

The Alabama Municipal JOURNAL

January 2012

Volume 69, Number 7

2012 Municipal Quality of Life Award Winners

city of **winner: 12,001^{and} over**
auburn
using GIS to enhance public engagement
city of **winner: 5,000 to 12,000**
tarrant
city of making blight right
pedmont
m power piedmont **winner: under 5,000**

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Editor: CARRIE BANKS

Staff Writer: TRACY L. ROBERTS

Graphic Design: KARL FRANKLIN

For a complete list of the ALM staff, visit www.alalm.org.

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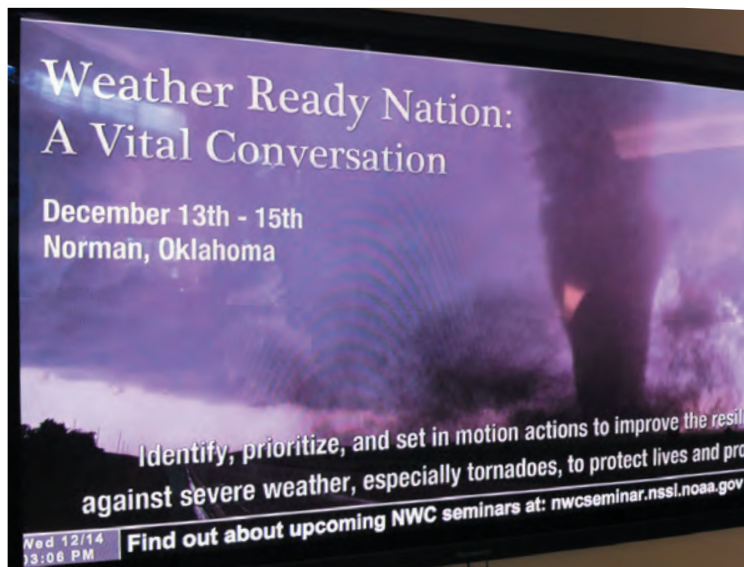
On the Cover:

Congratulations to this year's Municipal Quality of Life Awards winners! The cities of Piedmont, Tarrant and Auburn were chosen as the winners for their population categories – Under 5,000, 5001 to 12,000 and 12,001 and Over, respectively. They will be recognized during the Opening Session of the League's 2012 Annual Convention in Birmingham on May 19th. See page 10 for more information.

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Abbeville, Adamsville, Addison, Akron, Alabaster, Albertville, Alexander City, Aliceville, Allgood, Altoona, Andalusia, Anderson, Anniston, Arab, Ardmore, Argo, Arton, Arley, Ashford, Ashland, Ashville, Athens, Atmore, Attalla, Auburn, Autaugaville, Avon, Babbie, Baileytown, Baker Hill, Banks, Bay Minette, Bayou La Batre, Bear Creek, Beatrice, Beaverton, Belk, Benton, Berry, Bessemer, Billingsley, Birmingham, Black, Blountsville, Blue Springs, Boaz, Boligee, Bon Air, Brantley, Brent, Brewton, Bridgeport, Brighton, Brilliant, Brookside, Brookwood, Brundidge, Butler, Calera, Camden, Camp Hill, Carbon Hill, Carrollton, Castleberry, Cedar Bluff, Center Point, Centre, Centreville, Chatom, Chelsea, Cherokee, Chickasaw, Childersburg, Citronelle, Clanton, Clay, Clayhatchee, Clayton, Cleveland, Clio, Coaling, Coffee Springs, Coffeetown, Coker, Collinsville, Colony, Columbia, Columbiana, Coosada, Cordova, Cottonwood, County Line, Courtland, Cowarts, Creola, Crossville, Cuba, Cullman, Dadeville, Daleville, Daphne, Dauphin Island, Daviston, Dayton, Deatsville, Decatur, Demopolis, Detroit, Dodge City, Dora, Dothan, Double Springs, Douglas, Dozier, Dutton, East Brewton, Eclectic, Edwardsville, Elba, Elberta, Eldridge, Elmont, Elmore, Emelle, Enterprise, Epes, Eufaula, Eutaw, Eva, Evergreen, Excel, Fairfield, Fairhope, Fairview, Falkville, Faunsdale, Fayette, Five Points, Flomaton, Florala, Florence, Foley, Forkland, Fort Deposit, Fort Payne, Franklin, Frisco City, Fulton, Fultondale, Fyffe, Gadsden, Gainesville, Gantt, Garden City, Gardendale, Gaylesville, Geiger, Geneva, Georgiana, Geraldine, Gilbertown, Glen Allen, Glencoe, Glenwood, Goldville, Good Hope, Goodwater, Gordo, Gordon, Gordonville, Goshen, Grant, Graysville, Greensboro, Greenville, Grove Hill, Gu-Win, Guin, Gulf Shores, Gunter'sville, Gurley, Hackleburg, Haleyville, Hamilton, Hammondville, Hanceville, Hartselle, Hartford, Hartselle, Hayden, Hayneville, Headland, Heath, Heflin, Helena, Henagar, Highland Lake, Hillsboro, Hobson City, Hodges, Hokes Bluff, Holly Pond, Hollywood, Homewood, Hoover, Hueytown, Huntsville, Huntsboro, HyTop, Ider, Indian Springs, Irondale, Jackson, Jackson's Gap, Jacksonville, Jasper, Jemison, Kansas, Kellyton, Kennedy, Killen, Kimberly, Kinsey, Kinston, LaFayette, Lake-view, Lanett, Langston, Leeds, Leesburg, Leighton, Lester, Level Plains, Lexington, Lincoln, Linden, Lineville, Lipscomb, Lisman, Littleville, Livingston, Loachapoka, Lockhart, Locust Fork, Louisville, Lowndesboro, Loxley, Luverne, Lynn, McIntosh, McKenzie, Madison, Madrid, Magnolia Springs, Malvern, Maplesville, Margaret, Marion, Maytown, Mentone, Midfield, Midland City, Midway, Millbrook, Millport, Millry, Mobile, Monroeville, Montevallo, Montgomery, Moody, Mooresville, Morris, Mosses, Moulton, Moundville, Mount Vernon, Mountain Brook, Mulga, Munford, Muscle Shoals, Myrtlewood, Napier Field, Natural Bridge, Nauvoo, Nectar, Needham, Newbern, New Brockton, New Hope, New Site, Newton, Newville, North Courtland, Northport, Notasulga, Oak Grove, Oak Hill, Oakman, Odenville, Ohatchee, Oneonta, Onycha, Opelika, Opp, Orange Beach, Orrville, Owens Cross Roads, Oxford, Ozark, Paint Rock, Parrish, Pelham, Pell City, Pennington, Perdido Beach, Phenix City, Phil Campbell, Pickensville, Piedmont, Pike Road, Pinckard, Pine Apple, Pine Hill, Pine Ridge, Pinson, Pisgah, Pleasant Grove, Pleasant Groves, Pollard, Powell, Prattville, Priceville, Prichard, Providence, Ragland, Rainbow City, Rainsville, Ranburne, Red Bay, Red Level, Reece City, Reform, Reheobeth, Repton, Ridgeville, Riverside, Riverview, Roanoke, Robertsdale, Rockford, Rogersville, Rosa, Russellville, Rutledge, Saint Florian, Samsom, Sand Rock, Sanford, Saraland, Sardis City, Satsuma, Scottsboro, Section, Selma, Sheffield, Shiloh, Shorter, Silas, Silverhill, Sipsy, Skyline, Slocomb, Smiths Station, Snead, Somerville, South Vinemont, Southside, Spanish Fort, Springville, Steele, Stevenson, Sulligent, Sumiton, Summerdale, Susan Moore, Sweet Water, Sylacauga, Sylvan Springs, Talladega, Talladega Springs, Tallassee, Tarrant, Taylor, Thomaston, Thomasville, Thorsby, Town Creek, Toxey, Trafford, Triana, Trinity, Troy, Tusssville, Tuscaloosa, Tuscumbia, Tuskegee, Twin, Union, Union Grove, Union Springs, Uniontown, Valley, Valley Grande, Valley Head, Vance, Vernon, Vestavia Hills, Vina, Vincent, Vredenburgh, Wadley, Waldo, Walnut Grove, Warrior, Waterloo, Waverly, Weaver, Webb, Wedowee, West Blocton, West Jefferson, West Point, Westover, Wetumpka, Wilsonville, Wilton, Winfield, Woodland, Woodstock, Woodville, Yellow Bluff, York.

A Message from the Editor



Two weeks before Christmas I attended a severe weather conference, “Weather Ready Nation: A Vital Conversation,” in Norman, Oklahoma at the National Weather Center. Sponsored by NOAA and the National Weather Center, the goal of this invitation-only symposium was to “initiate a national conversation among the user, service and science (physical and social) communities, including key stakeholders and America’s weather enterprise, to identify, prioritize and set in motion actions to improve the nation’s resiliency against severe weather, especially tornadoes, to protect lives and property.”

I spent two 12-hour days at the National Weather Center listening to presentations by 38 (yes, I typed that correctly) private sector meteorologists, broadcast meteorologists, physical science academics, social science academics, civil engineers and emergency management professionals. Keith Stammer, Director of the Joplin/Jasper County EMA in Missouri, gave an excellent and moving presentation on the impacts of the EF5 tornado that struck Joplin on May 22nd as did Ken Horst, recently retired Deputy Chief of Fire and Operations for Tuscaloosa who spoke emphatically about the April 27th EF4 tornado that cut a nearly six mile long, 1.5-mile wide path straight through the city. The second day of the conference was devoted to break-out sessions of various “communities”. I was included in the Emergency Decision Makers community. From there, we broke out into various “cross-cut” groups that had people from all the “communities” to brainstorm answers to the following questions:

1. What did you learn from the events of 2011? 2. If the lead time and accuracy of forecasts of tornadic outbreaks increases, how can we expect society to function differently? 3. In the entire end- to-end process, what are the largest gaps in our current understanding: science, cultural understanding, societal impacts, planning, coordination, decision-making, and/or resiliency? 4. What kind of information is needed to incite the appropriate level of response by the public? 5. What are the near-term and long-term actions that can improve public response and resiliency to tornadoes? 6. How should these actions be prioritized and implemented?

From these discussions, 11 themes were developed: 1. Integrate Meteorology & Social Science, 2. Foster Physical Science Improvements, 3. Address Dissemination Issues, 4. Ensure Community Resilience, 5. Address Warning Performance Issues, 6. Improve Forecast Process, 7. Increase Standardization, 8. Improve Public Education, 9. Clarify Hazard Communications, 10. Strengthen Collaborations and 11. Address Human Concerns

These were further fleshed out to include ideas such as:

- NOAA Weather Radio must transmit polygons.
- End users must have geo-targeting mobile devices with graphical-based capability.
- Incorporate social media as an observing/early warning system (e.g., tweets).
- Recommend to governors to adopt an interoperable, CAP-based public alerting system.
- Educate youth so they can teach their parents.
- Use AMS Science Education Program to train school teachers.
- Use milk cartons, utility bills, etc. for messaging
- Address “tornado can’t happen here” syndrome.
- Educate public on limits of science and technology
- Families must have a plan prior to event.
- Develop basic training on National Weather Service capabilities to stakeholders.

continued on page 34

The President's Report

Councilmember Thomas O. Moore • Demopolis



CMO Program Continues to Evolve

This past August, the League held commencement ceremonies in Montgomery for the 16th group of officials to receive their basic Certified Municipal Official certification and the 13th group to receive their advanced CMO certification. As I've said before, I'm a firm believer in the League's CMO program, which was established in 1994 to guide and support municipal officials in carrying out their elected duties efficiently and effectively. Since its inception, nearly 3,500 officials have enrolled; more than 900 have received their basic CMO; and more than 400 have continued their training to become an Advanced Certified Municipal Official.

Over the past 18 years, this program has evolved into one of the League's most valuable member services and this year the program will transition even further beginning with a 2012 calendar of events to help you better plan for your training opportunities as well as the availability of various popular CMO programs on DVD. In addition, the League is working to develop a "basic curriculum" package that all officials should obtain.

The first CMO program on the 2012 calendar is the League's annual Legislative Advocacy session, which will be held in Montgomery on February 21st. This session is critical to *all* mayors and councilmembers, regardless of credit hours already obtained. This is the one day each year that you as a locally elected official can take your message to the State House through the power of a collective voice. I strongly encourage you to register for this extremely important session. There is power in numbers and it's critical that our state representatives recognize the importance and strength of Alabama's cities and towns.

As you are probably already aware, the CMO Program is an ongoing project of the League to fulfill the education mandate contained in its constitution. The program consists of a series of one-day continuing education programs designed for elected municipal officials – mayors and councilmembers – who voluntarily wish to receive formal training in municipal government. Officials who complete 40 credit hours of training are awarded the professional

designation of Certified Municipal Official. Training sessions are generally conducted twice each year at four regional sites throughout the state. Additional hours may be earned by attending designated sessions during the annual League Convention and other approved events sponsored by the League and the National League of Cities. A limited amount of credit may be obtained by attending other approved courses. The training program can be completed in as few as two calendar years.

The League continually adds new topics and speakers to keep the program fresh and relevant. Recent training sessions have included economic development, disaster preparedness, harassment and mayor/council relations. Other topics include council meeting procedure, rules of parliamentary procedure, the Open Meetings Act, public records, ordinance drafting, powers of municipalities, ethics laws, conflicts of interests, duties of mayors and councilmembers, tort liability, annexation, zoning, subdivision regulation, municipal revenues and expenditures, the competitive bid law, personnel issues, insurance issues and regulatory powers of municipalities.

In 1998, the League added an Advanced CMO Program for those officials who had received the CMO designation and desired additional training. During its January 2000 meeting, the League's Executive Committee approved the addition of a continuing education requirement to the Program through which each Advanced CMO Graduate must earn ten credit hours of approved training within two calendar years to maintain their Advanced CMO active status. Any CMO Advanced Graduate who does not earn at least ten approved credit hours of training within two calendar years will have their Advanced CMO status designated as "inactive" until such time as the required ten hours of approved credit is earned.

If you are not already enrolled in the League's CMO program, please do so immediately. For enrollment information, or for more information about the program, visit: www.alalm.org/CMOPage.html. ■



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- Court Clerk
Large Municipal Court

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- 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

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Municipal Overview

Ken Smith • Executive Director



2012 - A Look Ahead

It's hard to believe that 2011 has already come and gone and that we are moving forward into 2012. Your League staff continues to work hard to find new ways to serve the members and to improve on programs from the past. I thought this would be a good time to look at some of the projects and changes you can look forward to in the upcoming year.

Convention

This issue contains information regarding this year's League Convention, which will be held in Birmingham, May 19 – 22, 2012. The Membership Services Department, Theresa Lloyd, Krystle Bell, Cindy Price, Twanna Walton and Sonya McCarley, are working with the rest of the League staff planning an outstanding event for this year.

For those of you who have attended a Convention recently, the format will remain very similar to previous years. Sessions start Saturday morning, continue Sunday afternoon and Monday, and conclude on Tuesday around noon. Attendees can look forward to attending energizing training on elections, concurrent sessions on many timely topics, and opportunities to share and network with other officials.

As you make your plans to attend, remember that the deadline for pre-registration is April 27, 2012. Discounts are available for registering early. Information about registration and other details regarding the Convention are located elsewhere in this publication.

Certified Municipal Officials

Alabama's Certified Municipal Officials (CMO) program continues to be one of the most successful in the country. To date, more than 3,400 elected Alabama municipal officials have enrolled in the program. Over 900 of these officials have obtained the required 40 credit hours of training to earn certification as a Basic CMO graduate. Over 400 have gone further and attended another 40 hours of training to earn the designation of Advanced CMO graduate. The CMO program has helped these officials learn new ways and methods to better serve their citizens.

As successful as this program has been, the League continues to work to make improvements. We continually add new topics and speakers to keep the program fresh and relevant. Recent training sessions have included economic development, disaster preparedness, harassment, mayor/council relations and others. The League will continue to examine current issues and trends and seek the input of those in the program to make our training even better.

But at the risk of sounding like an infomercial, wait – there's more. Cindy Price, who heads up the CMO program in our office, has worked tirelessly to make improvements. In 2012, you can look forward to receiving advance notice of training programs as we plan to unveil a calendar of events to let you know when and where our CMO training will be available. We are also looking closely at creating a basic curriculum of training areas officials should obtain. All of this should help you better plan your calendar well in advance.

Upcoming training includes a session on legislative advocacy, followed by a hands-on opportunity to meet with your legislators at the Alabama State House. This training will take place on February 21 at the Renaissance Hotel in Montgomery. You can also look forward to a Spring CMO session that will probably be held in March, training on Community Development in June, and orientation sessions for newly elected officials in October and November. We will have more information about topics and specific dates soon.

Communications

We are also making major changes in our publications. Many of our officials and municipal employees have requested that we make more information available in an electronic format. To accomplish this, Carrie Banks and Karl Franklin in the Communication Department have added a new e-publication, "This Week from the League", to provide timely information to our members via a combination of e-mail and on-line information. They have also made numerous improvements in our web page, www.alalm.org. Visit it often for the most up-to-date information we have available.

Also, more publications will be available in an electronic format. The 2011 Annual Directory and Vendor Listings, our Directory, was published in this format and was well received. We printed only enough copies of the 2012 elections manual, *Procedures for Holding Elections in Mayor-Council Municipalities*, to send to the officials who will be conducting elections for our municipalities. Additional copies can be printed for free from our web site. This helps us reach a larger number of individuals who are interested in obtaining this information and at the same time helps us reduce costs. Printing and mailing paper copies of these publications can be extremely expensive.

We will continue to expand our electronic publications in the future. Look for electronic copies of the *Selected Readings*

for the *Municipal Official* and the *Mayor/Council Handbook* in 2012, as well as on-line access to many of the League's manuals and other information.

Surveys

One of the League's primary functions is to gather and disseminate information to assist our cities and towns. This year, you can look forward to the availability of more survey information from the League. Twanna Walton, Cindy Price and other members of the Membership Services Department will be developing new surveys to obtain data from our members that can then be shared with others. Keep in mind that these surveys are only as good as the information we receive. When you get one of these surveys from the League, please complete it and return it to our office so your information can be included. You may help another municipality solve a problem they are facing. And, you may be the one who can use this information to solve a problem confronting you. Sharing our knowledge helps all League members – and the League itself – function better.

Legal

Lori Lein, Tracy Roberts and Sharon Carr in the Legal Department will be busy in 2012 because this is an election year for all but a handful of Alabama's 460 cities and towns. The number of inquiries our Legal Department receives during each election year generally increases by almost 50%. The Legal Department also plans to update many of the League's manuals and other publications during this year. Many of these publications will be made available on-line. The Legal Department has to work hard to handle the increase in work-load while continuing to provide the many other outstanding services they provide to the League and its members and they do a fantastic job.

Legislative

The legal department will also continue to be heavily involved in the legislative process, assisting our lobbyists, Greg Cochran and Hal Bloom. As noted in last month's *Journal*, the League Legislative Committee has already established the list of bills the League will seek to have introduced during the upcoming session. We will also be closely watching other legislation. With the economic situation Alabama continues to face, we anticipate a number of bills will directly or indirectly seek to limit municipal revenue powers or to impose new mandates on municipalities. We also plan to expand the legislative notices you receive from us through use of our weekly legislative bulletins, "This Week from the League" and additional notices to keep our members up-to-date and informed. I hope you will review this documents carefully and

continue to contact your legislators about bills that concern you. We need your help to make the 2012 legislative session successful.

Technology

As you can see from the above information, our IT Department will be heavily involved in the many developments at our office. The members of the IT Department, Monty Paggeot, Chuck Stephenson and Ken Gabehart, continue to seek new and innovative ways for the League to reach our members, and to help assist our members with their technology needs.

Finance

The economic slowdown continues to grip the world, resulting in budget shortfalls and belt-tightening everywhere. Unfortunately, while the League is on firm financial ground, we are not immune from many of the same issues facing our members. We anticipate several of the changes that will be implemented during 2012 will result in a reduction in direct expenses, particularly in printing and mailing costs. We strive to be fiscal stewards of the resources the members entrust to us and will continue to do so.

Most of the League's funding comes from fees our members pay for services we provide rather than dues. We work to provide only relevant services at competitive prices and outstanding quality. Going forward into 2012 and beyond, our Finance Department, Steve Martin, Faith Ann Gunn and Rachel Wagner, who is also our Librarian, will continue to seek new sources of revenue and ways to reduce costs without sacrificing relevant services. The entire League staff is committed to this goal.

Conclusion

This overview provides you with a glimpse into the activities we have planned in the near future, but this article only scratches the surface of the exciting developments you will see from the League in the upcoming year. We plan other improvements as well, but it would be premature to discuss those at this time. I hope you will find that these changes help you better serve your citizens.

Our staff strives to provide better, more up-to-date and relevant information and services to our members. This has been one of our primary goals since the League was formed and we feel that we have been extremely successful achieving this objective over the years. We are a service organization and our guiding light will always be to search out new ways to enhance the assistance we provide. We will continue to seek out new innovations and improvements. I'm excited about these and other developments you will see from our office in the coming months and hope you will be as well. ■

2012 Annual Convention

Birmingham - Jefferson Convention Complex

May 19 - May 22, 2012





The Legal Viewpoint

By Tracy L. Roberts
Deputy General Counsel



Military Leave for Municipal Employees

Alabamians have traditionally supported a strong military and backed this support with a willingness to serve. In terms of total numbers, Alabama has one of the largest National Guards in the country.

Many guardsmen and reservists are also municipal employees and officials. Events of recent years have resulted in an increase in employees and officials entering military service. Of course, these individuals already serve the public, often in positions which cannot easily remain vacant. When they take time off to serve in the armed forces, losing them – even on a temporary basis – creates hardships for the municipality. Often, the municipality has to hire replacements.

With the withdrawal of troops from Iraq many of these employees and officials will be returning home and seeking reemployment. This article examines state and federal laws regarding military leave to which municipal employees and officials are entitled.

Elected and Appointed Officials

Sections 36-8-1 to 36-8-6, Code of Alabama 1975, govern the temporary replacement of elected or appointed officials who are on active duty status. Pursuant to these sections, an official who is serving in the military at any time during an existing state of war or when a national emergency has been declared by the president does not vacate his or her office. It doesn't matter whether the official volunteers for service or is called involuntarily.

Section 36-8-2 gives the person or entity with the power to fill vacancies in the office the authority to temporarily appoint an acting official to serve while the regular official is gone. The regular official must notify the appointing authority in writing that he or she will enter military service and wishes to have an acting official appointed. If there is no written notice, the authority may temporarily fill the vacancy itself.

The official who is temporarily vacating the position may recommend a successor to the appointing authority. The temporary official has all the powers, duties and authority of the regular official. If the temporary replacement official enters into active duty, the appointing authority may fill the vacancy temporarily once they are notified in writing. If the temporary official does not notify them within 30 days of entering service, the appointing authority may fill the office with another temporary official.

The temporary acting official serves during the absence of the regular official and until 30 days from the date the regular official provides written notice that he or she intends to return to office.

Employees and Officers Granted 168 Hours Paid Leave to Serve

Section 31-2-13, Code of Alabama 1975, provides that all municipal employees and officers who are active members of the National Guard or any reserve unit of the military are entitled to 168 hours of paid leave of absence per calendar year, in order to attend training sessions. Absences cannot be deducted from the employee's vacation or sick leave time, nor can they affect the employee's efficiency rating. Public entities cannot refuse an employee the right to join the reserve or guard or interfere in his or her membership in the reserves or guard. AGO 2002-090. Pursuant to Section 31-2-13 of the Code of Alabama, all employees of the State of Alabama, or of any county, municipality, or other agency or political subdivision thereof, are entitled to paid military leave for 168 working hours every calendar year. AGO 2006-135.

In short, Section 31-2-13, Code of Alabama 1975 guarantees employees and officers 168 hours each year in order to serve in Reserve branches of the military or the Guard without the leave counting against them. Job performance ratings, seniority, or any other job benefits may not be reduced due to the absence of the employee.

For purposes of this provision, it doesn't matter that the employee voluntarily joined or re-enlisted in the Reserve or Guard. AGO 1981-309 (to Hon. W. H. Bendall, April 2, 1981). The legislative intent behind Section 31-2-13 was to encourage employees of public agencies to join military units. *Britton v. Jackson*, 414 So.2d 966 (Ala.Civ.App.1981). A municipality may not pass an ordinance providing that an employee on military leave will receive the difference between the employee's salary and military base pay. Employees and officers are entitled to receive pay for both their military service and their jobs as municipal employees. AGO 1996-188.

State Active Service Duty

In addition to leave for military training purposes, Section 31-2-13 grants employees another 168 hours "at any one time while called by the governor to duty in the active service of the state."

In interpreting Section 31-2-13, the Attorney General stated

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2012 Municipal Quality

This year's Municipal Quality of Life Awards program had 16 entries with winners and honorable mentions in three population categories. The cities of Piedmont, Tarrant and Auburn were chosen as the winners for their population categories – Under 5,000, 5001 to 12,000 and 12,001 and Over, respectively. The communities of Parrish, Montevallo and Madison were chosen as the Honorable Mentions for those same population categories. Piedmont, Tarrant and Auburn will be recognized during the Opening Session of the League's 2012 Annual Convention in Birmingham on May 19th.

The Municipal Quality of Life Awards program was created to recognize outstanding projects in local government and to share those success stories with other municipalities. Winners were chosen by a panel of four independent judges who are not employed by or affiliated with the Alabama League of Municipalities. Judging was based entirely on the written entries and supportive information and winners were chosen on how well entries met the three main objectives of the program: 1. To recognize successful, **innovative** projects that improve the quality of life for citizens. 2. To share those projects with other municipalities. 3. To demonstrate the value of cities and towns. The following brief summaries highlight the winners and honorable mentions in this year's Awards program.

piedmont: mpower piedmont winner: population under 5,000

Piedmont is committed to both academic and athletic excellence. In the past year, school and city officials have made great strides in providing new and exciting opportunities for the local students and citizens. Piedmont City Schools is in its second year of the MPower Piedmont Program – a one-to-one laptop initiative through which more than 750 MacBook laptop computers and backpack carrying cases were distributed to each student in the 4th and 12th grades. Students have access to the laptop 24 hours a day, seven days a week throughout the school year, returning them only during the summer for updates. These laptops serve as the students' books and notebooks. Each of the school buildings is equipped with wireless networks that allow students to use the laptops for classroom assignments.

Piedmont was the first Alabama school to participate in the laptop initiative, which allows each student the opportunity to learn in school and at home. Assignments are administered electronically, thus allowing teachers to ask questions and receive instant feedback in accessing student understanding of the concepts being covered. This laptop initiative has even had effects beyond the classroom, including several cases in which parents have completed their GED.

In addition, Piedmont High School's Field of Champions has undergone a complete renovation, which was a partnership between the school and city. Piedmont City Schools have been recognized nationally for their achievements and named by "US News and World Report" as one of the top high schools in the United States for three consecutive years. City and school officials are working together to provide the students with the best opportunities possible.

tarrant: making blight right winner: population 5,001 to 12,000

Over the past few years, the City of Tarrant began experiencing environmental concerns from industrial properties that, due to bankruptcy, the owners had abandoned. Five Mile Creek, an industrial stream also known as "Creosote Creek" due to the industrial discharge that for many years had been dumped into the creek, also posed devastating damage from repetitive flooding. In the spring of 2000, flooding from the Creek destroyed 77 mobile homes in a 111-space mobile home park at the entrance of the city.

Working with the Regional Planning Commission of Greater Birmingham, city leaders developed and adopted a comprehensive plan, "Tarrant A Vision Beyond 2025" which addressed environmental issues such as readying abandoned industrial sites for reuse. Through a \$1.4 million Flood Hazard Mitigation grant from FEMA, an ADECA Land and Water Conservation Grant, a Community Block Grant and a Federal Highway Administration Transportation Grant, Tarrant was able to fund a "gateway" entrance into the city using FEMA flood buyout property reuse guidelines that included recreational purposes which has since grown into the Five Mile Creek Greenway Partnership between six municipalities, Jefferson County, the Fresh Water Land

of Life Award Winners

Trust, the Regional Planning Commission of Greater Birmingham and COWACO RC&D to create the 28-mile long Five Mile Creek Greenway Trail. Tarrant received additional grant funding to plan, design and construct the first phase of the Trail, which the City decided to bring through the middle of Tarrant's blighted historic district. An eight-block multi-use bicycle and pedestrian trail, including sidewalks trees and lighting, was created. In addition, the Tarrant Redevelopment Authority was created to focus on revitalization of the historic downtown and grant funding from the US Housing and Urban Development Agency provided the necessary "streetscape" for sidewalks, period lighting, trees and flowers.

Tarrant has also worked closely with the U.S. Environmental Protection Agency as well as the Alabama Department of Environmental Management to secure funding and perform cleanup of old industrial sites. Working through ADEM's Voluntary Cleanup Program, Tarrant has converted an abandoned industrial property, a "Brownfield," into a cleaned-up property that is ready for reinvestment and productive use. The City, working with the Chamber of Commerce and other civic groups, has held public events such as Tarrant's Five Mile Creek Greenway Festival and the Tarrant Christmas Parade in an effort to instill a sense of community pride. Tarrant has also investigated various legal procedures to force compliance of public nuisance laws such as junk cars, unsightly grass, garbage improperly handled and homes that had deteriorated to an unsafe state. Tarrant has adopted laws to force citizens to clean up and repair the eyesores in the city and new inspections are now required when a rental property becomes vacant before the electric service is turned on.

auburn: using GIS to enhance winner: public engagement population 12,001 and over

FEMA's multi-year initiative to update base flood elevations nationwide and to modernize flood maps for the digital age required more than 20,000 communities participating in the National Flood Insurance Program to review, modify and pass a Flood Damage Prevention Ordinance for their respective communities. FEMA required every community to issue a preliminary report

and map, provide public notification and hold community meetings to afford affected property owners the opportunity to appeal the new flood plan maps as proposed. The City of Auburn's Public Works Department spearheaded this project for Auburn and worked closely with FEMA to make sure that all requirements were fulfilled.

A key element in the successful completion of this project was to engage citizens during the map modernization process. In addition to the traditional community meetings and the paper-based public notifications, the City of Auburn's Information Technology Department, Geographical Information Services (GIS) Division created an interactive, web-based mapping solution to allow the public to browse both the current and proposed flood plain maps to see proposed changes, as they happened, throughout the process. To accomplish this, the new and evolving flood map data was integrated with the City's live, enterprise GIS data system. A City of Auburn partnership with the Alabama Office of Water Resources and FEMA was established to acquire higher quality data through detailed studies outside the scope of federal grant requirements for the nationwide project. The resulting data allowed residents to use proposed flood plain layers on the map to visualize the changes to their property, and to view the data in relation to other GIS layers, including parcel lines and aerial photography.

This approach allowed the public additional ways to digest the information on their own time and wherever they had Internet access, including City-provided computer terminals at the Public Library and free wireless Internet access in all public buildings. Email addresses for City staff working on this project were provided and citizens could comment via email without having to meet with staff directly. Even when the flood map project was complete, citizens continued, in large numbers, to access the data over the web. Because of this, the original flood plain map application has remained online and the completed data integrated into the City's enterprise GIS systems, allowing the same data to be accessed not only by City personnel on various internal platforms, but by the public through a permanent, online resource such as the City's general interactive map (www.auburnalabama.org/maps). Using this combined resource, the public can go online not only to see flood plain boundaries as they relate to parcel lines and structures, but to voting wards, school zones and more.

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2012 Municipal Quality of Life Award Winners

(continued)

parrish: old town, new spirit **honorable mention:** **population under 5,000**

In an effort to overcome years of economic distress, job loss and political scandal, the Town of Parrish's current administration adopted a town slogan "Old Town, New Spirit" and began to try to reinvigorate its citizens and revitalize the community. Drug dealers were put in jail, ordinances were passed to keep the streets clear of loitering and to keep them clean. The presiding local government adopted the following as its new mission statement: "To improve the physical, social and economic status of the citizens of the Town of Parrish by involving the public in the governmental processes, by providing accurate information and services in a professional, timely manner and by making informed decisions that will improve the quality of live for all our citizens."

Through grants and municipal bonds, the Town began the process to build a new multi-million dollar park. Through small grants, community volunteers and employee dedication, Parrish erected its first new sign in front of the newly painted Town Hall. A Gateway Grant from Alabama Power afforded the community an opportunity to install a second welcome sign as a gateway into Parrish. Soon after, a website was developed, www.townofparrish.org and a Neighborhood Watch Program was reorganized. In addition, Town employees and councilmembers took classes from the University of North Alabama to learn about zoning and the importance of a planning committee. Classes were also taken on annexation. Founded in 1878, Parrish is, indeed, an "Old Town" with a "New Spirit".

montevallo turns art into gold **honorable mention:** **population 5,001 to 12,000**

The City of Montevallo is home to Alabama's only public liberal arts college, the University of Montevallo. Largely because of the University's influence, the City has become a magnet for people interested in the arts. Nowhere is this more evident than in historic downtown where local businesses, the University, the local Arts Council and the Chamber of Commerce came together with the City to create an arts center. In 2009, the City completed a plan for the revitalization of the downtown business district. One of the key components was to devise a way to physically

link Main Street with the University. In recent months, however, the University agreed to partner more proactively with the City by offering to locate arts-related classrooms and other facilities directly on Main Street.

This past November, the City began setting aside a newly enacted one-cent sales tax to be used almost exclusively to make capital improvement to the downtown. These improvements will be made under the direction of a cooperative district comprised of the University, the City and Shelby County. The common goal is to revitalize downtown and transform it into an arts village that will attract visitors from across the state and beyond. In addition, the City is replete with arts-related activities, including the Montevallo Arts Fest (first begun in 2007) as well as the inaugural ArtWalk, which took place this past October.

madison's children's living **honorable library garden** **mention: population 12,001 and over**

The Children's Living Library Garden at the Madison Public Library is the first of its kind for any library in Alabama. Some of its features include a life-size Scrabble board, mini-amphitheater for story time, Madison County soil history display, veggie garden, boat dock with ship and much more. The scenes in the garden are tied into the library with storybook themes like *Charlotte's Web* and *Where the Wild Things Are*. The garden is free to enter and open to everyone. Lessons in sustainability and the environment, gardening, art and music are just a few of the topics taught in the garden. Partners such as the Madison County Beekeepers Association, the Huntsville Botanical Garden, the Madison Gardening Club, the Madison Beautification and Tree Board and the Madison County Soil and Water Conservation District help to host events.

After developing the garden concept, a local professional landscape artist donated the design. The City then matched special garden features with a community donor willing to fund the feature and a builder willing to build it for little or no cost. All features were sponsored within a month of announcing their availability, so the cost of the garden was financed before construction started. In addition, two RC&D grants were used to help with educational supplies for lessons taught in the garden and for a Recycling and Composting program. The Friends of the Library also developed a group called Friends of the Garden to oversee the care and maintenance of the garden. ■

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

Courts: Revocation of probation during first appearance on new charges violated a defendant's due process rights. *Hill v. State*, 71 So.3d 10 (Ala.Crim.App.2010)

Courts: Revocation of a defendant's community corrections sentence without a revocation hearing violated his due process rights. *Ex parte Hill*, 71 So.3d 3 (Ala.2009)

Courts: Ordering a defendant to pay restitution on five checks for which she was acquitted of charges of second degree criminal possession of forged instruments arising from those checks was improper. *Jones v. State*, 71 So.3d 36 (Ala.Crim.App.2009)

Courts: Courts may not amend statutes so as to make them express what the courts conceive the legislature would have done or should have done, nor is it the role of the courts to usurp the role of the legislature and correct defective legislation or amend statutes under the guise of judicial construction. *Water Works Bd. of Town of Bear Creek v. Town of Bear Creek*, 70 So.3d 1186 (Ala.2011)

Legislation: The purpose of the constitutional provision requiring publication of notice before passage of a special law, private law, or local law, is the prevention of deception and surprise, and the provision requires that all those immediately affected by local legislation be informed of the substance of the proposed legislation so that they may have a fair opportunity to protest or otherwise express their views. The substance of a proposed law as advertised cannot be materially changed or contradicted, for purposes of this constitutional publication requirement before passage of a special law, private law, or local law. *Jefferson County v. Weissman*, 69 So.3d 827 (Ala.2011)

Obscenity and Pornography: A defendant did not have a reasonable expectation of privacy with regard to names of files, which were extremely explicit and highly suggestive of child pornography, on a computer that the defendant had voluntarily brought to a store for virus removal, with the result that viewing of the contents of the files by police officers, who were summoned by store staff, based on file

names, did not violate defendant's Fourth Amendment rights. *Melton v. State*, 69 So.3d 916 (Ala.Crim.App.2010)

Searches and Seizures: A driver's consent to a search of his vehicle was secured after a routine traffic stop and field sobriety test had been completed, and therefore, was voluntary, even though the driver was not free to leave the scene in his vehicle at the time, due to his perceived impairment. The driver had already signed the traffic citation and was free to walk away from the scene at the time he gave consent to the search. *State v. Ellis*, 71 So.3d 41 (Ala.Crim.App.2010)

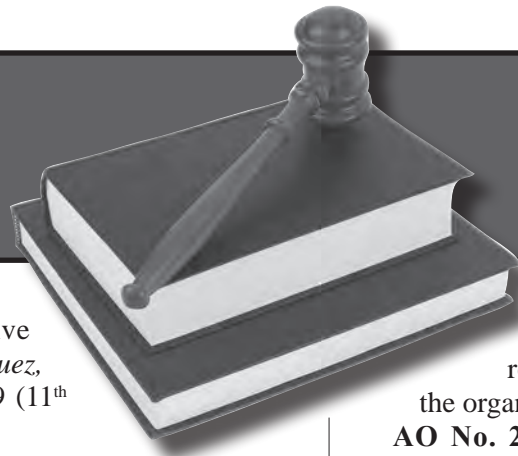
Streets: When the public, under a claim of right, adversely uses an open, defined roadway for an uninterrupted period of 20 years or more without objection or hindrance from the landowner, a presumption of dedication or other appropriation to a public use arises. The burden is then on the landowner to show the use was permissive only, in recognition of his title and right to reclaim the possession. *Key v. Allison*, 70 So.3d 277 (Ala.2010)

Utilities: The district court had no subject-matter jurisdiction over an action brought by a county against property owners to enforce liens for unpaid sewer-service charges, such that the judgment entered by the district court was void, and, thus, the circuit court never acquired jurisdiction over the property owners' appeal from the district court's judgment and could take no action other than to dismiss the appeal. The statute expressly granted subject-matter jurisdiction over an action to enforce such liens to the circuit court, not the district court. *Hilgers v. Jefferson County*, 70 So.3d 357 (Ala.Civ.App.2010)

Utilities: The title to the assets of a town water works board, which was a public corporation, vested in the town upon retirement of the board's water revenue bonds, with the board thereupon dissolved by operation of law. A water-purchase agreement between the board, as purchaser, and a regional water, sewer, and fire protection district, as seller, was not tantamount to bonded indebtedness of the board, as would preclude title to the board's assets from vesting in the town, and dissolution of the board. *Water Works Bd. of Town of Bear Creek v. Town of Bear Creek*, 70 So.3d 1186 (Ala.2011)

UNITED STATES COURT DECISIONS AFFECTING ALABAMA

Immigration: Crime of alien smuggling into the U.S. in violation of 8 U.S.C. § 1324(a)(2) does not require proof that the defendant had a specific intent to violate federal immigration law. The law includes both knowledge and



reckless disregard as alternative states of mind. *U.S. v. Dominguez*, --- F.3d ---, 2011 WL 5119449 (11th Cir.2011)

DECISIONS FROM OTHER JURISDICTIONS

Civil Rights: The use of a taser employed in dart-mode against a potential victim of domestic abuse who officers came to protect constituted constitutionally excessive force. The victim minimally resisted her husband's arrest while attempting to protect her own body and to comply with officer's request that she speak to him outside, she posed no threat to the officers, there was no indication that the husband intended to harm the officers or that he was armed, and victim was tased without warning. *Mattos v. Agarano*, --- F.3d ---, 2011 WL 4908374 (9th Cir.2011)

Firearms: A city violated the procedural due process rights of an arrestee by not having procedures in place for him to seek return of his gun after the charges against him were dropped. Refusal by the city, pursuant to established policy, to return the arrestee's handgun and ammunition following dismissal of an unlawful-use-of-a-weapon charge against him, violated his procedural due process rights but not his second amendment rights. *Walters v. Wolf*, 660 F.3d 307 (8th Cir.2011)

ATTORNEY GENERAL'S OPINIONS

DUI: Act 2011-621 did not repeal all previous provisions of section 32-5A-191 of the Code of Alabama, including the provisions added to it by Act 2011-613. The Director of the Department of Public Safety cannot impose an additional period of suspension or revocation under section 32-5A-191 of the Code after having imposed a suspension related to the same occurrence under section 32-5A-304. AGO 2012-011

Solid Waste: A municipality does not have the authority under section 22-27-3(a)(3) of the Code of Alabama to enact an ordinance that creates a reduced rate for Social Security recipients. A municipality may adopt an ordinance that places the assessment of solid waste collection fees for such services against the owners of rental property, provided that the bills are received in the name of the owner of the property where the service is provided. AGO 2012-010

ETHICS COMMISSION ADVISORY OPINIONS

AO No. 2011-12: The Alabama Association of School Boards (AASB) may provide a monthly stipend to its officers

who serve on a voluntary basis to partially reimburse them for the time they devote to the organization.

AO No. 2011-12: AASB may pay for meals and accommodations of its officers and board of directors during gatherings, conferences, conventions, etc. AASB may pay for the meals and accommodations of its committee members during gatherings, conferences, conventions, etc.

AO No. 2011-12: AASB may pay for meals and accommodations of AASB members for travel to out-of-state conferences and conventions when they are representing the Association and its members.

AO No. 2011-12: AASB may provide a nominal travel stipend for AASB members who travel out-of-state to conferences and conventions to represent the Association, when the stipend is for reimbursement of expenses and is not compensation.

AO No. 2011-12: It is permissible for AASB to pay for meals and accommodations for non-AASB members who have been invited to participate in AASB events in their official capacity.

AO No. 2011-12: AASB may award attendance prizes in the form of gift cards or free registration at its conferences and conventions, as these are door prizes.

AO No. 2011-12: Vendors may host dinner for school board members at AASB gatherings or other local gatherings, provided nothing is expected in return.

AO No. 2011-12: School officials and employees may participate in giveaways sponsored by vendors at AASB gatherings or other local gatherings, as these are door prizes.

AO No. 2011-12: Vendors may only provide gifts to school board members of a *de minimis* value.

AO No. 2011-12: Vendors may only provide gifts to teachers, retired school employees or other school employees, of a *de minimis* value.

AO No. 2011-12: The Ethics Law does not make a distinction between legislators, county commissioners, school teachers, etc. The law allows gifts, regardless of the source, to be of a *de minimis* value only.

AO No. 2011-12: School boards may enact a policy which allows students to contribute a *de minimis* amount towards a gift card from the class, provided the policy is reasonable, done in good faith and complies with the *de minimis* requirements in the Alabama Ethics Law.

AO No. 2011-12: The Board's attorney may buy lunch for school board members at a work session.

continued on next page

AO No. 2011-12: If the Board's attorney is a lobbyist, he may only expend \$25.00 per meal, per official, with an annual limit of \$150.00 per official.

AO No. 2011-12: If the Board's attorney works for a principal, he may only expend \$50.00 per meal, per official, with an annual limit of \$250.00 per official.

AO No. 2011-12: School board attorneys may not give individual Christmas gifts to school board members or other school employees, unless the gift is of a *de minimis* value.

AO No. 2011-12: A school board attorney or other vendors and individuals may give gift baskets, cheese trays and other consumable items to the school office for enjoyment by the staff.

AO No. 2011-12: Public officials, public employees, including school teachers and other school employees, may accept gifts of any value, when the gift is based on a friendship that transcends the public sector, as exemplified by a pre-existing friendship.

AO No. 2011-12: A school board attorney may only provide free baseball tickets to school board members and school employees, if it is an integral part of an overall event in which the board members or other school employees are participating.

AO No. 2011-12: School board members and other school employees may be provided tickets, if they pay the face value for that ticket.

AO No. 2011-12: There is nothing improper in a school board member buying a legislator lunch or vice-versa.

AO No. 2011-12: School board members and other school employees may gain free admission to school events (plays, sporting events, etc.) in their local district.

AO No. 2011-12: The Alabama High School Athletic Association may provide school board members free admission to Championship Athletic events, if those school board members have a school in their district participating in the event.

AO No. 2011-12: School board members elected or appointed after January 1, 2011, are required to receive Ethics training within 120 days of being sworn into office.

AO No. 2011-12: An employee or official, who knowingly fails to obtain Ethics training as required by Act No. 2010-762, upon conviction, may be found guilty of a Class A Misdemeanor.

AO No. 2011-13: School board members and employees of the school district may gain free admission to plays, sporting events and other school events at any school in their local district, as it is the school district and not the individual school that is considered the institution for purposes of the Ethics Law. ■

FAQ.

How can the salaries and benefits of the mayor and council be changed?

Salaries of the Mayor and Councilmembers must be fixed by the Council at least six months prior to each general municipal election. Sections 11-43-2 and 11-43-80, Code of Alabama, 1975. Any changes to the salaries of these officials before the 2012 general municipal election must be in place on or before February 28, 2012. If the Council fails to take action within the time allowed or takes no action at all, the officers of the succeeding administration will receive the same salaries paid to the Mayor and Council of the last term. AGO to Hon. R.E. Pate, October 19, 1964.

The fees, salary, compensation or emoluments of any elected or appointed municipal official must not be increased nor diminished during their term of office 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. Section 11-43-9, Code of Alabama 1975; Section 68 of the Alabama Constitution of 1901. A public official may voluntarily diminish his or her salary pursuant to Section 36-6-10, Code of Alabama, 1975. Elected officials may receive the same benefits as other employees of the municipality if such intention is expressed in the salary ordinance, as this would be deemed an increase in compensation. AGO 1981-013 and AGO 1981-197. However, an elected official may not receive cost-of-living raises during his or her present term of office unless specifically provided for in the salary ordinance. See AGO 2003-112 and AGO 2005-071. A municipality may not provide by ordinance for an elected official to participate in the State Employees Retirement System. AGO 1993-285.

Legitimate expenses made in connection with an official's duties may be reimbursed by the city. It is not recommended that a municipality provide a flat expense account for municipal officials without accounting for expenses incurred as such payments would be considered unauthorized salary payments. *State v. Stone*, 173 So. 871 (Ala. 1937); *Garner v. State*, 158 So. 546 (Ala. 1934). A municipality should adopt the practice of reimbursement of actual expenses incurred by its officers in the performance of their official duties upon affidavit of the officer who incurred the expense. This method generates a record and evidences the fact that the payments are not made in such a manner that they might be regarded as unauthorized salary increases. See also, Section 36-7-1 et seq., Code of Alabama 1975. ■

Municipal Marketplace

The following vendors have purchased advertising packages through the League. This list is intended to be a resource tool for municipal officials and employees. These vendors can also be found on the League's website at www.alalm.org under the Municipal Marketplace.

League Programs

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<p>Alabama Municipal Insurance Corporation (AMIC) 110 North Ripley Street Montgomery, Alabama 36104 Phone: 334-386-3863 FAX: 334-386-3874 E-mail: stevew@amicentral.org Website: www.amicentral.org Contact: Steve Wells</p>	<p>The Alabama Municipal Insurance Corporation (AMIC) is a mutual insurance company incorporated in 1989 under the laws of the State of Alabama and owned by its participating Alabama member municipalities. AMIC writes all lines of automobile insurance, commercial general liability, police professional liability, public officials errors and omissions coverage, bonds, property, inland marine, etc and provides 24 hour, 7-day-a-week, 1-866 convenience for the claims of its members. Coverage is available to municipalities as well as other incorporated municipal entities such as utility boards, industrial development boards, and housing authorities.</p>	<p>See our ad on page 2</p>
<p>Municipal Revenue Service P. O. Box 1270 Montgomery, Alabama 36102 Phone: 334-262-2566 FAX: 334-263-0200 E-mail: stevem@alalm.org Contact: Steve Martin</p>	<p>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.</p>	<p>See our ad on page 35</p>
<p>Municipal Workers Compensation Fund, Inc. (MWCF) P. O. Box 1270 Montgomery, Alabama 36102 Phone: 334-262-2566 FAX: 334-263-0020 E-mail: stevem@alalm.org Website: www.alalm.org (click on MWCF link) Contact: Steve Martin</p>	<p>Established in 1976, the Municipal Workers Compensation Fund (MWCF) is the second oldest League insurance pool in the nation. With more than 625 participating municipal entities – 78% of the Alabama League's membership – MWCF provides a direct means for municipalities and their boards to save on workers compensation coverage. MWCF offers a variety of Loss Control and Risk Management Services including loss control representatives; on-site risk management with follow-up reports and recommendations; specialized law enforcement risk control; loss analysis and trending; employment practices hotline; proactive driver training; firearms training system; DVD library; and seminars.</p>	<p>See our ad on the back cover</p>

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Website: www.al811.com
Contact: Michele Dory

Alabama 811 is a non-profit organization established to provide a centralized one call notification system as a means to safeguard against injury and loss of life, to protect public services and to prevent damage to underground facilities by providing for prior notification of excavation and demolition activities. Notification to underground facility owners is required by Alabama Act 94-487.

Grasshopper Company
P. O. Box 637
Moundridge, KS 67107
Phone: 620-345-8621
FAX: 620-345-2301
E-mail: show@grasshoppermower.com
Website: www.grasshoppermower.com
Contact: Connie Estep

Grasshopper Company offers a complete line of True Zero-Turn™ power units ranging from 16 to 35 horsepower with air-cooled/liquid-cooled gas and liquid-cooled diesel engine options. Deck sizes range from 41" to 72" – side discharge, mulching and grass collection. Both Front-mount and Mid-mount models are offered. Grasshopper's line of implements includes: PowerVac™ Collection System, Coreless Aerator, Rotary Broom, Snowthrower, Dozer Blade, Dethatcher, Edger, Sunshade Leaf Blower, Drift Controlled Sprayer and Winter Enclosure.

continued on next page

Local Government Corporation

714 Armstrong Lane
Columbia, Tennessee 38401
Phone: 800-381-4540
FAX: 931-381-0678
E-mail: marketing@localgovcorp.com
Website: www.localgroup.com
Contact: Stacy Hardy

Local Government Corporation, headquartered in Columbia, Tennessee, was established in 1977 as a private, not-for-profit corporation chartered to provide computer services to local government entities. These services are provided on a cost recovery basis, with local governments benefiting from the economies of a large-scale computer organization. With the assistance of state agencies, LGC has developed many software applications to meet the management needs and legal requirement of local governments. LGC prides itself in providing a total technical solution including all software, hardware, installation, training, support, website design, and network maintenance for its customers.

Mauldin & Jenkins, CPA, LLC

2000 Southbridge Parkway, Suite 501
Birmingham, Alabama 35209
Phone: 888-277-0080
FAX: 205-445-2940
E-mail: medwards@mjcpa.com
Website: www.mjcpa.com
Contact: Miller Edwards

Since 1918, Mauldin & Jenkins has based our service on personal attention to our clients and technical competency combined with integrity, honesty and commitment. We employ more than 240 professionals, 65 of whom have current governmental accounting, auditing, financial reporting and consulting experience. On an annual basis, we provide more than 60,000 hours of professional services to our 200 governmental entities in the Southeast. We understand the burdens, issues and complexities placed on governmental organizations.

Municipal Code Corporation

Dale Barstow, Vice President of Sales
P. O. Box 2235
Tallahassee, Florida 32316
Phone: 800-262-2633
FAX: 850-575-8852
E-Mail: info@municode.com
Website: www.municode.com
Contact: Dale Barstow, Vice Pres. of Sales

MCC has served Alabama Municipalities for over 50 years. Our well known services include: codification, recodification, supplementation, republication, legal review, code on the Internet, posting raw ordinances to the web, electronic only supplements, print & mail utility/tax billing statement services, records management, automated agenda, scanning and archival services. Please visit our Company On-line Brochure at: <http://www.municode.com/about/brochure.pdf> or call us at 800-262-2633.

Polyengineering, Inc.

P. O. Box 837 (36302)
1935 Headland Avenue
Dothan, Alabama 36303
Phone: 334-793-4700
FAX: 334-793-9015
E-mail: ddavis@polyengineering.com
Website: www.polyengineering.com
Contact: David Davis

Polyengineering, Inc. is in its 52nd year of providing professional engineering and architectural design services to public and private clients. Their office includes an on-site, full service water and wastewater laboratory. POLY's staff consists of over 60 multi-disciplined professionals including civil, electrical, mechanical, and environmental engineers; architects; environmental scientists; surveyors; and construction representatives. This diverse in-house staff allows Polyengineering to provide a broad range of engineering and architectural services.

Select Medical Systems, Inc.

7291 Gadsden Highway
Trussville, AL 35173
Phone: 205-383-1607
FAX: 205-655-2430
E-mail: smsdau1@gmail.com
Contact: Myron Myers

SMS is the provider of drug testing analyzers, reagents and consumables for all 11 prison testing sites within the Alabama Dept. of Corrections. Not only does SMS reagent rental analyzers for drug testing, but offers a mobile drug testing service utilizing a self contained 32' mobile laboratory. SMS operates a complete CLIA certified drug screening laboratory located in Trussville, AL. All drug testing is analyzer based utilizing either saliva or urine samples. Member of DATIA.

Bronze Package Vendors

Sales Tax Auditing & Collection Services (STACS)

P. O. Box 3989
Muscle Shoals, Alabama 35662
Phone: 256-383-5569
FAX: 256-383-3496
E-mail: salestax@comcast.net
Website: www.stacsonline.com
Contact: Don Allen

STACS provides low cost sales, use, rental, lodging and gasoline tax collection and auditing for local governments throughout the state of Alabama. Personal service to both local governments and taxpayers are our specialty along with Toll Free telephone service and a website for rate information and for downloading applications and reporting forms. STACS provides online filing through the click2file system.

The League is proud to represent more than 2,800 elected municipal officials who make purchasing decisions for their cities and towns every day. Whatever your goals, if you consider Alabama's municipal entities as your target audience, the League provides you the unique opportunity to connect with the decision makers by becoming a select vendor with this target audience when you advertise through one of the League's four specially designed promotional packages or by purchasing space in the Alabama Municipal Journal, the League's monthly magazine. For more information about the League's advertising packages shown here, please contact Cindy Price at cindyp@alalm.org.



Join us in Birmingham for our 35th EXPO!

On May 20 the 2012 EXPO Hall doors will open to more than 50,000 square feet of city solutions! This unique showcase offers an excellent opportunity for the League's 1,000+ delegates and guests to network and make valuable connections with more than 300 vendor representatives. The League will kick off its 35th annual EXPO with the Exhibitors Showcase on Sunday evening at 5:30 with a casual reception featuring live music, heavy finger foods and an open bar in the Expo Hall. Monday morning the Hall will open at 10:30 followed by a full day of events and opportunities for officials and vendors to meet.

ALM vendors are here for you! This one-stop shopping opportunity only happens once a year. Take the time to experience the entire exhibit hall and visit ALM's vendors to get answers to questions, learn solutions for problems and return home with key information for your municipality! A vendor listing for this year's Expo can be previewed at <http://www.alalm.org>. To reserve a booth space in Birmingham, contact Cindy Price at (334) 262-2566, or via e-mail at cindyp@alalm.org.

NEW THIS YEAR! The Monday Luncheon will be held in the Expo Hall. The intent is to create more time for face-to-face interaction with exhibitors by our Convention attendees. There will be plenty of seating.

Municipal Marketplace vendor prize drawings will be featured in the Expo Hall during the Sunday evening reception. Officials must be present to win the featured prize drawings.



2012 Annual Convention Information

Birmingham-Jefferson Convention Complex (BJCC)

Birmingham, Alabama May 19 - 22, 2012

NOTE: *Registration materials will NOT be mailed this year. Photocopy the forms provided in this issue of the Journal or register online at www.alalm.org. Online registration will be available February 1.*

Online Registration: To make the registration process more efficient, delegates are encouraged to pre-register. Pre-registration will assist the League staff in making arrangements for attendance at this year's convention. The deadline for pre-registration is April 27, 2012. After April 27, delegates must register at the Convention Registration Desk in the BJCC. It is also important for delegates and their spouses who plan to participate in the golf tournament to register as soon as possible.

Hotel Accommodations: Hotel information was mailed in October to all municipal officials and clerks. Please note that Municipal Officials are responsible for making their own reservation at their choice of hotel. Each delegate is responsible for making his/her hotel reservations. Please visit www.alalm.org for hotel contact and room block information.

IF NOT REGISTERING ONLINE:

1. Complete the convention registration forms in this issue of the Journal to register yourself and your spouse (if applicable). Use one form for each delegate registered.
2. Complete golf tournament registration (provided on convention registration form) if applicable.
3. Enclose a payment for the appropriate convention registration fee and golf tournament fee (if applicable). Payment in full must accompany each registration form.
4. Return the forms and payment or credit card number to Alabama League of Municipalities, Attention: Convention Registration, P.O. Box 1270, Montgomery, AL 36102. (You may fax your forms with credit card payment to 334-263-0200.) Credit card numbers will not be accepted by email.

NOTE: Although a separate convention registration must be completed for each delegate, the municipal clerk may send registration forms and a payment for all municipal officials and employees to the League in a single envelope. **NO CONVENTION REGISTRATIONS BY PHONE WILL BE ACCEPTED.**

Envelopes must be postmarked by the dates below. There is no extra charge for children under 6; however, children must be pre-registered. The full convention fee covers the following events for each delegate and children under 6: Saturday night Welcome Party, Sunday Night Exhibitors Showcase and Reception, Monday Luncheon, and Monday Reception and Banquet. The registration fee for spouses includes Saturday Night Welcome Party, Sunday Night Exhibitors Showcase and Reception, Monday Spouses Breakfast, Monday Luncheon, and Monday Reception and Banquet.

CONVENTION REGISTRATION FEES:

\$300 through April 13, 2012	(\$20 nonrefundable registration fee for spouses*)
\$325 from April 14 through April 27, 2012	(\$30 nonrefundable registration fee for spouses*)
\$375 after April 27, 2012 (on-site registration)	(\$50 nonrefundable registration fee for spouses*)

*Spouse registration cannot be paid by the municipality; therefore, registration must be paid by the official at the time of registration.

The astronomical cost of putting on a convention makes it impossible to allow free admittance of guests of delegates at any function. Delegates who bring a guest may purchase additional tickets for the various events at the registration desk. For children ages 6 and over and guests, the full registration fee must be paid or single tickets to events may be purchased at the registration desk at the following discounted prices:

Monday Luncheon – \$25.00 Monday Banquet – \$40.00

If you need assistance due to disability or other special services, please call Theresa Lloyd (334) 262-2566 before May 4, 2012. For additional guest information, please contact Krystle Bell at (334) 262-2566.

CONVENTION REFUND / CANCELLATION POLICY:

In order to receive a partial refund of your registration fee, your cancellation request must be received in writing by May 4, 2012. A \$60 administrative fee will be charged for all cancellations regardless of the reason for cancellation (including medical emergencies). No refunds will be given after this date. Registration fees for spouses are nonrefundable.

ALM cannot make exceptions to this policy.

DISTINGUISHED SERVICE AWARDS: This year the League will present its Distinguished Service Awards to Mayors, Council Members, Clerks, Administrative Assistants, City Managers, City Administrators, Commissioners, Attorneys, and Judges who have served for 20, 30, or 40 years in municipal office. Service in multiple positions may be combined to make the required number of years. These service awards will be presented at the Annual Convention during the banquet on Monday night, May 21. Please help us prepare for the presentation of the League Distinguished Service Awards by notifying League Headquarters by **March 20, 2012** of any official who has served for 20, 30 or 40 years in municipal office and has not previously received a service award for the number of years submitted. **You can download a form for this purpose at www.alalm.org.**

2012 ANNUAL MUNICIPAL GOLF TOURNAMENT:

May 20, 2012, Ballantrae Golf Club, Pelham, Alabama

The fee is \$75 for each participant, this includes riding cart, green fees, breakfast, and lunch. The deadline for refund requests is May 4, 2012. For additional information go to **www.alalm.org**.

- \$ 75 per player
- All skill levels welcome!
- Great networking with fellow officials
- Door Prizes
- Four Player Scramble with a shotgun start
- Breakfast served prior to Tournament
- Awards Luncheon following Tournament
- Must be registered for the Convention

Prize Eligibility/Awarding Prizes: All prizes will be awarded at the Awards Luncheon. You must be present to win a door prize. All players are presumed to know their eligibility for prizes. Other than door prizes, no player will be awarded more than 1 individual prize. To be eligible to win an individual prize, a participant must be a municipal official, a municipal employee or their spouse, and the participant must be registered for the convention. A complete listing of Prize Eligibility and Awarding Prizes information is available at **www.alalm.org**. **Additional information will be sent to you upon receiving the paid registration fee.**



2012 Annual Convention Registration

Birmingham-Jefferson Convention Complex (BJCC)

Birmingham, Alabama May 19 - 22, 2012

DELEGATE REGISTRATION FORM

(Mayors, Councilmembers and Clerks) Please print or type all information

Mail completed application to: Alabama League of Municipalities, Attn: 2012 ALM Convention, P O Box 1270, Montgomery, AL 36102

Name _____ Municipality _____

Name _____ Title _____
(to appear on badge)

Daytime Phone # _____ E-mail _____

Address _____ City/Town _____ Zip _____

Spouse Name: First _____ Last _____
(see registration fees below)

Through April 13, 2012

- \$300 Delegate Registration** (Cancellation request must be received in writing by May 4, 2012)
- \$ 75 Golf Registration** Choose Category A, B, C, or D Category _____ (Email required for Foursome Info)
- \$ 20 Spouse Registration** (Non-refundable)

April 14 - April 27, 2012

- \$325 Delegate Registration** (Cancellation request must be received in writing by May 4, 2012)
- \$ 75 Golf Registration** Choose Category A, B, C, or D Category _____ (Email required for Foursome Info)
- \$ 30 Spouse Registration** (Non-refundable)

After April 27, 2012 (On-site registration only)

- \$375 Delegate Registration** (Cancellation request must be received in writing by May 4, 2012)
- \$ 75 Golf Registration** Choose Category A, B, C, or D Category _____ (Email required for Foursome Info)
- \$ 50 Spouse Registration** (Non-refundable)

Golf Teams must be as equal as possible. Use this list of Player Categories to help form a foursome. Each team registering as a foursome must consist of an A, B, C, and D player. Please list your category in the appropriate place on the registration form.

A Player = Average Score 80 or below
B Player = Average Score 81 - 90
C Player = Average Score 91 -100
D Player = Average Score 101 +

PAYMENT INFORMATION

Check Visa MC AmEx

Card # _____ Expiration Date _____

Name on card _____ Signature _____

Billing Address _____

For Office Use Only

Notes:

Date Received

Amount Paid

Check #

2012 Convention Quick Guide

Birmingham-Jefferson Convention Complex (BJCC) Birmingham, Alabama May 19 - 22, 2012

Meetings and/or events are subject to change. CMO credits can be earned. See Convention program for details.

Saturday, May 19

10 a.m. - 5 p.m.	Registration BJCC
11 a.m.	Resolutions Committee Meeting
1 p.m.	AMIC Annual Meeting
3:00 - 5:00 p.m.	OPENING SESSION - Speaker - Gov. Robert Bentley (tentative)
6 p.m.	City of Birmingham Welcome Party

Sunday, May 20

7:30 a.m.	Annual Municipal Golf Tournament
10 a.m.	Prayer Service
1 - 5 p.m.	Registration BJCC
1:30 - 4:30 p.m.	Roundtable Discussions
4:30 - 6 p.m.	ABC-LEO Reception
5:30 - 7 p.m.	Exhibitors Showcase and Reception

The Municipal Flags will display at the entrance to the EXPO hall during the Showcase and Reception. See below.

Municipal Marketplace vendor Prize drawings will be featured in the EXPO Hall during the Sunday evening reception. Officials must be present to win!

Monday, May 21

8 a.m. - 5 p.m.	Registration BJCC
8:30 - 9:30 a.m.	Clerks Breakfast and Business Meeting
8:30 a.m. - 5 p.m.	Alabama Association of Public Personnel Administrators
9:30 a.m. - 5 p.m.	Municipal Clerks Conference
9 a.m. - 10:30 a.m.	GENERAL SESSION: Municipal Elections
10:30 a.m. - 2:45 p.m.	Exhibits Open
11 a.m. - Noon	Concurrent Sessions
12:15 p.m. - 2:15 p.m.	Luncheon and Ice Cream in the EXPO Hall

NEW THIS YEAR! Both the Monday luncheon and an ice-cream dessert will be served in the EXPO Hall. Exhibitor prize drawings will take place at this time.

2:30 p.m. - 3:30 p.m.	Concurrent Sessions
3:45 p.m. - 5:30 p.m.	ANNUAL BUSINESS SESSION
6 p.m.	Reception
7:15 p.m.	President's Banquet followed by "Three on a String"

Tuesday, May 22

8 a.m. - Noon	Registration BJCC
8:30 - 10:30 a.m.	GENERAL SESSION
10:30 a.m. - Noon	Ask Your Attorney Panel
Noon	Adjourn

2012 Municipal Flag Showcase

The Flag Showcase was such a success in its inaugural year, the League plans to have its Second Annual Municipal Flag Showcase at this year's ALM Annual Convention in Birmingham. The displayed flags will line the entrance to the Expo Hall. Below are a few of the frequently asked questions and information regarding the flag display. **The registration form for the Flag Showcase can be downloaded from www.alalm.org.**

- **What size flag?** The standard size flag is 3 feet by 5 feet. Flag sizing should be close to this size.
- **What height does your flag pole need to be?** The average height is 6 feet to 8 feet. The height should not be over 8 feet if at all possible.
- **You must provide a flag stand for your Municipal Flag.** Please label your flag stand with your contact information.
- Flags will be displayed Sunday, May 20, 2012, 5:30 - 7:00 p.m., in Birmingham at the Birmingham Jefferson Civic Complex. The flags will line the entrance to the Expo Hall.
- Flags should be checked in at the main ALM Convention Registration Desk no later than 3:00 p.m. on Sunday, May 20, 2012.
- ALM will provide a placard for each flag identifying the Municipality.
- Each Municipality may have a representative who is attending the Convention to be present with your flag during this event. The representative is to be present no later than 5:00 p.m. One or more representatives from your Municipality must be registered for the Convention to be eligible for participation in the Municipal Flag Showcase.
- Flags must be picked up from the display area NO LATER than 7:15 p.m. on Sunday, May 20, 2012. Flags will not be stored. The League is not liable for flags or stands not picked up by this time. Prior to the convention you will receive confirmation of your application. We will ask for a contact number of the registered attendee on-site for notifications during the Convention.
- **Deadline for submitting the application form is May 1, 2012.**
- A confirmation will be emailed to you prior to this event.

Upcoming CMO Sessions

Remember to check our League Calendar and the CMO page on the League's website for up to date information

Legislative Municipal Advocacy

February 21, 2012
Tuesday, 8:30 a.m. -3:30 p.m.
Montgomery Renaissance
Montgomery, Alabama

*See page 27 for
more information
about this session*

Summer Session - Community Development

June 22, 2012
Friday, 8:30 a.m. -3:30 p.m.
Faulkner University
Montgomery, Alabama

Spring Regional Training

Weeks of March 19 thru March 30, 2012
8:30 a.m. -3:30 p.m.
Locations: Three to Four - Regionally

CMO Graduation Ceremony and Reception

August - 2nd week of August
Basic and Advanced Graduates
Vaughn Park Church of Christ - Montgomery

2012 Annual Convention

May 19 – May 22, 2012
Birmingham-Jefferson Convention Center
Birmingham, Alabama

Fall Session-Orientation for Newly Elected Officials

October – November 2012
8:30 a.m. -3:30 p.m.
More Details to Follow



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ReNEW

MUNICIPAL LEGISLATIVE ADVOCACY

Renaissance Montgomery Hotel • Tuesday, February 21, 2012 • 8:30 a.m. until 3:30 p.m.
Registration - \$100 Five (5) CMO Credit Hours (Basic, Advanced, Continuing)

The Annual Municipal Legislative Advocacy CMO is your opportunity to share your voice with the state’s political leadership. It is important that the vital role our municipalities play in economic development, community enhancement and quality of life is repeatedly articulated to our state representatives.

Municipal Legislative Advocacy Day is the one day each year when you as a municipal leader have the opportunity to take your message to the State House so the power of our membership’s collective voice is heard. This is the day we say: “Our voice matters!”

ADVOCACY | EDUCATION | NETWORKING

ADVOCACY: Take advantage of this opportunity to advocate on behalf of your hometown at the State House. It is important to show a strong municipal presence at the State House to demonstrate the effectiveness of the state’s cities and towns in building a stronger Alabama economy.

EDUCATION: Hear from State political leaders and your Association’s legislative staff about the issues that will affect Alabama municipalities during the 2012 session. Also take home information on timely topics to help you be successful leaders in your community.

NETWORKING: Throughout the day, connect with other municipal elected officials and your legislators at the State House. Use the opportunity to make new friends, visit with old friends and share ideas.

ATTENTION:

Please make appointments to visit with your representatives on February 21 between 2 and 3:30 p.m.
To Visit House Members Call 334-242-7600
To Visit Senate Members Call 334-242-7800

Schedule for CMO 35 Municipal Legislative Advocacy

8:30 - 9:15 a.m.	Registration
Noon-1 p.m.	Lunch
1:30 p.m.	Group Photo on Capitol Steps (weather permitting)
2:00 – 3:30 p.m.	Legislative Visits

Congratulations to the following clerks who have earned their CMC/MMC Designations in 2011

CERTIFIED MUNICIPAL CLERK (CMC)

Sheila Fuller	Town of New Site
Linda Faust	City of Brundidge
Tiffany Lynn	Town of Summerdale
Debra Brown	Town of Douglas
Thomas Seale	City of Pelham
Laura Carmack	City of Lincoln
Joy Marler	Town of Vincent
Rita Findley	City of Bay Minette
Lora Johnson	Town of Langston
Stacy Gilley	City of Madison
Dineki Mccaa	City of Aliceville

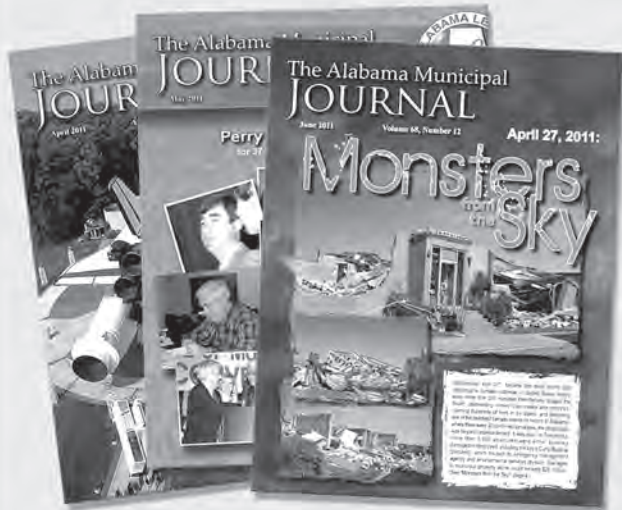
MASTER MUNICIPAL CLERK (MMC)

Carole Epstein	City of Mountain Brook
Linda Holcomb	City of Red Bay
Gina Antolini	City of Columbiana
Lisa Hanks	City of Fairhope
Shelia Hamilton-Burns	City of Hokes Bluff
Oletha Miller	City of Camden
Lorrie Cook	City of Greensboro
Kathy Chambless	City of Jasper

**The League salutes you and
your achievement! Well done!**

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mszabo@utilityservice.com

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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 or mail cd submissions to:

**Alabama League of Municipalities
Attn: Photo Submissions
P.O. Box 1270
Montgomery, AL 36102**

Ownership/Use Rights:
Photographers retain the copyright to their photographs. By submitting images to the Alabama League of Municipalities (ALM), photographers agree to have their photograph(s) displayed within any ALM publication (digital or print) as well as the ALM website without any fee or other form of compensation, and also agree that the photo may be used, with photo credit, on the website for the National League of Cities (NLC) and within NLC's publications. Where possible, photos will be credited to the photographer listed on the entry form. In the event that ownership of any photograph submitted to ALM is contested in any manner, ALM retains the discretion to discontinue use of the photograph.

in AGO 2002-090, that a qualifying individual is entitled to 168 hours of leave with pay while in federal status per calendar year *and an additional* 168 hours of leave with pay while in the active service of the state by the governor. The opinion goes on to hold that a member who has used only a portion of his or her federal status hours of leave with pay may use the remainder of federal leave status with pay when called into federal service in the war on terrorism. If there is a question as to how an official or employee was called to active duty, the League recommends checking with his or her commanding officer.

Citing AGO 1991-140 (where the Attorney General opined that Troy State University could not pay the difference in an employee's military pay and his normal pay provided by the university), the Attorney General went on to hold that because Section 31-2-13 caps military leave with pay at 168 hours per calendar year, public entities may not pay for additional military leave with pay beyond 168 hours per calendar year.

The Attorney General, though, did determine that Section 31-2-13 does not cap other benefits that a municipality may provide to those who are on active military duty. Section 31-2-13 constitutes the minimum to which an employee is due. In other words, a municipality could grant additional benefits to encourage its employees to participate in the Guard or Reserve, if it chose to do so. For instance, in AGO 1991-140, the Attorney General held that Troy State could continue to pay its share of an employee's insurance benefits while the employee was on active duty, and to allow the employee to remain eligible for all insurance benefits to which they would normally be entitled.

In *Birmingham v. Hendrix*, 58 So.2d 626 (Ala. 1952), the court addressed whether employees of the city of Birmingham were entitled to credit for annual vacation and sick leave accumulated while on absence for extended duty as members of the United States Naval Reserve. The employees claimed they were due one day of leave for each month they were on active duty. The court disagreed, stating that Birmingham's personnel policy clearly indicated that no vacation or sick leave was to accumulate while an employee was on military leave. The court found nothing in Section 31-2-13 to contradict this, stating that this section requires only that the employee be allowed military leave "without loss" of vacation or sick leave. To the court, this meant that the employee could not be forced to use sick leave or vacation time for military leave. The court applied Birmingham's policy on accumulation of sick leave and vacation time.

Other Allowable Benefits

Chapter 12, Title 31, of the Code of Alabama 1975 provides additional benefits for employees of the state of Alabama. While these benefits are generally mandatory for state employees, adoption of these benefits are optional for municipal and county governments.

Section 31-12-6 of the Code allows any municipality — at the option of the municipal governing body — to provide an employee who is called into active duty during the war on terrorism which began in September, 2001, to receive the difference between active duty military pay and the higher public employment salary he or she would have received if not called into active duty. If a municipality elects to become subject to this provision, the Attorney General has opined that military pay under this provision

means basic pay as set forth in Chapter 3 of Title 37 of the United States Code and does not, therefore, include the special and incentive pay set forth in Chapter 5 nor the allowances set forth in Chapter 7 of Title 37 of the United States Code. AGO 2002-270.

Sections 31-12-7 and 31-12-8 provide additional benefits for public employees. Again, in the League's opinion, these provisions are optional for municipalities. Section 31-12-7 allows employees to continue their insurance coverage (individual and dependent) and have the premiums deducted from their salary. As required by this code section, an employee must be receiving compensation from the employing entity to be eligible for these benefits. Thus, the only way a municipal employee would be receiving pay under this Section is if the municipality has adopted to continue paying a salary pursuant to Section 31-12-6 of the Code.

Section 31-12-8 allows the reinstatement of any leave an employee used as a result of being called into active duty. In AGO 2002-270, the Attorney General also opined that Section 31-12-8 of the Code requires the state of Alabama to reinstate the annual leave that a reservist/public employee felt compelled or was required to take under the circumstances and in the exercise of his or her independent judgment as a result of being called to active duty in the war against terrorism. Again, the League feels that this provision is optional for municipalities because it applies only to an employee who is covered by Section 31-12-7.

NOTE: In the League's opinion, if a municipality elects to grant benefits pursuant to either Sections 31-7-6, 31-7-7 or 31-7-8, they must also grant the additional benefits provided in each of these other sections as well. In other words, a municipality cannot grant an employee the pay difference permitted in 31-7-6 without also granting their employees the rights protected by Sections 31-7-6 and 31-7-8. A municipality may, however, refuse to grant any of these benefits. If they do grant any of these benefits, though, they must grant them all.

Federal Reemployment Rights

Federal law also provides job security for employees who leave their jobs for military service. Chapter 43 of Title 38, United States Code, commonly known as the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994, preserves the reemployment rights of these employees.

Courts have held that the protection of veteran's reemployment rights is a legitimate exercise of the congressional power to raise armies. *Peel v. Florida Department of Transportation*, 600 F.2d 1070 (5th Cir.1979). The act clearly applies to municipal employees, although courts must consider local legislation in determining the rights returning veterans are due. *Smith v. Little Rock Civil Service Commission*, 218 S.W.2d 366 (Ark. 1949). Local legislation can increase the benefits a service member may receive, but it cannot reduce those benefits and rights.

In *Peel*, cited above, the court held that the act provides a floor for the protection of veteran's rights. The Act does not preempt state laws which provide greater or additional rights (such as Section 31-2-13, Code of Alabama 1975). 38 U.S.C. Section 4302(a). However, laws which conflict with rights granted under the act are invalid. 38 U.S.C. Section 4302(b).

The Act is liberally construed for the benefit of returning veterans. *Coffee v. Republic Steel Corp.*, 447 U.S. 191 (1980). However, the Act is not unlimited in its protection of veteran's

rights. *Smith v. Missouri Pacific Transport Co.*, 313 F.2d 676 (8th Cir.1963). For instance, the veteran has the burden of proving that he or she has satisfied the statutory requirements and is entitled to the protection of the Act. *Shadle v. Superwood Corp.*, 858 F.2d 437 (8th Cir.1988).

This burden, though, is not as difficult to meet as one might assume, because Section 4311(c) basically provides that an employer shall be considered to have discriminated against the service member if the military service was simply a motivating factor, rather than having to prove that military service was the *sole* motivating factor. As indicated below, if the service member meets this standard, the employer must then prove that the action would have been taken despite the employee's military service. Congress spells out the purposes of the Act in Section 4301. These are:

- 1) to encourage non-career service in the armed forces by eliminating civilian career barriers
- 2) to minimize the disruption to the lives of persons serving in the military
- 3) to prohibit discrimination against individuals as a result of military service.

The Act prohibits employers from discriminating against individuals who have served in the military. Discrimination is defined as any termination, denial of employment or reemployment, or refusal to grant a benefit motivated entirely or in part by the applicant or employee's military service. The burden is on the employer to demonstrate that its action would have been taken regardless of the person's military service.

Reemployment Rights

To be eligible for reemployment, a veteran must:

- 1) Give notice (does not have to be in writing) to the employer that he or she has been in the military, unless notice cannot be given for military necessity (notice can be provided by someone other than the individual); and
- 2) apply for reemployment within the time frame set out in the act.

There is, though, a five-year cumulative service limit on the amount of voluntary military leave an employee can use and still retain reemployment rights. The five-year total does not include the following: inactive duty training (drills), annual training, involuntary recall to active duty or additional training requirements determined and certified in writing by the service secretary and considered to be necessary for professional development or for completion of skill training or retraining.

The time within which the individual must apply for reemployment varies depending on the length of the person's military service. If the service was for less than 31 days, or for an examination to determine fitness for service, the veteran must simply report to work on the first full scheduled work day following the completion of service and the expiration of eight hours for travel. Veterans are also entitled to reemployment following the eight-hour transportation period if they fail to report on time due to no fault of their own, or if reporting on time is impossible or unreasonable.

If the term of service was for more than 30 days, but less than 181 days, the veteran must apply for reemployment within 14 days of completing service. If it is impossible or unreasonable for the veteran to apply within this time, the veteran must apply on the first full calendar day possible. If service was for

more than 180 days, the veteran must apply within 90 days of completing service.

If the veteran is hospitalized for or convalescing from an illness or injury suffered during military service, the veteran must apply for reemployment at the end of the time needed for recovery. Again, the time within which the veteran must apply depends upon the length of service, as set out above. For example, a veteran who served less than 31 days but who is hospitalized following the 31-day period must report to the employer on the first full scheduled work day following the completion of service. As noted above, the veteran would be permitted eight hours for travel. The provisions dealing with impossibility or impracticality of reporting on time also apply.

The period necessary for the veteran to recover from the illness or injury may not exceed two years. However, a veteran may receive an extension for the minimum time required to accommodate circumstances beyond the veteran's control.

However, even if a veteran fails to apply for reemployment within the time required by the act, he or she does not lose the protections the act provides. Instead, the veteran merely becomes subject to the employer's rules and regulations regarding discipline and explanations for absences from scheduled work time.

Documentation

When a veteran applies for reemployment, the employer has the right to request documentation for the following purposes:

- 1) to prove that the employee's application is timely
- 2) to prove that the length of service did not exceed five cumulative years
- 3) to prove that the veteran's reemployment rights have not extinguished due to:
 - a) a dishonorable discharge
 - b) a court martial
 - c) commutation of a court martial sentence
 - d) being AWOL for three or more months or
 - e) for having been dropped from the military rolls for serving time in a federal or state prison.

A veteran is not required to produce documentation if what is requested is not available or does not exist. However, if the appropriate documentation later comes available and establishes that the employee's military service ended for a reason that would extinguish the veteran's reemployment rights, the employer may terminate the veteran.

Reemployment Positions

If the military service was for less than 91 days, a veteran is entitled to return to the position he or she would have held had employment not been interrupted. If the veteran is not qualified for this position, the employer must take reasonable steps to try to qualify the veteran. If the veteran cannot be qualified, the employer must place the veteran in the position he or she had before serving in the military.

If the military service was for more than 90 days, the veteran must be placed in a position he or she would have held had employment not been interrupted, or to a position of like seniority, status and pay, if the veteran can reasonably be qualified for this position. If the veteran cannot be qualified, the employer must place the veteran in the position he or she held before serving in the military, or in a position of like seniority, status and pay.

As a general rule, the returning employee is entitled to

reemployment in the position he or she would have held had employment not been interrupted. This is called the “escalator position.” However, if the returning employee is not qualified for the escalator position and cannot become qualified with reasonable efforts by the employer, the employee is entitled to the job that he or she left, or a position of equivalent seniority, status and pay. If the employee is not qualified for that position for any reason other than service-related disability and cannot become qualified through reasonable efforts by the employer, the employee must be employed in any other position for which he or she is qualified and that most nearly approximates his or her former position. Reasonable efforts to render a returning veteran qualified for a position include providing training or retraining. An employer is also obligated to reasonably accommodate returning employees with service-related disabilities. However, an accommodation requiring significant expense, considered in light of the nature of the business or operation and overall financial impact on the business or operation, may be considered an undue hardship on the employer and remove this obligation.

If a veteran is not qualified due to a disability suffered during military service, and the disability cannot be reasonably accommodated, the veteran must be placed in a position with like seniority, status and pay to the position he or she would have occupied had employment not been interrupted. If the veteran cannot be qualified for a position, the employer must place the veteran in a job which retains the nearest approximation to the seniority, status and pay the veteran would have had if his or her employment not been interrupted.

When Reemployment is Not Required

An employer is not required to reemploy a veteran if the employee’s circumstances have changed to make reemployment impossible or unreasonable, or if reemployment would pose an undue hardship on the employer. Further, an employer has no duty to reemploy a veteran if the employee’s position was for a brief, non-recurrent period without a reasonable expectation that employment would continue for an indefinite or significant period. The employer bears the burden of proving that any of these circumstances prevent rehiring a veteran.

At least one court has interpreted the predecessor to this provision. In *Mowdy v. ADA Board of Education*, 440 F.Supp. 1184 (D.C.Okla.1977), the court held reasonable the failure to immediately rehire a returning employee where reemployment would have required firing the replacement or the creation of a useless position.

Miscellaneous Provisions

If two or more veterans request reemployment for the same position, the veteran who left first must be reemployed. Section 4316(b) provides that an employee serving in the military is deemed to be on furlough or leave of absence and is entitled to all rights and benefits which are due to such employees pursuant to the rules and regulations of the employer. However, the employee’s seniority rights are not affected by their absence. The employee may contribute to any funded benefit plan to the same extent as other employees or furlough or leave of absence.

Employees who serve in the military are entitled to continue participating in any health insurance plan as spelled out in 38 U.S.C. Section 4317. However, no waiting period or exclusion can apply to any veteran whose insurance was terminated by

reason of military service unless the exclusion or waiting period would have applied had employment not ceased. Employees may continue participating in employee pension plans as set out in 38 U.S.C. Section 4318.

Questions frequently arise concerning retirement programs. For instance, if a municipality participates in a retirement program, whether it is the Alabama Employees Retirement System or some other system, is the municipality governed by federal or state law with regard to retirement credit for employees who are called into active military service? This issue is covered specifically by USERRA. The rights provided under USERRA to public employees serving in the military cannot be diminished in any way by state law.

So, what responsibilities does a municipality have with regard to retirement credit for municipal employees who are returning to work after being on active military duty? Under USERRA, a municipality must reemploy a person returning from active military duty and shall, with respect to the period of military service, be liable to the retirement system the municipality participates in for funding the employer’s obligation to that system. With regard to retirement benefits, USERRA specifically provides the following:

1. A reemployed person must be treated as not having incurred a break in service with the employer
2. Military service must be considered service with an employer for vesting and benefit accrual purposes
3. The employer is liable for funding any resulting obligation
4. The reemployed person is entitled to any accrued benefits from employee contributions only to the extent that the person repays the employee contributions.

For purposes of determining an employer’s liability or an employee’s contribution for retirement credit, the employee’s compensation during the period of his or her military service must be based on the rate of pay the employee would have received from the employer but for the absence during the period of service. If the employee’s compensation is not based on a fixed rate such that the determination of such rate is not reasonably certain, then it must be based upon the employee’s average rate of compensation during the 12-month period immediately preceding such period or, if shorter, the period of employment immediately preceding such period.

As far as a returning municipal employee’s repayment of contributions, he or she has up to three times the length of military leave, up to a maximum of five years, to make any contribution payments he or she would have made to establish retirement credit without having to pay any interest. No such payment may exceed the amount the municipal employee would have been required to contribute had the person remained continuously employed by the municipality throughout the period of military service.

It should be noted, though, that a municipality does not have to pay the retirement credit for municipal employees who are on active military duty during the time the employee is serving. Instead, USERRA provides generous time periods for the payment of missed contributions without any interest penalties. Upon returning from active military duty, the employee would have to exercise his or her option of remitting any missed retirement contributions and not until that point would the municipality be obligated to pay its portion of any retirement benefits missed. ■



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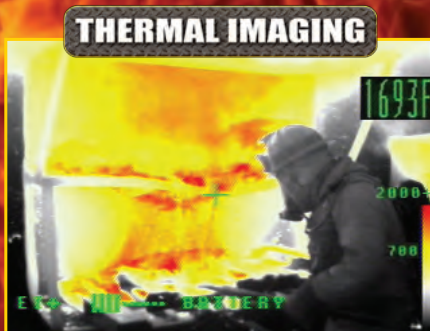
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- Examine best practices of other risk-based professions (e.g., financial services, health care).
- Within 6 months, partner with National Science Foundation to create a “Weather and Society Initiative”.
- Partner with Chambers of Commerce to better convey threat potential to users.
- Modernize NOAA Weather Radio via public private partnership (R&D, technology transfer).
- Define scope of “False Alarm Problem” for TORs
- Develop metrics that reflect societal impact.



It was an intensive and important discussion that will continue throughout the first part of 2012. Of course, as with all initiatives, necessary funding will be extremely difficult to come by. In addition, it’s my feeling that the scientific community will need to bring the stakeholders (local officials, community decision makers) on board immediately before these conversations go much further. It will be interesting to see what fleshes out over the next year. I’ll keep you posted as I learn more.

Carrie

ALM Salutes Dr. Tommy Pow!

Dr. Tommy Pow, who has worked with the League for many years through the University of Alabama’s College of Continuing Studies, particularly the Certified Municipal Clerk Institute (CMC) & Master Municipal Clerk Academy (MMCA), retired this past November. A reception was held in his honor during the Clerks Annual Meeting on November 30th. The Alabama League of Municipalities salutes Dr. Tommy Pow for his dedicated support of the League and his invaluable assistance to municipal clerks and revenue officers throughout his tenure with the University of Alabama!



Pictured left to right are: 2011 AAMCA officers, President Elect Gina Antolini, City of Columbiana; Treasurer Laura Carmack, City of Lincoln; Dr. Tommy Pow; Secretary Lynn Porter, City of Trussville; and President Peggy Shadix, Town of Sylvan Springs.

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