

# The Alabama Municipal JOURNAL

November 2011

Volume 69, Number 5



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Page 30



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# The Alabama Municipal JOURNAL

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## On the Cover:

Stan Fant, SkidCar Coordinator for AMIC/MWCF's Loss Control Division, is pictured with the new SKIDCAR system recently purchased for Proactive Driver Training.

See page 30 for more information.

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# A Message from the Editor

## This Week from the League

I'm excited to announce that ALM recently introduced "This Week from the League," a weekly e-newsletter, that is sent to every municipal official and employee in our database. "This Week from the League" is a service provided as part of your municipality's membership with the League. We're currently using Mail Chimp to customize and distribute the e-newsletter, which we plan to send on Tuesdays. If you have not received the e-newsletter, but you are currently on our blast email list, please check your SPAM and/or Junk Mail folders and add us to your safe senders list.

If you're not on our blast email list and would like to receive "This Week from the League," we're happy to add you! Please send your email address to Theresa Lloyd at [theresal@alalm.org](mailto:theresal@alalm.org) and request to be added to the League's database. You may also opt out of the e-newsletter distribution by clicking "unsubscribe from the list" at the bottom of the e-newsletter.

In addition to the e-newsletter, the League also sends a variety of email blasts regarding important, time-sensitive issues such as League surveys, League Alerts, Legislative Alerts and Legal Alerts. While we will try to condense as much information as possible into the weekly e-newsletter, we'll still be sending email blasts when necessary, particularly for critical information that may require a quick turnaround. Again, these email blasts are a service provided as part of your municipality's membership with the League. If you're not listed in our database but would like to receive these important notices, please send your email address to Theresa Lloyd at [theresal@alalm.org](mailto:theresal@alalm.org).

## League Surveys

In an attempt to better serve our membership, the League has begun asking for your participation in periodic online surveys on various subjects that may help us become more efficient and effective. We realize your time is valuable so we strive to keep the surveys simple and short (5 to 10 minutes in most cases).

Your survey responses are important to us as we develop new programs and improve existing ones. For instance, last month a link was distributed via email to a brief online survey regarding the League's annual convention. Responses to that survey will help the League staff as we begin planning the 2012 convention scheduled for May 19-22 in Birmingham.

If you are not currently listed in our database but would like to be included, please send your email address to Theresa Lloyd at [theresal@alalm.org](mailto:theresal@alalm.org).

## Elections Manual

The League's legal staff is in the process of editing the 2012 edition of *Procedures for Holding Elections in Mayor Council Municipalities*, an ALM Special Report that's updated every four years. Once this publication is complete, a PDF will be available on the League's website at [www.alalm.org](http://www.alalm.org). This manual is intended to serve as a comprehensive guide to Alabama's municipal election process for the municipal clerk or other municipal officials or employees responsible for conducting municipal elections. The report covers the laws relating to election procedures as well as laws pertaining to political activity of government employees, the Fair Campaign Practices Act, the Hatch Act and the State Ethics Law. Sample forms to be used in the elections process are included in the publication. It's extremely important that municipal clerks and other individuals responsible for conducting municipal elections plan ahead so that the requirements of the law are met without problems. Of course, should you have questions regarding this publication, please contact our legal department at 334-262-2566.

ALM Newsletter  
This Week From the League - November 1, 2011  
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## This Week From the League

**NLC to Hold Congress of Cities Nov 9-12**  
This year's Congress of Cities will be held at the Phoenix convention center in Arizona and offers four concurrent conferences to provide more in-depth exploration of the most pressing challenges facing cities. One registration fee gets you access to all concurrent conference and other activities at the Congress of Cities. For conference information visit [www.nlc.org](http://www.nlc.org)

**2012 Elections Manual Available Online in November**  
The League's legal staff is in the process of editing the 2012 edition of *Procedures for Holding Elections in Mayor Council Municipalities*, a Special Report that's updated every four years. Once this publication is complete, it will be available on the League's website.

**Discounts for 2012 Workers Comp Premiums!**  
Sign and return your Statement of Commitment by December 1, 2011, and a 3% discount will be reflected on your 2012-2013 billing.

**New SkidCar System Available in 2012!**  
For the past 11 years, the League has offered Proactive Driver Training to its members using the SkidCar System - a state-of-the-art design which simulates hazardous driving conditions at low speed. This past October, the League purchased a new SkidCar System and will begin training law enforcement personnel and other municipal employees with the new system in 2012.

**2012 Annual Convention Scheduled for May 19-22 in Birmingham**  
Hotel room blocks are now available. For a complete list, click [HERE](#)

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Happy Thanksgiving!  
Carrie

# The President's Report

Councilmember Thomas O. Moore • Demopolis



## League Membership Offers Invaluable Benefits

As cities and towns enter another year of tight budgets with little relief in sight, municipal officials have no choice but to review each expenditure and make hard decisions. These decisions are part of our duty as elected officials. We were chosen by our constituents to manage the affairs of our communities with the best interest of its citizens in mind.

Membership in the Alabama League of Municipalities is one of those expenses that may come under scrutiny as elected officials strive to justify the spending of every tax dollar. The City of Demopolis has been a long-term, active member of the League and I have personally participated in League programs since I was first elected to serve on the Council in 1992. I will tell you without hesitation that League membership is invaluable. For many reasons, membership in the League is a wise choice and a tremendous investment for our communities.

Individual service to member municipalities on a day-to-day basis, such as responding to legal inquiries from its member municipalities, is one of the most important functions of the League. In fact, the League maintains a legal department to provide its members with direct legal assistance when needed. Please note, however, that *each municipality must be a member in good standing in order to access the League's legal department for assistance*. If your municipality is not a League member, these services are not available to you. For that reason alone, membership with the Alabama League of Municipalities is absolutely worth the investment in annual dues. Of course, the League provides many additional services. Here are just a few examples:

### Representing Your Interests

The Alabama Legislature meets in regular session every year. The length of a session is limited to 30 legislative meeting days within a 105-calendar day period of time. During a regular session, the Legislature considers hundreds of bills that, if enacted, could affect – positively or negatively – our ability to meet the needs of our citizens, based on the legislative principles and advocacy agenda that we developed and adopted through hard work on the League's policy committees. During every legislative session, our League supports those bills that will enhance our ability to serve our residents; opposes those that would harm that ability; and seeks changes in other bills to make them reasonable and feasible. For more than 75 years, the League has worked tirelessly to pass legislation critical to our cities and towns and to defuse legislation that would be harmful to our municipalities and the constituents we serve.

While the League's efforts at the state Legislature are critical, there are many other areas where the League represents our interests, including the appellate courts and state regulatory agencies. The League also works diligently to make our voice heard in Congress through League contacts and efforts made on our behalf by the strong National League of Cities lobbying team.

### Saving Money

You may think of the League as an association that your city or town belongs to by paying annual dues. That's true; however, if your municipality chooses to take advantage of some of the cost-saving programs and services offered through the League, your city or town could well end up saving more than it pays. The League operates four very successful programs for its members:

**Municipal Workers Compensation Fund (MWCF)** – This League-sponsored program was established in 1976 and provides a means for municipalities and their boards to save on the cost of workers compensation coverage. In fact, MWCF is currently offering a three percent premium discount for 2012-2013 to its members that return the *Statement of Commitment* by December 1, 2011.

**Alabama Municipal Insurance Corporation (AMIC)** – Formed by League members in the late 1980s, AMIC provides liability and property insurance coverage for member municipalities. Both AMIC and MWCF take pride in their competitive rates, strong safety services and record of savings for members over the years and have also developed a joint Loss Control Department to further meet the needs of Alabama's municipalities.

**Alabama Municipal Funding Corporation (AMFund)** – Developed by the Alabama League of Municipalities to assist municipal entities with funding local projects and purchases, the purpose of AMFund is to provide low-cost financing to municipalities in Alabama. AMFund's process is extremely simple and certainly worth considering for any upcoming project, purchase or refinancing your municipality may be contemplating.

**Municipal Revenue Service** – This League program, which has been available to League members for many decades, collects delinquent municipal insurance license taxes and has recovered a tremendous amount of lost municipal revenue over the years.

All League member municipalities have the opportunity to participate in each of these plans and most Alabama municipalities have elected to participate in one or more of these outstanding programs.

*continued on page 28*





# Judicial Correction Services

## Case Supervision for Misdemeanor Courts

Collect & Successfully Close Twice As Many  
Partial Payment Cases

### Benefiting the Court...

"...(JCS's) service has decreased my magistrates' probation workload and court sessions by 65%...collections are at an all time high..."

- Court Administrator  
Large Municipal Court

"JCS has improved our court operations greatly with their professionalism and by the amount of monies collected."

- Court Clerk  
Large Municipal Court

"We are now collecting more than 90% of our fines, and I see far fewer return visits from those I sentence to probation."

-Judge  
Georgia Municipality

### Benefiting the Community...

"JCS has provided great cooperation with the County to cut these overhead costs that have been growing...It's everyone's goal not to have to build more jails. That and these high costs of keeping someone in jail are a big drain on county resources that can be better used elsewhere."

- Former Director of Corrections  
Large Florida State Court

"We have saved on jail expenses and issued fewer warrants."

- Court Clerk  
Large Municipal Court

"...we found that a full service probation provider like JCS can be instrumental in controlling the growth of the jail population and assuring the appropriate use of expensive jail cells."

- Judge  
Alabama Court

### Benefiting the Defendants...

"JCS has helped me understand the bad decisions I have made in my life. Through their guidance I have been given a chance to start over."

- 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

**Judicial Correction Services**

888-527-3911 Hoover, Alabama & Locations Throughout Alabama

# Municipal Overview

Ken Smith • Executive Director



## Alabama's "Illegal Immigration Act"

Last session, the Alabama Legislature passed Act 2011-535, the **Beason-Hammon Alabama Taxpayer and Citizen Protection Act**. This Act was signed into law by Governor Bentley on June 9, 2011. Commonly referred to as Alabama's Illegal Immigration Act, this law has several effective dates. The provisions authorizing the Alabama Department of Homeland Security (ADHS) to hire additional law enforcement officers and to establish rules and coordinate with local authorities - became effective on June 9, 2011 (Sections 22 & 23). Conditional requirements for local governments, contractors, etc., before receiving any awards of contracts, grants or incentives from a government agency, becomes effective on January 1, 2012 (Section 9). The provisions making it illegal to hire any unauthorized alien and making e-verify mandatory become effective on April 1, 2012 (Section 15). All other provisions were to become effective on September 1, 2011 but were stayed by a federal court until after September 28<sup>th</sup>.

The federal district court issued injunctions on September 28<sup>th</sup> as to Sections 8, 11(a), 11(f), 11(g), 13, 16, 17, the last sentence of 10(e) and the last sentence of 11(e) of the Act, holding that these provisions may not be currently enforced. This is not a final order; however the remaining provisions of the Act will be effective until further action of the court.

Tracy Roberts in the League's legal department prepared the following summary of the important provisions and their effective dates. We appreciate Tracy's hard work in attempting to summarize this Act. Keep in mind that it is possible that a court may further alter provisions of the Act. The League will keep you informed if this happens.

- I. **Effective June 9, 2011:**
  - a. **Rules for Enforcement of the Act and Law Enforcement Officers for ADHS (Section 22):** The Alabama Department of Homeland Security (ADHS) shall have the authority to promulgate rules for the enforcement of Act 2011-535. ADHS is authorized to hire, appoint and maintain APOSTC certified state law enforcement officers. These officers shall not engage in routine law enforcement activity unless a violation of state law occurs in their presence, except for those

duties necessary to carry out the enforcement of Act 2011-535 and to fulfill the mission of the ADHS or those duties necessary to provide assistance to other law enforcement agencies. ADHS can be contacted at (334) 353-3050.

- b. **Coordination (Section 23):** ADHS has authority to coordinate with state and local law enforcement the practice and methods required to enforce this Act in cooperation with federal immigration authorities and consistent with federal immigration laws.

### II. **Effective September 1, 2011 (September 29<sup>th</sup>)**

- a. **Civil**
  - i. **Public Benefits (Section 7 and Section 30):** Section 7 of the Act requires agencies and political subdivisions of the State to verify the lawful presence in the U.S. of each alien who applies for State or local public benefits.
    1. Subject to exceptions listed in the Act, the term "State or local public benefit" includes grants, contracts, loans, professional licenses, or commercial licenses provided by the governmental body, and any of the following benefits; retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any similar benefit provided by a State or local government.
    2. Verification must be accomplished through the U.S. Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) program. State and local government entities can register to use the SAVE program at <https://save.uscis.gov/registration>. If for any reason the verification of an alien's lawful presence through the SAVE program is delayed or inconclusive, the agency may provide public benefits in the interim period if the alien signs a declaration that he or she is an alien lawfully present in the U.S.
  - ii. **Policies (Section 5(a), Section 6(a)):** No officer or

agency of this state or any political subdivision may adopt a policy or practice that limits or restricts the enforcement of federal immigration laws by limiting communication between its officers and federal immigration officials or that restricts enforcement of this Act. Any violation of this provision may result in a loss of funds, grants or appropriations from the State of Alabama.

iii. **Civil Causes of Action:** Civil causes of action are created and may be brought by any U.S. citizen who is a resident of Alabama pursuant to Section 5(d) and Section 6(d). Section 17 establishes a cause of Action against an employer for discrimination against U.S. citizens and lawful aliens in favor of unauthorized alien employees or job applicants.

b. **Criminal**

i. **Failure to Report (Section 5(f) and Section 6(f)):** Every person working for the State of Alabama or a political subdivision thereof, including, but not limited to, a law enforcement agency in the State of Alabama or a political subdivision thereof, shall have a duty to report violations of this act. Any person who willfully fails to report any violation of this act when the person knows that this act is being violated or when there is reasonable cause to believe that this act is being violated shall be guilty of obstructing governmental operations as defined in Section 13A-10-2 of the Code of Alabama 1975 and shall be punishable pursuant to state law.

ii. **Perjury (Section 7 (h)):** Any person, who knowingly makes a false, fictitious, or fraudulent statement or representation in a declaration executed (when applying for state or local benefits) shall be guilty of perjury in the second degree pursuant to Section 13A-10-102, Code of Alabama 1975. Each time that a person receives a public benefit based upon such a statement or representation shall constitute a separate violation of Section 13A-10-102, Code of Alabama 1975.

iii. **Failure to Carry an Alien Registration Card (Section 10):** (a) In addition to any violation of federal law, a person is guilty of willful failure to complete or carry an alien registration document if the person is in violation of 8 U.S.C. § 1304(e) or 8 U.S.C. § 1306(a), and the person is an alien unlawfully present in the United States. ... (f) An alien unlawfully present in the United States who is in violation of this section shall be guilty of a Class C misdemeanor and subject to a fine of not more

than one hundred dollars (\$100) and not more than 30 days in jail.

iv. **Forgery of Identification Documents (Section 14):**

1. (a) A person commits the crime of dealing in false identification documents if he or she knowingly reproduces, manufactures, sells, or offers for sale any identification document which does both of the following:

(1) Simulates, purports to be, or is designed so as to cause others reasonably to believe it to be an identification document.

(2) Bears a fictitious name or other false information.

(b) A person commits the crime of vital records identity fraud related to birth, death, marriage, and divorce certificates if he or she does any of the following:

(1) Supplies false information intending that the information be used to obtain a certified copy of a vital record.

(2) Makes, counterfeits, alters, amends, or mutilates any certified copy of a vital record without lawful authority and with the intent to deceive.

(3) Obtains, possesses, uses, sells, or furnishes, or attempts to obtain, possess, or furnish to another a certified copy of a vital record, with the intent to deceive.

(c)(1) Dealing in false identification documents is a Class C felony. (2) Vital records identity fraud is a Class C felony. ...

(f) Any person convicted of dealing in false identification documents as defined in this section shall be fined up to one thousand dollars (\$1,000) for every card or document he or she creates or possesses and be subject to any and all other state laws that may apply.

v. **No State Driver's License (Section 18):** (Amending §32-6-9 to add the following language):

(b) Notwithstanding the provisions of Section 32-1-4, if a law officer arrests a person for a violation of this section and the officer is unable to determine by any other means that the person has a valid driver's license, the officer shall transport the person to the nearest or most accessible magistrate. (c) A reasonable effort shall be made to determine the citizenship of the person and if an alien, whether the alien is lawfully present in the United States by verification with the federal government pursuant to 8 U.S.C. § 1373(c). An officer shall not attempt to independently make a final determination of whether an alien is lawfully present in the United States. (d) A verification inquiry, pursuant to 8 U.S.C. § 1373(c), shall be made within 48 hours to the Law Enforcement Support Center of the United

*continued on page 26*





# The Legal Viewpoint

By Lori Lein  
General Counsel



## What Every Potential Candidate Should Know About Municipal Government

This article is not intended as a guide for qualifying and running for municipal office. The League publishes a manual titled *Procedures for Holding Elections in Mayor-Council Municipalities* which covers issues related to campaigning and holding elections. The goal of this article, however is to inform potential candidates as to the structure of municipal governments in Alabama as well as to the limitations and restrictions on municipal power. Potential candidates must understand the extent of the authority a municipality may exercise before making the decision to run for office. Also, an understanding of these laws and functions can help candidates avoid future embarrassment upon discovering that a campaign promise can't legally be fulfilled.

Potential municipal candidates must be aware of the laws governing the municipality in which they choose to run for office. The provisions discussed in this article apply generally to any municipality with a mayor/council form of government. Many state laws, however, apply to only certain municipalities. It is up to the candidate to be sure that the rules and regulations set out in this article govern their municipality.

The League encourages municipal clerks to make copies of this article for potential candidates so they will be aware of the regulations that will govern their actions as municipal officials. This article should also serve as a refresher for elected officials who are presently in office.

### What is a Municipality?

In Alabama, a municipality is a form of local government created by the citizens within a defined area. First, the local government must meet the requirements of state law to incorporate. If so, and the citizens themselves determine to incorporate by voting, the municipality is created.

Historians disagree regarding the reasons municipalities first came into existence. Some reasons include the promotion of commerce, protection from invading armies, convenience, or even just the desire of humans to share time with each other. Regardless of the historical reasons, municipalities

today provide many services to their citizens, such as fire and police, utility services, parks and recreation, and historical preservation among others. They also help protect their citizens through these services. These are the reasons most municipalities today decide to incorporate. All are designed to provide their citizens with the services and protections that are deemed important to a better life-style.

Municipalities provide an element of convenience by performing many services which individuals themselves may not be willing to perform, such as construction and maintenance of roads, disposal of garbage and promotion of the arts.

Local governments provide a means for citizens to have a direct say in which services are needed and how those services should be provided through the process of electing representatives. Representatives, who are chosen from the pool of willing citizens, meet and discuss how the municipality can best meet the needs and desires of their citizens.

When these elected officials meet, however, it is important for all parties to understand that in Alabama, all municipal powers flow directly from the state legislature. Alabama operates under what is known as the Dillon rule. This rule provides that municipalities have no powers beyond those that are given to them by the state. The authorization must be either explicit or clearly implied from the language of a state statute or constitutional provision.

Briefly, Alabama is governed by a document that was first passed in 1901, although it has been amended many times since. This is the Alabama Constitution. Laws in the Constitution are passed by the legislature, but only become effective following a vote of the public. The Constitution provides a framework for the adoption of laws by the legislature. Legislative acts cannot conflict with constitutional provisions. If there is a conflict, a new constitutional amendment must be adopted and approved by a vote of the people.

In addition to the Constitution, the legislature meets at least annually – more often if special sessions are needed – to pass general and local laws. Many of these laws apply directly

to the operation of municipal governments. Actions taken by a municipal government cannot conflict with state legislation. Beyond that rule, however, is a further limitation on municipal powers. Not only do municipal actions have to comply with these statutes and the Alabama Constitution; under the Dillon rule, there must be legislative authority for the municipality to take the specific action in question.

So, when a potential candidate decides that some action needs to be taken, he or she must examine the laws to ensure that the municipality has the power to act in the way desired. If not, the municipal official may first have to obtain authority from the state legislature. Depending on what the official wants to do, this may require either a local act, a general act or possibly even the adoption of a constitutional amendment.

**The Extent of Municipal Power**

Municipalities are established by incorporation through the procedures set out in the Code. Municipalities grow through annexations. The methods of annexing property are also provided for in the Code.

Municipalities are divided into cities and towns on the basis of population. If the municipality has less than 2,000 citizens, it is a town. Once the population reaches 2,000, however, the municipality is defined as a city.

Municipalities may exercise two types of power: legislative and corporate. Legislative powers affect the public generally. In exercising these powers, the municipality acts

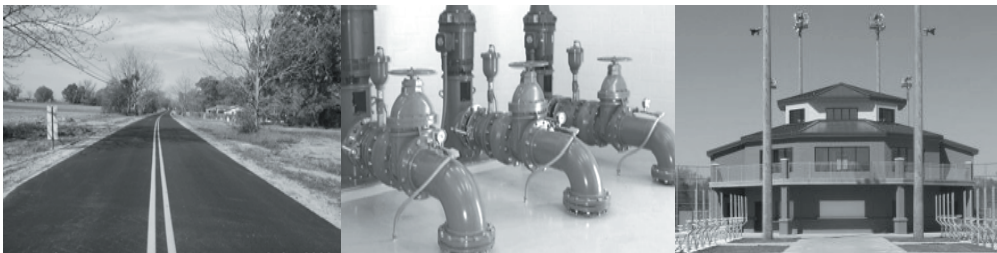
very much as an arm of the state. Corporate powers are more comparable to those of a private corporation and are exercised to benefit the municipality in its proprietary capacity.

Municipalities also have authority to exercise certain powers within their police jurisdictions. The police jurisdiction is a legislatively created area outside the corporate limits of a municipality. The size of the police jurisdiction is either a mile-and-a-half, or three miles, depending on the population of the municipality. It ensures orderly development beyond the municipal limits and allows the municipality to protect persons who live within these areas.

Municipalities can levy certain types of taxes in the police jurisdiction in order to pay for services which are provided in the area. Additionally, municipalities can enforce criminal ordinances in the police jurisdiction. Construction and development can be regulated through the application of municipal building codes and subdivision regulations. Municipalities can also provide a wide range of services to citizens within the police jurisdiction, and if the municipality licenses businesses within the police jurisdiction, it must spend those funds to provide services within the police jurisdiction.

**Appropriations**

Frequently, potential candidates for municipal office make promises to voters that will require some type of appropriation from the municipal treasury. The use of public funds is, of course, of central concern to the voters. Many



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taxpayers, understandably, want to have a direct say in how their tax money is spent. However, citizens must understand that municipal expenditures are limited by state law.

Perhaps the most common barrier to municipal spending is Section 94 of the Alabama Constitution of 1901. This Section is commonly referred to simply as Section 94. It prohibits municipalities from giving anything of value to any private individual or group of individuals. The prohibition also bars donations to private, nonprofit corporations, even if these organizations benefit the public. Section 94 is the reason municipalities cannot pave driveways or parking lots on private property. The rule is also why government property cannot be given away, unless the use of those funds serves a recognized public purpose.

Section 94 is a frequent source of friction for elected officials, especially for those who are new to the operations of public entities. This is because often the groups requesting financial help from the municipality do provide a valid community service, and there is an inherent desire to assist them. Many are charitable organizations. For the purposes of Section 94, though, it is crucial to distinguish between the public and private nature of the group, and many traditional entities are considered private, not public. It doesn't matter under Section 94 that the group is non-profit. If it is private (which generally means that it was not directly created by a public organization), the municipality may not donate funds to it without finding a public purpose behind the donation. Courts have created a four-part test for determining if an expenditure serves a public purpose:

“The Court should *first* determine the ultimate goal or benefit to the public intended by the project.

*Second*, the Court should analyze whether public or private parties will be the primary beneficiaries.

*Third*, the speculative nature of the project must be considered.

*Fourth*, the Court must analyze and balance the probability that the public interest will be ultimately served and to what degree.”

In *Slawson v. Alabama Forestry Commission*, 631 So. 2d 953 (Ala. 1994), the Alabama Supreme Court stated that, “The paramount test should be whether the expenditure confers a direct public benefit of a reasonably general character, that is to say, to a significant part of the public, as distinguished from a remote and theoretical benefit ...”

Section 94, though, does not prohibit municipalities from contracting with private companies and individuals for services. For example, although a municipality cannot give money to the Girl Scouts of America, the municipality may compensate the Girl Scouts for legitimate services they can perform for the municipality. Bear in mind that the service being performed generally must be a service that the municipality could perform itself.

Similarly, Section 94 does not ban appropriations to public organizations which serve the municipality. For instance, municipalities may contribute funds to public schools their citizens attend. However, municipalities may not make donations to band booster clubs or other private clubs organized by students or parents because these are private groups.

Section 94.01 creates a limited exception to Section 94 for economic development projects. The procedures in Section 94.01 must be followed exactly in order to spend public funds under to this provision.

Municipalities must also comply with the State bid law. The bid law prohibits expenditures (with certain exceptions which are listed in the Code) of more than \$15,000.00 (\$50,000 for public works contracts) without first soliciting competitive bids. However, cities and towns may contract with other public agencies or purchase items through a state contract without first obtaining bids. In addition, they may make purchases off an existing Government Services Administration (GSA) contract.

There are, of course, other provisions governing municipal expenditures that are too numerous to discuss here. What is important is for potential candidates to understand that they must examine expenditures carefully to ensure that what he or she wants to do is legal.

### **Citizen Petitions**

Citizens often draft and circulate petitions to be presented to the municipal governing body. What is the legal effect of these petitions?

Of course, in some cases the Code requires the council to act on petitions which contain a certain percentage of citizen signatures. In these cases, the council must follow through on all statutory requirements. These situations, though, are rare. Usually, the council is not required to act on, or even debate, requests submitted by petition. At best, a petition serves as a means of bringing the issue before the council.

Certainly, citizens have the right to make requests of the governing body. And, just as clearly, the number of signatures on a petition has a practical political effect. In most cases, however, a council may deny a petitioner's request, or refuse to even consider it.

Even where a municipal council will consider a citizen petition, it is important that candidates realize that they cannot delegate the authority to make legislative decisions to the citizens themselves. Frequently, elected officials want to allow citizens to vote on issues. While it may be admirable to seek approval of those who will become subject to a municipal action, the legislative power of a municipality, though, cannot be delegated to the citizens. For instance, in Opinion No. 91-00262, the Attorney General held that a city council may not make zoning in a particular district subject to a referendum of the residents.

The prohibition on delegation of municipal powers is particularly applicable to taxation. The municipality cannot hold a referendum for the voters to approve most tax increases. Ad valorem taxes are the notable exception. Most other taxes must be approved by the council by passage of a general and permanent ordinance. The city may hold a public hearing to obtain input, but it cannot delegate approval of the tax or tax increase to the citizens.

In fact, a city may not sponsor and hold a non-binding referendum using city employees and officials to work on the election, even if the cost of the referendum is paid for with private funds. AGO 94-00001. But, a private group may conduct a non-binding referendum for a municipality, although the municipality may not participate other than as private citizens and the council cannot agree to be bound by the referendum. AGO 97-00257. Of course, under state law the municipality must submit some questions, as provided for by law, to the voters to make the final decision. A candidate must be sure whether a referendum is required, or even allowed, prior to agreeing to allow the public to vote on specific issues.

### **The Division of Duties Between Elected Officials**

One of the most misunderstood aspects of municipal government is the separation of powers between the mayor and the council. Like government on the state and federal levels, municipal government is divided into three separate but equal branches: executive, legislative and judicial. Each of these branches has distinct duties, powers and restrictions on how far it can intrude into the affairs of the other branches.

At the municipal level, the mayor serves as the head of the executive branch. As such, the mayor is responsible for overseeing the day-to-day operations of the municipality. He or she oversees municipal employees, makes sure that bills are paid on time, executes municipal contracts and, in general, performs many of the same functions as a C.E.O. of a private corporation.

In municipalities of less than 12,000 inhabitants, the mayor also presides over council meetings and serves as a member of the council. In these cities and towns, the mayor may vote on any issue before the council, introduce measures and participate in debates to the same extent as members of the council.

In cities with populations of more than 12,000, the mayor is not a member of the council. However, he or she has a veto over any permanent action taken by the council. The council can override the veto by a two-thirds votes.

The council is the legislative branch. Candidates must understand that individual councilmembers, acting alone, have no greater power or authority than any other citizen of the municipality. The council can only act as a body at a legally convened meeting.

The council has authority over the finances and property of the municipality. The council establishes policies, passes

ordinances, sets tax levels, determines what sorts of services the municipality will offer and has authority over all other legislative aspects of municipal government.

### **Council Meetings**

Problems frequently arise over public participation in council meetings. This is probably due to the misconception of a council meeting as a public hearing. It is not. A council meeting is intended as a gathering of elected officials brought together to conduct the affairs of the municipality. The meeting is open to the public not so much to obtain citizen input, but to allow the public to observe the affairs of government to ensure appropriate and legal representation by their elected officials. Although most councils do set aside a time for public comment, Alabama law does not guarantee citizens the right to speak at a council meeting. The Open Meetings Act grants citizens the right to be present at public meetings, but does not grant them an absolute right to express their views at the meeting. And, the municipality may establish reasonable guidelines governing public participation in the meeting. AGO 98-00134.

Potential candidates must also be aware that problems often arise over public records. Clearly, most records maintained by a municipality are public. However, controversies over what this means are common. Everyone is not entitled to see public records any time they wish. The municipality is entitled to establish reasonable procedures governing access to public records. Citizens who wish to view public records must follow these procedures. The custodian of records may ask for a reason for viewing the records, and must be convinced that the reason is legitimate. Also, the municipality may charge for making copies.

Additionally, not all records are public. Some records, such as on-going police investigation files, some material in personnel records, confidential tax information and similar records containing information not for public consumption, are not open to the public.

For potential candidates, it is important to note that individual councilmembers and the mayor generally have no greater right to inspect municipal records than do any other members of the public.

### **Relationships with Boards**

Not all municipal services are provided by the municipality itself. Many are provided by municipal boards. Some of these boards are separately incorporated, while others are not. Municipalities have the authority to create a broad range of boards to control particular functions. Perhaps utility boards provide the most common example.

Boards are usually created when the governing body takes on the duty of performing so many functions that it needs to give the responsibility to another entity so that it can adequately provide for the other needs of the citizens. Once a board is created, its powers are specified by the statute under which it was organized. The council may not change the duties of the board from those set out in the statute. Nor can a council create boards that are not authorized by the

*continued on page 19*



# 2012 Alabama Municipal Elections Calendar

**DISCLAIMER:** *This election calendar is provided as a service to candidates running in the general municipal election and those officials responsible for conducting the municipal election to be held on August 28, 2012, with a run-off on October 9, 2012, if necessary. Use of this calendar is at the sole risk of the candidate. It is the responsibility of the candidate or official to verify the dates on which forms are due. The Alabama League of Municipalities and the municipality and/or official that may distribute this form disclaim any responsibility or liability for failure to comply with any filing requirement or any other election law.*

*References are to dates in the year 2012 unless otherwise indicated and all citations are to the Code of Alabama 1975. In most cases, the dates printed in this publication represent the final deadline for performing the listed duties. The League urges officials and candidates to accomplish these duties well in advance of the deadline.*

**Electronic Voting Rule**—An ordinance establishing the use of electronic vote counters must be adopted. No deadline is set, but the ordinance must be adopted far enough in advance to meet other election deadlines. §17-7-21.

## August 28, 2011

First day candidates for municipal elections can begin to raise money. §17-5-7(b)(2). Under general law, there is no limitation on the amount an individual may contribute to the campaign of a person running for municipal office. However, a corporation is limited to giving \$500 per candidate per election. §§10A-21-1.03 and 10A-21-1.04. **NOTE: Once a candidate establishes a principal campaign committee pursuant to the Fair Campaign Practices Act, the committee must file monthly campaign disclosure reports pursuant to §17-5-8. The reports are due on the last day of each month up to the month preceding the election at which point the reports are due weekly on Fridays leading up to the election. §17-5-8. Forms are available from the probate judge, the Secretary of State, or the municipal clerk.**

## February 28, 2012

Last day for the council to change the salaries for officials who will be elected in August. §§11-43-2 and 11-43-80. Last day for the council to decide whether to elect councilmembers at large or from districts. §§11-43-2 and 11-43-63. Last day for the council in municipalities with a population of less than 10,000 according to the most recent decennial census to provide for a procedure for the appointment of additional election officials to receive, count, and return the absentee ballots cast at the election. §§ 11-46-27, §17-11-10 and §17-11-11.

## March 31

Last day for councils elected at large to number the places for election purposes. §11-46-22.

## May 28

Last day for the council to change its district lines. §11-46-23. Last day for the council to change the location of designated voting places or add an additional voting place.

## May 30

Last day a person can become a resident of the municipality and district and still be a candidate for election.

Candidates must reside in the municipality and the district for a period of 90 days before the election. §11-4 25(g); §11-43-63.

## June 28

Last day on which the council may adopt an ordinance establishing qualification fees. §11-46-2.

## June 29

A municipality operating on Eastern Standard Time may open and close the polls under Eastern Standard Time if necessary. Changing to or from Eastern Standard Time would necessitate pre-clearance at least 60 days prior to the election. **§11-46-28. Electronic Voting Rule** – First day to conduct a training school for officials who will conduct an election using electronic voting machines. **§17-8-9.** No election official shall serve in any election in which an electronic voting machine is used, unless he or she shall have received such instruction within 60 days prior to the election and is fully qualified to perform the duties in connection with the electronic voting machine, and has received a certificate from the authorized instructor to that effect. This does not prevent the appointment of an uninstructed person as an election official to fill a vacancy among the election officials.

## July 3

Mayor gives notice of the election on the first Tuesday in July. §11-46-22(a). Candidates may begin qualifying once notice is published. Qualifying forms are available from the municipal clerk. §11-46-22(a). **NOTE:** The Fair Campaign Practices Act requires all candidates to file with the PROBATE JUDGE a list of from two to five persons who will serve as their campaign committee. Candidates may serve as their own committee, but must still file a form to this effect with the PROBATE JUDGE. THIS FORM MUST BE FILED WITHIN FIVE (5) DAYS OF QUALIFYING TO RUN FOR OFFICE. THIS FORM MUST BE FILED REGARDLESS OF WHETHER THE CANDIDATE HAS REACHED THE \$1,000 THRESHOLD UNDER THE FAIR CAMPAIGN PRACTICES ACT. Forms are available from the probate judge, Secretary of State or the municipal clerk. §17-5-4.

**IN ADDITION,** once a candidate establishes a principal campaign committee pursuant to the Fair Campaign Practices Act, the committee must file monthly campaign disclosure reports pursuant to §17-5-8. The reports are due on the last day of each month up to one month from the election at which point the reports are due weekly on Fridays leading up to the election. §17-5-8.

**FURTHER**, the Ethics Law requires candidates to file a statement of economic interests with the MUNICIPAL CLERK. THIS STATEMENT MUST BE FILED ALONG WITH THE QUALIFYING FORM. A candidate for municipal office may request a five day extension to file the statement of economic interests. The request must be made through the MUNICIPAL CLERK. The statement of economic interests must be filed with the MUNICIPAL CLERK within the five day extension. **THE CLERK IS REQUIRED TO REMOVE FROM THE BALLOT THE NAME OF ANY CANDIDATE WHO FAILS TO FILE THE STATEMENT OF ECONOMIC INTERESTS BY THE DEADLINE**. Incumbents do not have to file the statement of economic interests as they are required to submit an annual report which is on file with the ETHICS COMMISSION. §36-25-15.

#### **July 6**

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

#### **July 13**

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

#### **July 17**

Last day to qualify to run for municipal office. The qualifying form must be filed by 5:00 p.m., Central Daylight Time, with the MUNICIPAL CLERK. Forms are available from the clerk. §11-46-25(g). Mayor must cause the printing of the ballots. §11-46-25. Mayor must file a list of qualified voters with the clerk. If the mayor is a candidate in the election, the council must appoint a qualified person to perform this duty. Sections 11-46-36 and 11-46-37.

#### **July 20**

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

#### **July 23**

Last possible day for candidates to file with the PROBATE JUDGE a statement showing the names of their campaign committee. §17-5-4. Last day for the clerk to forward candidate statements of economic interests to the Ethics Commission. §36-25-15.

#### **July 24**

Mayor must file a list of qualified voters with the absentee election manager. §17-11-5. Last day for the mayor (or other person assigned to this duty) to deliver absentee ballots and supplies to the clerk. §17-11-5. NOTE: §11-46-32 requires the mayor to provide absentee supplies no later than 21 days before the election. The provision in Title 17 is a more recently adopted provision and should be followed instead.

#### **July 27**

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

#### **July 29**

Last day to place a voting machine on display. §11-46-31. Last day for sample of the ballot or vote card to be placed on display in municipalities using vote tabulators that require voters to fill out a card or paper ballot to be read by the tabulator. §11-46-31.

#### **August 3**

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

#### **August 10**

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

#### **August 13**

Last day for the council to appoint election officials. **NOTE:** The clerk must notify the persons chosen as election officials and must hold an election school for them. The clerk must notify the official at least 48 hours before the school is scheduled. §§11-46-27 and 11-46-30.

#### **August 14**

**Electronic Voting Rule** – First day to test electronic vote counters. The test must be conducted as close as practicable to the date of the election. The test is open to the public. The League recommends forty-eight (48) hours notice of the test. Rule 307-X-1-.04.

#### **August 17**

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

#### **August 18**

Last day for the mayor to publish lists of the election officers and the voting places to which they are assigned. Section 11-46-27.

#### **August 23**

Last day for a voter to apply for a regular absentee ballot. §17-11-3(a). Last day to publish the list of qualified voters. §11-46-36. **Electronic Voting Rule** – Last day to conduct a training school for officials who will conduct an election using electronic voting machines. §17-8-9.

#### **August 24**

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8.



Forms are available from the probate judge, Secretary of State or the municipal clerk.

Last day for an absentee voter who is required to provide identification but failed to include it with the ballot to submit this identification to the absentee election manager by 5:00 p.m. to prevent the ballot from becoming a provisional ballot. §17-10-2(c)(1)(a).

#### **August 27**

Last day for a voter to apply for an emergency absentee ballot if he or she is required by his or her employer to be out of the country on election day. §17-11-3(d). The clerk, along with two watchers, must inspect and seal voting machines which will be used in the election beginning no later than 9:00 a.m. §11-46-33. If an absentee ballot is returned by mail, it must be postmarked by August 27 **and** received by noon the day of the election. The deadline for hand-delivery of absentee ballots is the close of business on August 27. §17-11-3(c), 17-11-18.

#### **August 28**

**Election Day.** Regular municipal elections are held on the fourth Tuesday in August. §11-46-2. Candidates may appoint a poll watcher to observe voting procedures in the polling place. The appointment must be made in writing, signed by the candidate, and filed with the election officials at the polling place. §11-46-35. **NOTE:** Section 11-46-28 provides that the polls be open from 7:00 a.m. to 7:00 p.m. and that a municipality may set those times under Eastern Standard Time if necessary. Changing to or from Eastern Standard Time would necessitate preclearance at least 60 days prior to the election. (June 29, 2012). **Electronic Voting Rule** – Precinct counters must be tested according to the manufacturer’s instructions to ensure that they are set at zero and to prepared for voting. Rules 307-X-1-.11. Deadline for returning absentee ballots by mail or an emergency absentee ballot for a registered voter who requires emergency treatment by a licensed physician within 5 days of the election is 12:00 noon on August 28. §7-11-18. Election officials must meet at their respective polling places at least 30 minutes before polls open. §11-46-28. The clerk must ensure that all ballots, boxes and supplies are provided at each polling place, or if machines are used, that proper supplies are provided at each polling place. §11-46-33.

#### **August 29**

Deadline for the absentee election manager to notify voters whose absentee ballots have become provisional due to the inspector’s personal knowledge that voter was not eligible to vote. §17-10-2(c)(3)(b). Municipal clerk must deliver the written affirmations of the provisional voters, inspector challenge statements, and all voter re-identification forms in a sealed envelope addressed to the board of registrars to the board of registrars no later than noon.

#### **August 31**

Last day for an absentee voter who was required to provide identification but failed to provide it before the election to submit identification to the board of registrars in order to have the vote counted. §17-10-2(c)(1)(c).

#### **September 4**

Commencing at noon the council must canvass the election results. §11-46-55. See also §11-46-46. If a candidate receives a majority of the votes cast for the office, the council issues a certificate of election. If no candidate receives a majority, the council shall order a run-off election to be held. ANYONE WITH STANDING TO CONTEST THE ELECTION MAY REQUEST A RECOUNT WITHIN FORTY-EIGHT HOURS OF THE OFFICIAL CANVASS OF THE ELECTION RESULTS. §11-46-55.1.

#### **September 7**

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

#### **September 10**

Last day a candidate may contest the results of the general election. §11-46-69.

#### **September 11**

Last day for the mayor (or other person assigned to this duty) to deliver absentee ballots and supplies to the clerk for the run-off election. §17-11-12.

#### **September 14**

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

#### **September 21**

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

#### **September 25**

**Electronic Voting Rule** – First day to test electronic vote counters for the run-off election. The test must be conducted as close as practicable to the date of the election. The test is open to the public. The League recommends forty-eight (48) hours notice of the test. Rule 307-X-1-.04.

#### **September 28**

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

#### **October 4**

Last day for a voter to apply for a regular absentee ballot. §17-11-3(a).

*continued on page 21*

# 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

**Arrests:** The association of a suspect with a facility known or suspected of drug activity is a factor that may give rise to reasonable suspicion or probable cause justifying a detention. A defendant's headlong flight in response to an officer's questions did not constitute the mere exercise of a defendant's right to decline to answer questions and go on about his way, but was suspicious conduct that could properly be considered when determining whether officer had reasonable suspicion to conduct a *Terry* stop. The officer observing the defendant run in the center of a public street had probable cause to arrest for disorderly conduct. *State v. Jemison*, 66 So.3d 832 (Ala. Crim.App.2010)

**Courts:** Provision of Alabama Administrative Procedure Act (AAPA) stating that an administrative agency's delay in reaching a final decision shall be justification for an aggrieved party to seek a court order compelling action by the agency did not provide a basis for circuit court's jurisdiction over private nonprofit community action agency's appeal of non-final decision of the hearing officer in a contested case between the agency and the Alabama Department of Economic and Community Affairs, as the statute referred to the power of the trial court to order an administrative agency to issue a final decision rather than any power on the part of the trial court to hypothecate a final decision on the administrative agency's behalf. *Alabama Dept. of Economic and Community Affairs v. Community Service Programs of West Alabama*, 65 So.3d 396 (Ala.Civ.App.2010)

**Forfeitures:** In a forfeiture case, where a real party in interest is someone who was not named as a party, the case should be dismissed without prejudice or reversed by the appellate court with directions to allow the cause to stand over for amendment. *Hillbert v. State*, 66 So.3d 779 (Ala.Civ. App.2010)

**Streets and Roads:** Evidence indicating that a disputed roadway had been infrequently used, that it had been in bad repair, and that it had not been maintained by the governing body was insufficient to prove that the disputed roadway had been abandoned as a public road. *Laney v. Garmon*, 66 So.3d 766 (Ala.Civ.App.2010)

## UNITED STATES COURT DECISIONS AFFECTING ALABAMA

**Voting Rights Act:** The U.S. District Court for the District of Columbia declined to overturn Congress' 2006 reauthorization of Section 5 of the Voting Rights Act. Despite the effectiveness of Section 5 in deterring unconstitutional voting discrimination since 1965, Congress in 2006 found that voting discrimination by covered jurisdictions had continued into the 21st century, and that the protections of Section 5 were still needed to safeguard racial and language minority voters. *Shelby County, Ala. v. Holder*, --- F.Supp.2d ----, 2011 WL 4375001 (D.D.C.2011)

## DECISIONS FROM OTHER JURISDICTIONS

**Americans with Disabilities Act:** When a city decides to build or alter a sidewalk but makes that sidewalk inaccessible to individuals with disabilities without adequate justification, the city discriminates within the meaning of the ADA's Title II, which prohibits disability discrimination in the provision of public services. *Frame v. City of Arlington*, --- F.3d ----, 2011 WL 4089778 (5<sup>th</sup> Cir.2011)

**Public Records:** The Freedom of Information Act (FOIA) was intended to pierce the veil of administrative secrecy and to open federal agency action to the light of public scrutiny; although Congress enumerated nine exemptions from the disclosure requirement, these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act. The FOIA gives the public a right to see government information about federal investigator's use of cell data to track suspects. *American Civil Liberties Union v. U.S. Dept. of Justice*, --- F.3d ----, 2011 WL 3890837 (C.A.D.C.2011)

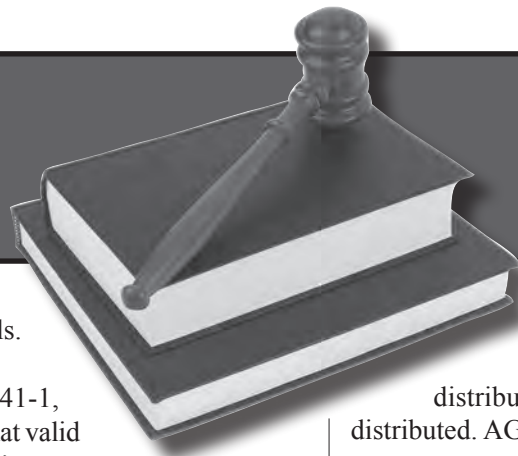
**Volunteer Fire Departments:** The remuneration a volunteer firefighter receives is only one factor in a common-law agency test for determining whether the individual is an 'employee' under Title VII of the 1964 Civil Rights Act. *Bryson v. Middlefield Volunteer Fire Dept., Inc.*, --- F.3d ----, 2011 WL 3873789 (6<sup>th</sup> Cir.2011)

## ATTORNEY GENERAL'S OPINIONS

**Capital Improvement Funds:** A municipality can use restricted capital improvement funds for the procurement of technical equipment, including computer and telecommunications equipment, required for the operation of the municipal government. AGO 2011-092

**Elections:** Immediate real-time electronic computer access to the computerized statewide voter registration list is limited





to state and local election officials.  
AGO 2011-098

**Incorporation:** Section 11-41-1, Code of Alabama 1975, requires that valid incorporation petitions contain signatures from 15 percent of registered voters residing in the area, owners of 60 percent of the total land in the area, and 4 registered voters residing on each 40 acres of the unincorporated community. A petition for incorporation must fail when the petition lacks the requisite signatures as set forth in section 11-41-1 of the Code. The 60-percent-ownership requirement is in relation to the entire area to be incorporated. This figure should not be applied to each quarter of a quarter section of land in a proposed municipality. Invalid petitions may be amended by the petitioner. AGO 2011-099

**Police Department:** No state or federal law prevents a municipality from conducting a roadblock on a United States highway that is within its corporate boundaries. Whether such a roadblock would satisfy the standards established by the Alabama courts for conducting such roadblocks is a factual question. AGO 2011-105

**Property Forfeiture:** Online auction sites that are open to the public constitute public auctions as it relates to section 11-47-116, Code of Alabama 1975, dealing with the sale of abandoned and stolen property found within the municipality. AGO 2011-095

**Public Records:** Applications, resumes, and other related materials, for positions of government employment from applicants who are not selected as final candidates, are subject to disclosure under the Open Records Law except when specific records or portions thereof can be demonstrated by the governing body to fall within a recognized exception. Home addresses, telephone numbers, social security numbers, and marital status may be withheld from public inspection. AGO 2011-094

**Public Works Bid Law:** Under certain facts a court may find that a municipality has “substantially complied” with the requirements of the Public Works Bid Law, despite less than full advertising. AGO 2011-100

**Rules of the Road:** The use of a split-screen device in the front seat of a vehicle that cannot receive television broadcasts does not violate section 32-5-219 of the Code of Alabama. AGO 2011-101

**TVA Payments:** The Discretionary Fund Committee created by a local act applicable to Marshall County, Act 2011-602, has the authority to expend the additional TVA-in-lieu-of-tax funds created by Act 2010-135 for any lawful purpose

within the discretion of the Committee. The Committee has the discretion to approve the distribution of the funds that have been previously distributed. AGO 2011-096 ■

**May municipal funds be used to provide a holiday dinner for municipal employees or to provide a holiday bonus to municipal employees?**

Section 11-43-9, Code of Alabama 1975, states, “The fees, salary, compensation, or emoluments of any officer whose election or appointment is required or authorized by the applicable provisions of (Title 11) shall not be increased nor diminished during the term for which he shall have been elected or appointed, and no gratuitous appropriation in any case shall be made to or for the benefit of any officer or employee in addition to his salary.” Additionally, Section 68 of the Alabama Constitution of 1901, prohibits the granting of any extra compensation, fee, or allowance to any public officer, servant, or employee, agent or contractor, after service has been rendered or contract made. These provisions would prohibit the use of city funds to provide food to be used at a holiday dinner, for city officers and employees, or for bonuses granted after work has been performed.

Meals may be purchased for city employees only if related to municipal business. Public funds may be used to pay for meals and/or refreshments served at business meetings when the meals are directly related to the business of the entity, and the meals and refreshments are incidental to the meeting. In order for meals to be an incidental part of the meeting, the primary purpose of the gathering must be to have an official meeting at which business is conducted, not a social gathering at which food is provided. Refreshments may not be provided at a break during a meeting that does not extend through a mealtime. See AGO 2010-076.

Section 11-43-9 and Section 68 prohibit the use of city funds to pay holiday bonuses or give gifts to employees for holidays. AGO to Ms. Jane Phillips, January 3, 1978; George Roy, December 19, 1972; Hoover Moore, April 16, 1974. A council cannot give bonuses to employees, however, the council may provide for a lump sum raise to be earned by employees at a certain time each year. AGO to Hon. Jerry L. Tolbert, February 12, 1981.



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legislature. Although a council may create an advisory board, it cannot delegate power over any municipal function in its control unless the legislature has given them that authority. An advisory board can only make recommendations to the council. The council must determine whether or not to act on those recommendations.

Frequently, municipal officials are asked to remove board members or to order the board to take certain actions. Candidates must understand that once a board is created, it has the sole power to act and the council has no power to make demands on the members of the board. Members of these boards are appointed for terms and generally they cannot be removed until their terms expire. This is especially true for separately incorporated boards.


It is important to understand the difference between an incorporated and an unincorporated board. Incorporated boards usually cannot be dissolved until some event defined in the Code occurs. Frequently this is the payment of the debts of the board. Therefore, members of incorporated boards are totally independent from council members. Unincorporated boards are different. They generally can be dissolved by a governing body. The council will then either establish a new board or assume control over the functions themselves. However, the council may not leave the board in existence and change the duties of the board from those set out in the Code.

**Conclusion**

This article does not answer every conceivable question regarding municipal government, nor could it. Municipal government is multifaceted. It is difficult to even list all the functions performed by municipalities, and even harder to explain the laws which govern their operation. Multi-volume sets of books have been written which provide only a brief overview.

However, what is often overlooked is the community nature of a municipality. Although municipal governments are legally recognized entities with a certain amount of control over the affairs of their citizens, municipalities are still communities. They are organized by citizens who feel a need for the services and protection the government provides. In order to make the government effective, elected officials, and the citizens they represent, must work together in a spirit of cooperation, cooperation based on an understanding of what the municipality is permitted to do under state law. The League hopes this article will help foster this spirit of cooperation. ■

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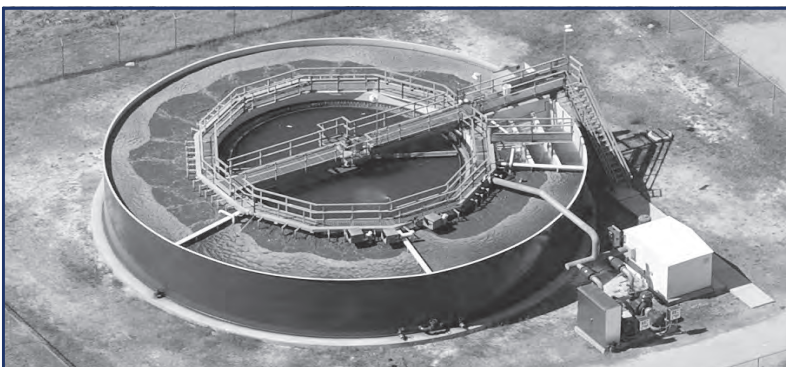
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## October 5

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

Last day for an absentee voter who is required to provide identification but failed to include it with the ballot to submit this identification to the absentee election manager by 5:00 p.m. to prevent the ballot from becoming a provisional ballot. §17-10-2(c)(1)(a).

## October 8

Last day for a voter to apply for an emergency absentee ballot if he or she is required by his or her employer to be out of the country on election day. §17-11-3(d). The clerk, along with two watchers, must inspect and seal voting machines which will be used in the election. §11-46-33. If an absentee ballot is returned by mail, it must be postmarked by October 8. The deadline for hand-delivery of absentee ballots is the close of business on October 8. §17-11-18.

## October 9

**Run-off Election Day.** Candidates may appoint a poll watcher to observe voting procedures in the polling place. The appointment must be made in writing, signed by the candidate, and filed with the election officials at the polling place. §11-46-35. **Electronic Voting Rule** – Precinct counters must be tested according to the manufacturer’s instructions to ensure that they are set at zero and to prepared for voting. Rules 307-X-1-.11. Deadline for returning absentee ballots by mail or an emergency absentee ballot for a registered voter who requires emergency treatment by a licensed physician within 5 days of the election is 12:00 noon on October 9. §17-11-3(c), 17-11-18.

## October 10

Deadline for the absentee election manager to notify voters whose absentee ballots have become provisional due to the inspector’s personal knowledge that voter was not eligible to vote. §17-10-2(c)(3)(b). Municipal clerk must deliver the written affirmations of the provisional voters, inspector challenge statements, and all voter re-identification forms in a sealed envelope addressed to the board of registrars to the board of registrars no later than noon.

## October 12

Last day for an absentee voter who was required to provide identification but failed to provide it before the election to submit identification to the board of registrars in order to have the vote counted. §17-10-2(c)(1)(c).

## October 16

Commencing at noon the council must canvass the election results. §11-46-55. See also §11-46-46. ANYONE WITH STANDING TO CONTEST THE ELECTION MAY REQUEST A RECOUNT WITHIN FORTY-EIGHT HOURS OF THE OFFICIAL CANVASS OF THE ELECTION RESULTS. §11-46-55.1.

## October 22

Last day a candidate may contest the results of the run-off election. §11-46-69.

## November 5

Newly elected municipal officials take office on the first Monday in November following the election. §11-46-21(c). Council meets for its organizational session. §11-43-44.

## December 26

Last day for candidates who were not involved in the run-off election to raise money to pay off their campaign debts. §17-5-7.

## February 6, 2013

Last day for candidates who were involved in the run-off election to raise money to pay off their campaign debts. §17-5-7.

All political advertisements must be clearly marked with a statement that the communication is a paid political advertisement. This statement must contain information which adequately identifies the person or committee that paid for or authorized the ad. §17-5-12.

**NOTE:** Candidates who are not elected should dissolve their campaign committees by filing a form with the PROBATE JUDGE. The Fair Campaign Practices Act requires all candidates who fail to dissolve their campaign committees to file an annual report listing all contributions or expenditures with the probate judge. Forms are available from the probate judge, the Secretary of State, or the municipal clerk. There have been changes to the Fair Campaign Practices Act since the 2008 election and there are different filing deadlines. Please refer to the manual for more information. ■

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# Photos Wanted!

The Alabama League of Municipalities is seeking photos for use on its website and in its publications. **Spotlight your municipality by sending us your photos!** Photos must be of an Alabama city or town and follow a municipal theme: municipal buildings, parks, street scenes, downtowns, city festivals, etc. Photos do not have to be taken by a professional photographer; however, they must be submitted on a CD or emailed as a high resolution JPEG or TIFF file. (High resolution files are necessary for print quality purposes.) Each entry must include a photo description as well as photographer's name and contact information. Email submissions to [karlf@alalm.org](mailto:karlf@alalm.org) or mail cd submissions to:

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# Discounts Available for 2012 Workers Compensation Premiums!



The Municipal Workers Compensation Fund (MWCF) strives to keep the premiums for our members as low as possible. In 2011, 51% of MWCF members received a full 10% off their premium by appointing a Safety Coordinator; signing a *Statement of Commitment, Post Accident Drug Testing Agreement*; and having an approved Medical Protocol in place. These programs not only helped reduce claims but also put thousands of dollars back into the budgets of those municipalities and municipal entities to be used elsewhere.

## 2012 Statement of Commitment

The *Statement of Commitment* is a two-page document comprised of safety standards that each member endeavors to follow. It is updated annually and mailed to every MWCF member during November. **If it is signed and returned by December 1, 2011, a 3% discount will be reflected on the 2012-2013 billing. This two-page document must be renewed each year.**

## Post Accident Drug and Alcohol Testing Program

The MWCF provides an additional 3% discount for those members that commit to a *Post Accident Drug and Alcohol Testing* program. In order to qualify a member must sign a "Participating Commitment" (which will be enclosed with the above mentioned document) and have such program certified by their attorney that the member's drug and alcohol policy is Fourth Amendment compliant. Unlike the *Statement of Commitment*, this document does not have to be renewed each year.

## Medical Protocol

Another 3% discount is available to those members who establish and implement a *Medical Protocol*. This program is a great benefit to both the member and the claims management team. A sample protocol will be included in the November mailing for those members that do not yet have one on file. For further information regarding this discount, call Millennium Risk Managers at **1-888-736-0210**.

MWCF members who participate in all three programs will receive a bonus 1% discount – earning those members a full 10% discount on their annual premium for 2012! **All members are encouraged to watch for the *Statement of Commitment* information packet coming to you in November and return it promptly to take advantage of these benefits.** It will also be available for downloading on our website by going to the MWCF page at [www.alalm.org](http://www.alalm.org).



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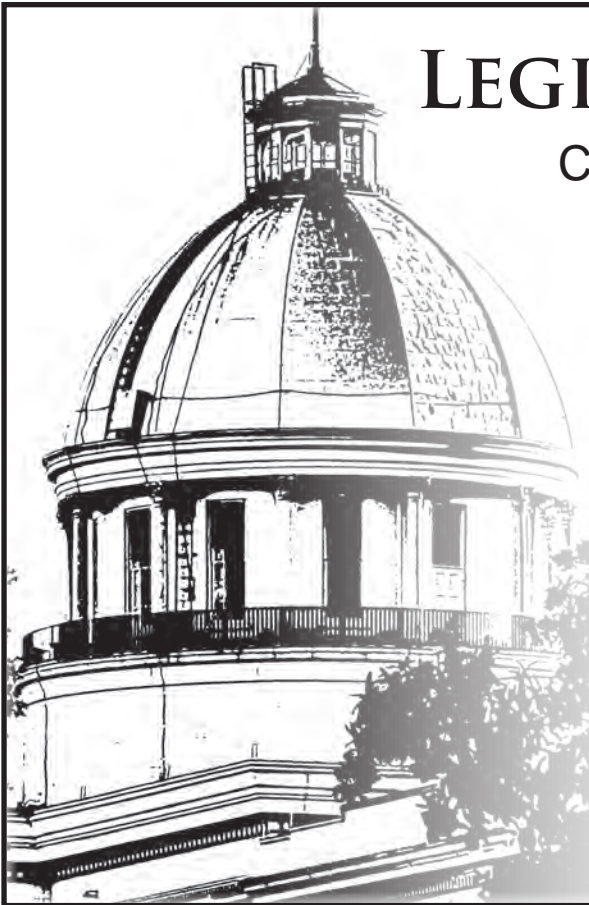
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# LEGISLATIVE ADVOCACY

CMO Session Coming February 2012

## Morning

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- Legislative Forecast
- League's Legislative Agenda
- Legislation Affecting Municipalities
- Building Strong Relationships

## Afternoon

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- Group photo on the Capitol Steps (weather permitting)
- Legislative visits at the Alabama State House

**STAY TUNED FOR  
DATE AND DETAILS!**

## Recently Retired Tuscaloosa City Attorney Robert Ennis Receives International Award



Robert Ennis, who recently retired after 33 years with the City of Tuscaloosa, received the Joseph I. Mulligan Award from the International Municipal Lawyers Association (IMLA) in a ceremony held September 13 at the Chicago Hilton in Chicago, Illinois.

Joseph Mulligan, Jr., an iconic IMLA member, was the Corporation Counsel for the City of Boston for many years and past president of IMLA. The Mulligan Award is designed to recognize an IMLA member who has realized significant and surpassing achievements in the field of local government law while bringing honor to the practice.

Robert Ennis devoted his legal career entirely to the City of Tuscaloosa. His nominator, Tuscaloosa City Attorney Tim Nunnally, described Robert as one of the leading municipal attorneys in the state of Alabama. He was IMLA state chair for a number of years and helped found the Alabama Association of Municipal Attorneys.

Founded in 1935, the International Municipal Lawyers Association (IMLA) is a nonprofit, nonpartisan organization consisting of approximately 3000 local governments and attorneys throughout the United States and Canada. IMLA provides a wide range of services and programs to its membership, including comprehensive educational programs, legal research, professional publications and legal advocacy on behalf of its members in the United States Supreme Court, as well as federal and state appellate courts.

States Department of Homeland Security or other office or agency designated for that purpose by the federal government. If the person is determined to be an alien unlawfully present in the United States, the person shall be considered a flight risk and shall be detained until prosecution or until handed over to federal immigration authorities.

**vi. Inchoate Crimes (Section 25):** (a) A solicitation to violate any criminal provision of this act, an attempt to violate any criminal provision of this act, or a conspiracy to violate any criminal provision of this act shall have the same penalty as a violation of this act. (b) For the purposes of this section, solicitation shall have the same principles of liability and defenses as criminal solicitation under subsections (b) through (e) of Section 13A-4-1, Code of Alabama 1975, and Section 13A-4-5, Code of Alabama 1975. (c) For the purposes of this section, attempt shall have the same principles of liability and defenses as attempt under subsections (b) and (c) of Section 13A-4-2, Code of Alabama 1975, and Section 13A-4-5, Code of Alabama 1975. (d) For the purposes of this section, conspiracy shall have the same principles of liability and defenses as criminal conspiracy under subsections (b) through (f) of Section 13A-4-3, Code of Alabama 1975, and Sections 13A-4-4 and 13A-4-5, Code of Alabama 1975.

**vii. Business Transactions (Section 30):** (b) An alien not lawfully present in the United States shall not enter into or attempt to enter into a business transaction with the state or a political subdivision of the state and no person shall enter into a business transaction or attempt to enter into a business transaction on behalf of an alien not lawfully present in the United States. (c) Any person entering into a business transaction or attempting to enter into a business transaction with this state or a political subdivision of this state shall be required to demonstrate his or her United States citizenship, or if he or she is an alien, his or her lawful presence in the United States to the person conducting the business transaction on behalf of this state or a political subdivision of this state. United States citizenship shall be demonstrated by presentation of one of the documents listed in Section 29(k). An alien's lawful presence in the United States shall be demonstrated by this state's or a political subdivision of this state's verification of the alien's lawful presence through the Systematic Alien Verification

for Entitlements program operated by the Department of Homeland Security, or by other verification with the Department of Homeland Security pursuant to 8 U.S.C. § 1373(c). (d) A violation of this Section is a Class C felony.

**III. Effective January 1, 2012**

**a. Preconditions for awards of contracts, grants or incentives by municipality (Section 9):**

- i. As a condition of award of any contract, grant or incentive by the state, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees, the business entity or employer shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien and shall provide an affidavit signed before a notary attesting to such.
- ii. As a condition of award of any contract by a political subdivision of the state, a business must provide documentation that it is enrolled in the E-verify program.
- iii. The Secretary of State shall adopt rules to administer this section.

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IV. **Effective April 1, 2012**

a. **Employment of Unauthorized Aliens (Section 15):**

- i. No business entity, employer, or public employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Alabama.
- ii. Every business entity or employer in this state shall enroll in E-Verify and thereafter shall verify employment eligibility through E-Verify.

V. **What Municipalities need to do now as a result of the current court orders:**

- a. Require proof of citizenship or that the person is an alien lawfully present in the U.S. before conferring any benefit or entering into any business transaction.
  - i. Individuals may demonstrate citizenship by providing one of the following documents, or a legible photocopy of one of the following documents:
    1. A driver's license or non-driver's identification card issued by the division of motor vehicles or the equivalent governmental agency of another state within the United States if the agency indicates on the applicant's driver's license or non-driver's identification card that the person has provided satisfactory proof of United States citizenship.
    2. A birth certificate that verifies United States citizenship.
    3. Pertinent pages of the applicant's United States valid or expired passport identifying the applicant and the applicant's passport number, or presentation of the applicant's United States passport.
    4. A United States naturalization documents or the number of the certificate of naturalization. If only the number of the certificate of naturalization is provided, the number of the certificate must be verified with the United States Bureau of Citizenship and Immigration Services pursuant to 8 U.S.C. §1373(c).
    5. Other documents or methods of proof of United States citizenship issued by the federal government pursuant to the Immigration and Nationality Act of 1952, and amendments thereto.
    6. A Bureau of Indian Affairs card number, tribal treaty card number, or tribal enrollment number.
    7. A consular report of birth abroad of a citizen of the United States of America.
    8. A certificate of citizenship issued by the United States Citizenship and Immigration Services.
    9. A certification of report of birth issued by the United States Department of State.
    10. An American Indian card, with KIC classification, issued by the United States Department of Homeland Security.

11. A final adoption decree showing the applicant's name and United States birthplace.
  12. An official United States military record of service showing the applicant's place of birth in the United States.
  13. An extract from a United States hospital record of birth created at the time of the applicant's birth indicating the applicant's place of birth in the United States.
- b. Get a declaration of citizenship from any U.S. citizen applying for a benefit.
  - c. Verify the lawful presence and status of aliens using the SAVE program or by other verification with the Department of Homeland Security. If the verification process is delayed or inconclusive, the alien should be considered eligible for benefits in the interim period if the alien signs a declaration that he or she is lawfully present in the United States.
    - i. An alien possessing self-identification in any of the following forms is entitled to the presumption that he or she is an alien lawfully present in the United States:
      1. A valid, unexpired Alabama driver's license.
      2. A valid, unexpired Alabama non-driver identification card.
      3. A valid tribal enrollment card or other form of tribal identification bearing a photograph or other biometric identifier.
      4. Any valid United States federal or state government issued identification document bearing a photograph or other biometric identifier, if issued by an entity that requires proof of lawful presence in the United States before issuance.
      5. A foreign passport with an unexpired United States Visa and a corresponding stamp or notation by the United States Department of Homeland Security indicating the bearer's admission to the United States.
      6. A foreign passport issued by a visa waiver country with the corresponding entry stamp and unexpired duration of stay annotation or an I-94W form by the United States Department of Homeland Security indicating the bearer's admission to the United States.
  - d. In any lawful stop, detention, or arrest made by the police department in the enforcement of any state or municipal law where there is reasonable suspicion that the individual is an illegal alien, the police department must make a reasonable effort to determine the citizenship and immigration status of the person unless that determination will hinder or obstruct an investigation. ■

## Training

Another value-added service you receive through your League is *training*. The League has developed numerous training opportunities for both elected officials and municipal employees. In 1994, the League established its extremely successful Certified Municipal Official Program through which mayors and councilmembers can take basic and advanced leadership and nuts-and-bolts skills seminars and achieve levels of recognition. The League also offers a variety of loss control and safety training through its insurance programs. In addition, League staff members are frequently asked to speak to various municipal groups, including municipal clerks, personnel administrators and finance officers.

## Valuable Resources and Information

Having the correct information when you need it is an extremely valuable resource, and our League is definitely in the information business. The League offers an extensive website, [www.alalm.org](http://www.alalm.org), with a vast amount of information. League members are also updated through the League's Blast E-Mail System, which enables a quick turn-around on time-sensitive information. In addition, the League has just begun implementing an e-newsletter which will be sent weekly to everyone on the League's email list. If you are not currently receiving the e-newsletter, please contact Theresa Lloyd with the League's membership department at 334-262-2566 or

[theresal@alalm.org](mailto:theresal@alalm.org) and she'll be happy to add your email address to the distribution list.

These resources are, of course, in addition, to the League's other printed and electronic publications such as the *Alabama Municipal Journal*, *Risk Management Solutions*, the *Selected Readings for the Municipal Official*, the *Handbook for Mayors and Councilmembers* and the weekly Legislative Bulletins published during the session. Further, League staff members are just a phone call or an email away when you have a question.

## A Net Gain

The League staff truly understands our roles as local elected officials. They strive every day to provide us with the best information and representation possible. The Alabama League of Municipalities also understands the importance of member service. Whether it's through training elected officials and personnel on a variety of important topics; representing and protecting municipal government at the State House; or providing legal advice, the Alabama League has been the most steadfast resource available to municipalities for the past 76 years.

When you consider the benefits of your League membership, it's quite possible that your municipality can post a net gain for its investment in this fine organization – and that your investment in your League will grow even *more* valuable over time. ■

## PUT OUR EXPERIENCE TO WORK FOR YOU

The League's Employment Practices Hotline Offers Free 30-Minute Consultations on Personnel and Employment Practices.

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# AMIC/MWCF Debuts New SKIDCAR System



**B**ecause they spend a great deal of time operating vehicles – often at high speeds and in hazardous conditions – driving skills are critical for law enforcement and emergency personnel.

The League's Loss Control Department has offered Proactive Driver Training to its AMIC and MWCF members for nearly 12 years. In April 2000, a state-of-the-art SKIDCAR system was purchased and the League began offering AMIC/MWCF's Proactive Driver training throughout the state soon thereafter. This past October, an updated, redesigned SKIDCAR system was purchased and is now being used for this popular training program.

The Swedish-designed, state-of-the-art SKIDCAR System has been shown to instill better driving instincts to help drivers maintain control in the most difficult real-life situations. The SKIDCAR System is specifically designed to aid in the development of techniques that would be risky to learn in a regular vehicle at higher speeds. It consists of a steel framework on electro-hydraulic wheels attached to the suspension of a vehicle that, through the use of an instructor-operated electronic controller, can be adjusted to simulate loss of front, rear or four-wheel grip at low speeds. This means the instructor can create subtle-to-extreme skid conditions at a low speed in a small geographic space.



AMIC/MWCF's Proactive Driver Training program is offered throughout the state at various times of the year and consists of a day-long session in which a maximum of nine people are trained using the SKIDCAR System. The first hour of the course takes place in a classroom setting. The remainder of the program is hands-on and completed in shifts. Three participants ride in the vehicle (one driving, two in the back seat) with the instructor while the remaining six observe how the vehicle responds and help maintain the training course.



**Stanley Fant** (pictured at left) is the League's SKIDCAR Coordinator and is responsible for AMIC/MWCF's Proactive Driver Training. Fant has 30 years of law enforcement experience as an Alabama State Trooper, including more than 20 years as a highway patrol officer and supervisor. He retired in May 1999 and began working with AMIC/MWCF's Proactive Driver Training program in December 2000.

Although the Proactive Driver Training program was originally designed for law enforcement employees, **ALL** municipal employees are strongly encouraged to attend the program for their own driving safety. AMIC/MWCF's goal is to provide as many drivers as possible with the techniques and skills to safely overcome adverse driving situations they might encounter on a day-to-day basis. ■

**For more information on AMIC/MWCF's Proactive Driver Training program, contact Donna Wagner, Loss Control Coordinator, at 334-262-2566 or via email at [donnaw@alalm.org](mailto:donnaw@alalm.org).**



# Congratulations to the City of Brewton, AMFund's most recent borrower!



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*Pictured left to right: Greg Cochran; AMFund President; Mayor Wally Burns, Southside, AMFund Vice Chairman, Mayor Roy Dobbs, Berry, AMFund Chairman; Mayor Ted Jennings, Brewton; Mayor Howard Shell, Atmore, AMFund Board; and Mayor George Evans, Selma, AMFund Board. (Not pictured: Councilmember Debbie Quinn, Fairhope, AMFund Board)*

AMFund is administered by the Alabama League of Municipalities.

[www.amfund.com](http://www.amfund.com)

## Municipal Revenue Service

The League's Municipal Revenue Service for collection of delinquent insurance license taxes has more than 50 years experience of responsible and aggressive collection of lost revenue, currently for over 300 communities in Alabama.

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On Wednesday, April 27, 2011, Alabama hosted an unusual yet perfect set of weather conditions that produced dozens of deadly tornadoes beginning before dawn until late that night. Within the span of a few hours, one of the most prolific and catastrophic natural disasters in Alabama's history unfurled. A record-breaking 62 monsters from the sky ravaged the northern two-thirds of the state scattering 10 million cubic yards of debris, claiming more than 240 lives and causing an estimated \$1.5 billion in property damage.

Within 24 hours, AMIC representatives were surveying and photographing damage and consulting with experts to take the necessary steps to secure the affected areas within its member municipalities. Sixty-three AMIC members sustained damage totaling approximately \$45 million. AMIC issued its first claims check within 48 hours and distributed nearly \$12 million to its members within three weeks of this unprecedented tornado outbreak.



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