Samford University. Our next CMO session will be held in Montgomery at the Embassy Suites Hotel on March 29. This session will focus on Legislative Advocacy.

Future meeting dates were presented as follows:

- **First Day of Regular Session** –
March 1, 2011
- **Congressional City Conference** –
March 12-16, 2011 – Washington, DC
- **AAMA/AMJA Meeting** –
March 25, 2011 Birmingham, AL
- **CMO Session on Legislative Advocacy** –
March 29, 2011 – Embassy Suites Hotel,
Montgomery, AL
- **MWCF Board Meeting** – April 14, 2011
- **AMIC Board Meeting** – April 21, 2011
- **Southern Municipal Conference
Leadership Meeting** –
April 21-23, 2011 – Cocoa Beach, FL
- **League Convention** –
April 30-May 3, 2011, Huntsville, AL
- **MWCF Board Meeting** –
July 20, 2011
- **Executive Committee Organizational Meeting** –
July 21, 2011

It was my pleasure to report to the Executive Committee that we are in good shape with our Fiscal Budget for 2010-2011 which was adopted at the July 2010 meeting.

League Deputy Director/General Counsel Ken Smith was called upon to give a brief update of the new ethics laws enacted in December by the Alabama Legislature. He has written an excellent article on the subject that appeared in the February issue of the *Alabama Municipal Journal*.

Mayor Charles Murphy of Robertsdale updated members on the search for a new League Director. He said that the League Constitution provides that the position of League Director is to be elected annually at the League Convention. He reported that the Nominating Committee composed of the League President, Vice President, and active Past Presidents, as required by the League Constitution, has met several times since the last board meeting and has unanimously decided

to nominate Deputy Director/General Counsel Ken Smith for the position of League Director upon my retirement in May. This nomination will be voted on at the Business Session of the Annual Convention to be held in Huntsville on May 3, 2011.

Mayor Leon Smith of Oxford, President of the Municipal Workers' Compensation Fund; Mayor Billy Joe Driver of Clanton, Chair of the Alabama Municipal Insurance Corporation; and Mayor Roy Dobbs of Berry, Chair of the AMFund Board presented the reports on the activity of their respective programs. All of these League programs are doing well.

League Deputy Director/General Counsel Ken Smith gave the legal report. He discussed a new rule put in place by the Alabama Supreme Court to mandate training for municipal judges and to require municipalities to pay the costs of such training. He informed members that the legal department handled 7,700 legal inquiries during the past year.

League Communications Director Carrie Banks presented the report for her department. She announced that the cities of Union Springs, Muscle Shoals, and Cullman were the winners of the League's 2011 Quality of Life Awards. Copies of all entries are posted on the League website. A video of the three winning entries will be shown at the League Convention. Carrie also gave a demonstration of the new League website and told members of new office space for her department. Carrie and Karl Franklin of her staff as well as Monty Paggeot and his IT staff are to be commended for making our new website a reality. I encourage all League members to visit the new site.

League Director of Information Services Monty Paggeot presented the IT Report. He stated that the League now has a user friendly and fast electronic version of its membership directory on the website. He said that his department had also worked on the Convention online registration site. The department recently updated its backup structure and failover protection.

League Director of Intergovernmental Relations Greg Cochran presented the Federal Legislative Report. He said that Congress is focusing on rebuilding and streamlining the economy and aims to get more jobs back in the economy. He also noted that Congress is looking at cutting the CDBG program. Congress and the President are also having a political fight over discretionary funding. Mr. Cochran informed members of efforts to further define the term "financial advisor" by the SEC. He urged members to attend the Legislative Advocacy CMO program in Montgomery on March 29. He also told members that it is vitally important to build quality relationships with their newly-elected officials. He mentioned several issues that might resurface in the new legislature. Legislative Liaison Hal Bloom said that the upcoming session will bring a number of challenges. He expects the legislature to deal with campaign finance reform during the session. ■

UAB Creates Student City/County Management Association Chapter; Members Attend 2011 ACCMA Winter Conference

Matthew L. Price, Graduate Research Assistant, Department of Government, UAB and Chapter Manager, ICMA@UAB

As a student of public administration, I was curious about the opportunities for advancement through training available from professional organizations. I established an account on the International City/County Management Association (ICMA) website to gain access to the plethora of resources available there. Later, David Williams, a fellow Master of Public Administration student at the University of Alabama at Birmingham (UAB), approached me about starting a student chapter at UAB and over time, we established a constitution and became the first official student chapter of ICMA in the fall of 2010 – the International City/County Management Association at UAB, or ICMA@UAB.

ICMA@UAB seeks to promote excellence in public service by encouraging participation and education in professional public management. We also wish to serve. Every year students of public administration produce thousands of pages of quality research on local government concerns. Most of it will never be available to public administrators. We believe that this is a missed opportunity. We wish to use our talents to serve our communities by offering our services as student researchers to public administrators across the State of Alabama. We also intend to further our mission by seeking to publish our work and present at professional conferences. Plans are already underway to have material prepared for the Alabama City County Management Association (ACCMA) 2011 Summer Conference in Gulf Shores.

Our interest in providing service to our communities through our research led many of us to apply for scholarships to the ACCMA 2011 Winter Conference in Tuscaloosa. Five UAB@ICMA students were awarded scholarships to the conference along with students from Troy University and the University of South Alabama. We set off to Tuscaloosa, not only to learn and network at the upcoming conference, but to represent our student body and the efforts of all those in ICMA@UAB. The experience was truly rewarding. There was a sense of belonging, of family, of optimism – a place where colleagues came together to face the challenges that united them – conversing about the real issues that concern our communities. And, as I soon learned through the various sessions, the challenges are many. The fellowship of ACCMA members at the ACCMA Winter Conference will forever inspire my professional career. And, I am grateful.

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Meet the League's Legal Department

ALM's Legal Department assists and provides information to municipal governments, officials and employees. The department also provides many additional services including assisting with the League's lobbying efforts. For a User's Guide to the League's Legal Department, visit www.alalm.org.



Ken Smith
Deputy Director/General Counsel

Ken received a B.S. in Journalism from the University of Alabama in 1982 and a J.D. from the University of Alabama School of Law in 1985. After serving a one-year clerkship with Justice Hugh Maddox of the Alabama Supreme Court, he joined the League as Staff Attorney in 1986. Ken is also the Secretary/Treasurer of the Alabama Municipal Attorneys Association and is active in the International Municipal Lawyers Association (IMLA).

Lorelei (Lori) Lein
Deputy General Counsel

Lori received a B.S. in Textile Management and Technology from Auburn University in 1992 and a J.D. from the University of New Mexico School of Law in 1996. After practicing law in Montgomery and then working with the Alabama Legislative Reference Service, she joined the League as Staff Attorney in 2001. She is licensed to practice law in Alabama, New Mexico and Colorado.



Tracy Roberts
Assistant General Counsel

Tracy received a B.S. in Social and Behavioral Sciences and a J.D. from the Birmingham School of Law. After practicing law in Bessemer and serving as Deputy District Attorney for Montgomery County, he joined the League as Staff Attorney in 2006. Tracy served in the United States Marine Corps (4th Division) and then served as a law enforcement officer for ten years before beginning his legal career.

Sharon Carr
Legal Services Administrator

Born and raised in Montgomery, Sharon joined the League's staff in 2002 after working with a number of area churches and with the Church and Community Ministries Division of the Montgomery Baptist Association. she is responsible for assisting the legal staff, maintaining the AAMA/AMJA membership/dues database, coordinating legal conferences and workshops and maintaining the League's online member forums.

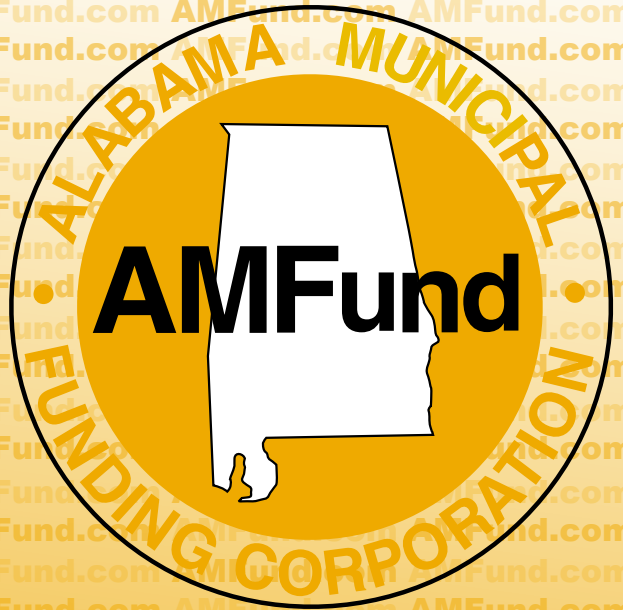


Twanna Walton
League Researcher

Originally from Chicago, Twanna received a B.S. in Political Geography from the University of Iowa followed by graduate school in Urban Planning. She joined the League's staff in 1991 as an intern assigned to modify the general informational file system. She currently works with innovative survey software, creating surveys for the League as well as serving as the League's legal researcher.

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