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Poised for Progress: Guin's Long View for Industrial Growth and Retail Development

See p. 7



Also in this issue – Resources for Developing Your Long View:

Structuring and Incentivizing Commercial Development; Why Websites Matter to Your Community; Wage and Salary Regulation Changes; and articles from ADECA, USDA Rural Development, ADOR, ACE, Main Street Alabama, DesignAlabama, ShopAlabama, Alabama Small Business Commission and more!

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A Message from the Editor



Carrie Banks

Communications Director • ALM

Resources for Developing Your Long View

This issue of the *Journal* is dedicated to Retail Development – opportunities and challenges as well as resources available to help your community develop and implement its local vision. According to the Alabama Retail Association (ARA), retail is the No. 1 private sector job creator in our state. Some 400,000 Alabamians work in retail; which means Alabama retailers employ 1 in 4 of all employees outside government. Retail, including restaurants and drinking establishments, accounts for almost 10 percent of the state's GDP, bringing in more than \$2 billion every year in sales tax revenue for the state. Spending your money with an Alabama-based retailer returns the most to your local economy. In fact, ARA has developed a specific campaign, Shop Alabama, to promote that simple message: support the retailers who support you and your community. See full story on p. 43.

On page 5, League President Mayor Phil Segraves of Guin explains the importance of building relationships with many organizations and individuals to recruit retail and industry, particularly for smaller municipalities, and on page 7 there is a more in-depth look at how Guin is now poised for progress by taking a long view to development. This issue also features profiles on several organizations that work closely with cities and towns to provide funding and support for quality of life projects and economic development initiatives, including the Alabama Department of Economic Development (p. 9), USDA Rural Development (p. 15), Alabama Communities of Excellence (p. 25), Main Street Alabama (p. 27), Design Alabama (p. 47), the Alabama Small Business Commission (p. 49) and Alabama Economy Online (p. 21).

Be sure to read “Structuring and Incentivizing Commercial Development: A Framework for Bringing Vision to Realty” on p. 29 by Balch & Bingham Associate Alex Flachsbart who spells out how to conduct the necessary cost-benefit analysis to set the appropriate incentive level for each project. He also explains how to use Amendment 772 along with state law to structure the best mix of incentives in any given transaction and concludes with thoughts on guarding against the inherent risk involved in using public funds to provide commercial incentives.

On p. 37 there is an excellent article on why municipal websites matter (and how to get one) and on p. 51 the League's Director of Information Technology, Chuck Stephenson, explains the importance of email in today's world. There's also an article on p. 53 explaining the new overtime and exemption rule that takes place December 1 and increases the exempt employee salary threshold to \$47,476 annually (\$913 per week), which more than doubles the current threshold of \$23,660 (\$455 per week).

Another must-read is the article on p. 17 from the Alabama Department of Revenue explaining its efforts to collect state and local sales and use tax from online sellers – which will have a positive impact on Alabama's municipalities. Amazon has agreed to begin collecting in Alabama as of November 1.

Really, every article is worth your time and will provide you with helpful and important information, so be sure to keep this issue handy! ■

Carrie

The President's Report

By Mayor Phil Segraves, Guin



Retail Development: Relationships Matter!

One of the greatest honors of my life has been serving as mayor of Guin. That being said, two of my biggest challenges as mayor of a small city in a relatively rural setting (Guin's population is just shy of 2,500) is recruiting retail and expanding job opportunities. Both are absolutely necessary in order to boost municipal coffers and improve the quality of life in *any* community, not just mine. The smaller the municipality, the more rural the location, the more difficult the challenge.

That being said, I *know* Guin; I *love* Guin; and so it is my responsibility as Guin's most visible ambassador to understand what it takes to bring business and industry to my city – to be able to promote my community's strengths – and the strengths of the surrounding area – at *every* opportunity and to know how to quickly answer questions and offer reasonable solutions to perceived challenges.

Development doesn't happen quickly – and it shouldn't. It's a slow, steady process that involves building relationships, forming partnerships, securing commitments and putting in countless hours behind the scenes no one will ever hear about. While I'm always concerned about the present, I'm also driven by a deep-seated love for Guin to



Mayor Phil Segraves of Guin discusses economic and retail development opportunities with ADECA Director Jim Byard. Photo by ADECA.

ensure that the future is secure for the next generation.

For the past 16 years as Guin's mayor, I've worked with many people, within the community and beyond, to stimulate Guin's economic outlook and promote growth. I'm proud to say, we've been successful in our endeavors and anticipate more good news moving forward!

Relationships Matter

I cannot emphasize enough the importance of forging relationships to build your community. Whenever I leave our city limits, I take Guin with me – be it to Montgomery to meet with state officials about grant funding or Washington, D.C. to meet with our congressional delegation to discuss how they can assist with projects in our area.

I've spent nearly two decades building relationships with key state and federal agencies as well as other organizations that have since partnered with Guin on numerous projects leading to current and future growth, including: Alabama Department of Economic and Community Affairs (ADECA), Appalachian Regional Commission (ARC), Alabama Commerce Department, USDA Rural Development, Alabama Communities of Excellence (ACE), North Alabama Mountain Lakes Tourist Association, Northwest Alabama Council of Local Governments, University of Alabama Center for Economic Development, Auburn University Government and Economic Development Institute and, of course, our Alabama League of Municipalities.

Without those relationships – several of which produced direct financial support in the form of grant funding to develop infrastructure – Guin would still be an obscure dot on a map rather than a municipality that is now perfectly positioned to offer a home to business and industry – especially those seeking to build distribution centers.

Relationships *matter*, folks!

Progress Through Partnerships

Thanks to Guin's partnerships with agencies such as ADECA, ARC, ACE and USDA Rural Development, what

once was overgrown timberland just a few short years ago is now Guin I-22 Industrial and Commercial Park – an elite, development-ready property designated as an “advantage site” where water, sewer, power, natural gas and broadband are already installed and covenants and restrictions are in place to protect not only Guin’s investment but retail and industrial investments. Additionally, a Capital Improvement Cooperative District has been established to maximize grants (we’ve been awarded more than \$6 million to date), enhance our tax base and make our area more marketable.

This careful planning and cultivation of resources, as well as a healthy dose of structured and aggressive marketing, has already proven successful for Guin. Holiday Inn chose to open a \$12.5 million, full service hotel on our doorstep – the largest investment in Marion County in over 30 years! Not only has the hotel been successful, it is the *beginning* of the development we will experience in our commercial park.

We are also undergoing a structured downtown revitalization effort to make our community even more appealing – for our citizens as well as potential businesses. Decorative street and traffic lights, attractive landscaping, a community fountain and more than 3.5 miles of new sidewalks connecting residents to downtown have been added. In addition, a focus to cultivate mixed-use development, retail and apartments is also underway.

All this for a city of just under 2,500. It can be done.

Promote Your Strengths

As I mentioned, I know my area and have made it a priority to understand its strengths and weaknesses. For example, to take advantage of the recently completed I-22 connecting Memphis to Atlanta via Birmingham, our city has contracted with three global marketing and development companies, Altera Development, EDS of America and Avison Young Real Estate Solutions, to assist with recruitment, strategic planning and development. These companies have a proven success record working with Fortune 500 companies worldwide.

It takes becoming a 21st Century community in order for Guin – or any municipality – to remain relevant and attract new businesses, jobs and people. Thanks to partnerships with a number of organizations and agencies throughout the state – and through focused, strategic planning – I feel Guin is well on its way.

Closing Thoughts

Do your homework and never stop seeking information. Attend workshops offered through ADECA and other agencies and learn about grant opportunities and resources that can benefit your community. Seek guidance from proven sources such as the University of Alabama Center for Economic Development and Auburn University Government and Economic Development Institute. Above all, continue to cultivate relationships. *Daily*. It matters. ■

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Poised for Progress: Guin's Long View for Industrial Growth and Retail Development

By: Carrie Banks • Communications Director • ALM

Incorporated on December 30, 1889, the City of Guin became a reality when Dr. Jeremiah Guin gave land to the Kansas City, Missouri and Birmingham Railroad to complete its Memphis to Birmingham railway. More than a century later, what started as a tiny town centered around a train depot with approximately 350 citizens is now a comfortable community of nearly 2,500 that's poised for progress – and actively recruiting business and industry.

Like many Alabama communities, Guin once prospered under the textile industry's economic umbrella. When the textile market declined, Guin was forced to find alternatives to not only sustain the community's quality of life but to remain relevant. This required methodical and concentrated strategic planning, building partnerships with state and federal agencies and cementing relationships with a multitude of organizations and leaders along the way. It's a long view – a structured process for industrial growth and retail development that Mayor Phil Segraves, who is seeking his fifth term as the city's most visible ambassador, works on daily.

"I was born and raised in Guin," Segraves said. "My children grew up here. My father was on the City Council for 32 years. The average age of a person in Marion county is 40 years old. That tells you that our young folks are leaving because we're not providing them with anything to come home to. I want the area to grow and I want Guin to grow so I can't afford to stand still. Economic development is a passion for me."

Long View

Guin's shining beacon on a hill, literally, is its recently opened \$12.5 million Holiday Inn overlooking the country's newest interstate, I-22. While this full service, 100-room hotel featuring state-of-the-art meeting space, a restaurant, fitness area and pool is a significant achievement in and of itself – the largest investment in Marion County in over 30 years and the only such hotel project in an Alabama city with a population of less than 2,500 – the real accomplishment is the effort

behind the outcome. It started years ago with a corridor that would eventually become an interstate spanning east from the Mississippi state line through Marion, Walker and Jefferson counties to I-65 just north of downtown Birmingham. It also required municipal leadership with a long view.

Officially designated as I-22 in 2004, construction first began in 1984 on what was known for 20 years as the Corridor X project – a 98-mile stretch serving as a connector between Birmingham and Memphis, costing just over \$1 billion that, in Alabama alone, includes 15 bridges and 14 ramps. After numerous setbacks over several years, the I-22/I-65 interchange finally opened to traffic this past June and I-22 now provides a major thoroughfare through rural, northwestern Alabama – an area previously inaccessible to major industries that can now benefit from economic development opportunities that would never be possible otherwise.

No one understands this better than Segraves, who began actively cultivating the advantages of a municipal location along a major interstate when he was first elected Guin's mayor in 2000. "This whole section of the state was left out on how the interstate

Mayor Phil Segraves with a downtown center plan created for Guin by the Auburn University Urban Studio as part of a Small Town Design Initiative.



system was developed,” Segraves said. “There’s really almost two Alabamas: those that have and those that have not. If you look at those that “have” and have been successful, it’s been along I-65. Those counties and cities have grown. The other parts of the state have lagged behind. So I-22 was built for economic development. Sure, it’s great to move traffic, but economic development is the reason it was built – to expose the area to economic development because we didn’t have a highway system to bring in new industry and new jobs.”

As someone who grew up alongside local politics and who has served more than 20 years in municipal office, Segraves understands that cultivating relationships and learning from the successes and challenges of others are integral to long-term progress. “I take note of other cities that have been successful,” he said. “I visit them. I listen. For instance, I know a lot about Prattville. Am I the same size as Prattville? Heck, no – but there are a lot of similarities. They have I-65 and I have I-22. Prattville was not always the size it is now. So I met with Prattville to learn how they accomplished some of their successes.”

To that end, Guin purchased nearly 300 forested acres along I-22 in 2000 and, over the past 16 years, more than \$6 million in grant funding has been awarded to the city to prepare itself to attract industry and commerce. “What we bought was

timberland,” Segraves said. “There was a two-inch waterline that went to a little restaurant that was once located there. That was it – the only infrastructure in place. No road. No sewer. No waterline large enough to even attach a fire hydrant. Limited power. No gas. We took a raw piece of property and developed it into what it is today (a full-service Capital Improvement Cooperative District) – and what it will be down the road. It now has water, power, sewer, gas, broadband and a road with solar roadway lighting (the only such lighting of its kind in the state, which was installed via federal grant funding).”

And a full-service Holiday Inn.

Segraves said it’s important to pay attention to which state and federal agencies are offering grant funding for what projects – that you have to apply for money when it’s available, such as with the federal dollars that funded the solar lighting for the road leading to the new Holiday Inn. Solar lighting wasn’t a priority but it was something Segraves was able to install through grant dollars – funding that is no longer available today. “You find out where the money is and then you figure out how it will fit into your plan,” he said.

In Guin’s case, participation in the Alabama Communities of Excellence (ACE) program, which provides technical assistance

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Large-scale public art, such as the murals located throughout Guin, adds vitality and interest to a downtown area. This mural by local Guin artist Missy Miles depicting three-dimensional arches, crape myrtles, roses and lilies is adjacent to a small downtown park with a fountain featuring bright blue water in support of area law enforcement.

In the past year Guin Mayor Phil Segraves has taken up the hobby of scouting automobile tags that are spotted in his city. That is because Mayor Segraves knows that many of the out-of-state vehicles usually translate into more money for this Marion County community of about 2,500 people.

A little more than a year ago a Holiday Inn opened off Interstate 22 beckoning weary travelers to stop for the night. In return for a good night's rest, travelers depart leaving the municipality some revenue in the form of lodging and sales taxes.

While I-22, which opened in 2011 linking Birmingham to Memphis, was the launching pad for the hotel, which employs about 50 people, the Alabama Department of Economic and Community Affairs (ADECA) supplied the fuel in the form of grants that funded infrastructure necessary for the building's construction along the interchange of I-22 and Alabama Highway 44. A quicker access to I-22 happened in June with the opening of an interchange with I-65 in Birmingham.

In 2010 Guin was awarded a \$296,720 Community Development Block Grant to extend and increase the water supply to the interchange necessary for the hotel. The Appalachian Regional Commission, a federal program in Alabama also administered through ADECA, provided another \$100,000 for infrastructure improvements required for the hotel construction. These infrastructure projects not only laid the foundation for future development at the interchange but improved city services by way of a new fire station and police department annex being built just down from the hotel.

"Every night you see cars from all over with people staying here who would not be spending one dime in our town if this hotel was not here," Segraves said. "This highway and this project have meant so much to our city and will mean more in the future. I am just so appreciative of ADECA and programs like ARC and CDBG that allow us to share and realize our vision."

Retail and Industrial Development Grants for Communities

Each year ADECA by way of the governor supplies a number of grants to help Alabama cities and towns attract retail and industrial development to their jurisdictions and create new jobs and commerce. Last year Gov. Robert Bentley awarded almost \$4 million in 15 CDBG economic development projects to assist new or existing industry and businesses and create jobs and revenue growth. Another \$765,000 in ARC funding was announced during that same time period to communities in its 37-county area. Also the Delta Regional Authority, basically the south Alabama equivalent to ARC, provided \$513,266 for business and job projects.

"As a former mayor, I know the positive impact these grants have on communities," said ADECA Director Jim Byard, Jr. "When you bring new development into an area that means more jobs, and it also means new revenue



Guin Mayor Phil Segraves said the construction of a Holiday Inn in his city will generate tax revenue and should lead to other retail stores locating in the municipality.

sources so local governments can expand and improve the services they provide residents. ADECA's mission is to make communities stronger and it is through strong local leadership and state partnership that our agency fulfills its mission."

While many people traveling south on U.S. 431 in Henry County are heading for Florida beaches, the Todd family wanted to make sure that travelers deposited some of their vacation money in the city of Headland and with their business, Todd Farms. To increase the possibility of more customers the Todds, who have been in the cane syrup making business for generations, planned to expand what was basically a roadside produce stand selling their home-grown and homemade syrup into a full-fledged business that included a retail store, restaurant, bakery and museum.

None of that would happen without city sewage, and the city didn't have the funds to provide it. That's when the city turned to ADECA for an \$83,264 CDBG which made the expansion possible, and enabled the business to hire 15 new employees.

"The grant was absolutely critical to our project," said co-owner Dewey Todd. "The city in no way had the funding available, but ADECA's partnership helped make it a reality. As a company we had already invested so much in buying the land and building the building. Then to have to spend \$103,000 to bring in sewage wasn't practical."

Faced with the same dilemma as many other Alabama

municipalities, the city of Fayette sought to enhance its downtown commercial district and reverse the loss of jobs. The city started in 1997 with a CDBG planning grant that enabled officials, residents and merchants to focus on long-term goals and outline methods to return the district to its past vitality. Fayette then applied for and received a \$500,000 CDBG grant, along with funds from other sources and grant programs, to improve infrastructure in 2004. Five years later the city was awarded a \$250,000 CDBG for further downtown upgrades.

"The businesses had to put up 20 percent and the city through the grant provided the other 80 participation," Fayette Mayor Ray Nelson said. "We had 30 merchants jump at that opportunity."

In addition to sprucing up downtown, attracting four new businesses and creating new jobs, the renovation had some unexpected benefits: "It's amazing what has been done," Nelson said. "We have a number of people coming downtown to walk in the evenings. It's like a walking trail and it's well lit. Small communities couldn't survive or improve without ADECA and its programs. We are very excited about the support we have received from the state and the programs that help small communities."

Recreation and Conservation

One area of ADECA where economics are often overlooked is the Recreation and Conservation unit

which manages two federal programs, the Land and Water Conservation Fund and the Recreational Trails program, both of which provide communities with trail, parks, playgrounds and recreation-related amenities.

Patrick Wigley, who owns Wig's Wheel, a bicycle shop in downtown Anniston, said the creation of Coldwater Mountain, a mountain biking trail complex, and the Chief Ladiga Trail which will ultimately provide a trail link from Anniston to Atlanta have the potential to provide added revenue for local economies. Both trails, funded in part by ADECA recreation grants, are still under development.

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Dewey Todd explains expansion plans, a CDBG project enabling Todd Syrup to expand and continue a family tradition of making syrup, to ADECA Director Jim Byard, Jr.

Municipal Overview

By Ken Smith, Executive Director



The Importance of Leadership in Retail Development

This month's *Journal* focuses on the issue of retail development in municipalities. Retail business is the lifeblood of most municipalities in Alabama. Municipal governments in Alabama depend heavily on revenue from sales and use taxes and license fees. As a result, it is important for municipal officials to attract and nurture local retail business to keep the revenue stream strong to provide services to the municipality and its citizens.

But retail development is no longer just about creating an environment to help Ellie Walker open a local pharmacy in Mayberry. Today's municipalities must actively recruit dollar stores, big boxes, restaurant chains, corner pharmacies, clothing retailers and others. They have to attract businesses that are able to compete on a global scale against retailers who may not even have a physical location.

How does a municipality go about attracting and developing relationships with these retailers? You'll find advice throughout this issue and I encourage you to explore ways to bring more business into your community. But encouraging retail development, like other activities in a municipality, begins with leadership and a strong commitment.

While the information you'll find in these pages shows your community investment and desire to include retail growth in its quality of life, it is equally important that municipal leaders take a strong role in retail and economic development efforts.

A great deal has been written over the years about the qualities of leadership. One of the best overviews I ever read was in an article called "Strive to be a 'BLT Leader,'" by Mark Towers, a professional speaker and consultant. The article was published in the March 2013 issue of the Arkansas League's *City & Town* publication. Portions are reprinted here with their permission.

Mr. Towers notes: "In order to be an effective leader, you need to have an easy-to-remember set of core values. That is why the BLT (Believable, Likeable and Trusted) acronym is work remembering."

Believable. He states that "being believable is about having your priorities in order, being of sound character first and competent second." Follow through, be accountable and do what you say you will do. Acknowledge when you drop the ball. Be willing to stand up, apologize and "have the character to admit my shortcomings."

Likeable. "Being likeable is about focusing on others first. When you look at another person, imagine that they have these four letters tattooed on the forehead: MMFI. These letters stand for Make Me Feel Important. Everyone, even the most shy among us, wants to feel significant and important."

Trusted. "Trust is a highly-valued commodity. The word is a critical component of all good, meaningful human relationships. Recent, the word transparent has been used to describe trustworthy leaders and followers. "Imagine that you wear a t-shirt underneath your regular clothes each day. The shirt has four words on it in big, bold letters: 'No Secrets, No Surprises.'" These four words give you permission to speak and live with integrity, honesty and openness. They will enable you to be a 'respectful rebel' and, in turn, a trusted individual, no matter what the situation.

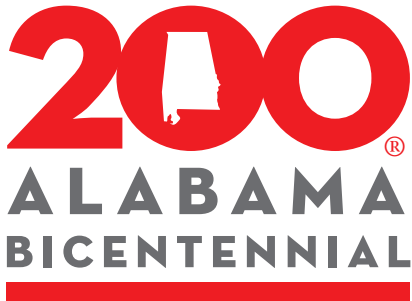
"Don't forget the words of Roy Disney, Walt's brother and business manager. He said, 'Decisions are easy when your values are clear.' Live, work and build your community with the clear values of a Believable, Likeable and Trusted leader." Developing these traits will help you attract business and growth to your community.

But even with strong core values, you must make an effort to attract business.

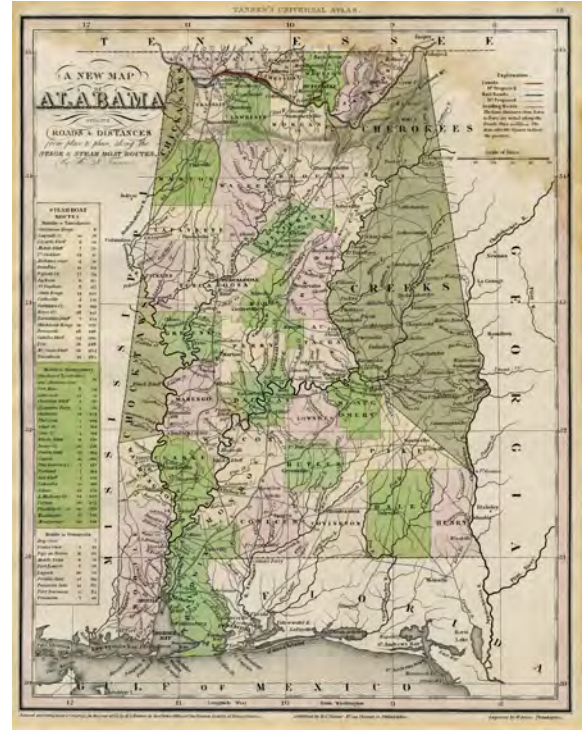
Diana Smith, Director of Business Development for MRB Group Engineering, Architecture, & Surveying, P.C., wrote an article titled "Local Government and Business: Bridging the Gap," which was published in the Summer, 2013 issue of the *NYCOM Municipal Bulletin*, a publication of the New York Conference of Mayors and Municipal Officials. In this article, Ms. Smith notes that many local

continued on page 20

Grant Applications Opening Soon for Bicentennial Community Celebration Committees! **Form Your Committee Today!**



Alabama's Bicentennial, which will be celebrated 2017-2019, is a unique opportunity for our municipalities to participate in a very specific historical milestone. The Bicentennial Commission and the Alabama League of Municipalities encourages every city and town to be part of the Bicentennial process by forming a **Community Celebration Committee**.



Options are endless!

Some communities may decide to take on a special project for the Bicentennial, such as a cemetery restoration, painting a mural on a downtown building or renovating a historic structure. If your community has an annual festival, your Celebration Committee could use the ALABAMA 200 branding to broaden your festival by incorporating the history of the festival, the history of your community and highlighting some of the elements that make your community unique and historically significant. It's also another way to market your event and area to visitors. **Official Bicentennial Celebration Committees can apply for limited grant funding, which will be awarded in 2017.**

How do we form an official Celebration Committee?

In order to apply for grant funding or to receive ALABAMA 200 promotional and branding materials from the

Bicentennial Commission, your municipality must designate an official Community Celebration Community that is approved via special resolution by the Mayor and Council.

Download the necessary resolution at alabama200.org under the "Get Involved" tab at the top – click on the "Community Resources" link. A copy of your resolution, as well as the contact information for the Chair of your Community Celebration Committee, must then be submitted to the Commission, which is forming a database to enable the Commission to send relevant information to the correct people and to keep a current list of Bicentennial projects and activities.



Community Celebration Committees can be composed of *anyone* from your community, especially people from historical, educational, cultural and/or civic and community organizations such as schools, libraries, history/heritage groups, tourism/economic development organizations, etc. We encourage you to engage your community leaders, activists and historians in this process.

Mail or email a copy of your resolution as well as your committee chair person's contact information to: Jay Lamar, Alabama Bicentennial Commission, 401 Adams Street, Suite 108, Montgomery, AL 36104 or jay.lamar@bicentennial.alabama.gov.

Alabama200.org

The Legal Viewpoint

By Lori Lein, General Counsel



Just Because You Can Doesn't Mean You Should: Private Business Activities and the Municipal Official

There is little doubt that creating and maintaining an attractive municipal environment for recruiting retail business is key to the long term success of a municipality. Doing this effectively requires on-going relationships between elected officials and private businesses, not only the retail businesses being recruited but the businesses that help create and maintain all aspects of the overall municipal environment – everything from banks to construction companies and contractors to utilities. These relationships can present potential conflicts of interest for municipal elected officials, especially officials who are, themselves, involved with private business in some way personally through employment or ownership interests.

The Merriam-Webster Dictionary defines “conflict of interest” as “a conflict between the private interests and the official responsibilities of a person in a position of trust.” This article, which is part of a larger article titled “Conflicting Offices and Interests” found in the *Selected Readings for the Municipal Official* (2016 ed.), will focus on some of the legal prohibitions municipal officials need to be aware of with regard to their private business dealings and their role as an elected public official.

A number of statutes prohibit municipal officers and employees from having specific dealings with a municipality, but the one most widely referred to is found in Section 11-43-12, Code of Alabama 1975. It provides, in part, as follows:

“No alderman or officer or employee of the municipality shall be directly or indirectly interested in any work, business, or contract, the expense, price, or consideration of which is paid from the treasury, nor shall any member of the council, or officer of the municipality be surety for any person having a contract, work, or business with such municipality, for the performance of which a surety may be required.”

This section not only prohibits officers and employees from having contracts with the municipality, it prohibits their being employed by the municipality. 53 Q. Rep. Att. Gen. 67. The following opinions indicate the wide scope of this section.

An officer of a municipality may not hold any other salaried position in the municipality even though he receives

no pay for such office. AGO to Hon. Cecil White, February 7, 1966. An officer of a municipality may not also serve as a police officer even though the only compensation provided would be payment for gasoline, oil and automobile upkeep. AGO to Hon. H. B. Wilson, December 14, 1964. However, the law does not prohibit a municipal firefighter from serving as a county commissioner. AGO 1992-277. A municipal clerk is not prohibited from serving as a director of a separately incorporated utility board or from receiving compensation for such service. AO NO. 1993-1.

A municipal councilmember is prohibited from engaging in the bail bond business while serving on the council. A properly authorized professional bail company owned by the spouse of a councilmember may do business in the municipality. AGO 1997-084.

A mayor has an indirect interest in the contracts of his wife who does business in her individual capacity and the municipality is prohibited from contracting with her by law. AGO to Hon. Josh Mullins, May 4, 1965. The section prohibits a municipality from doing business with a corporation whose sole stockholder and owner is the spouse of a municipal employee. AGO 1988-275. These sections also prohibit a mayor from selling insurance to the municipality, if he or she is an agent for the insurance company. AGO to Mayor of Florence, March 14, 1952. A municipal officer may not subcontract to perform part of a contract between the city and its prime contractor without violating the section. AGO to Hon. Carlton Mayhall, October 6, 1964. An officer may not lease a water supply to the waterworks system since he would be directly interested in a contract the consideration for which would be paid from the municipal treasury. AGO to Hon. E. C. Morrison, September 2, 1964. When a municipality serves as a sponsor for a summer food service program and federal funds pass through the municipal treasury, councilmembers are prohibited by Section 11-43-12, Code of Alabama 1975, from serving as the compensated program administrator. AGO 1992-299.

A councilmember may not lawfully sell goods, wares or merchandise to a municipality which he serves as councilmember. However, the Attorney General has ruled

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“Every weekend you go up on Coldwater Mountain and I dare say that half the cars parked up there are from out of state,” Wig said. “The locals, and by that I mean people from Atlanta and Birmingham, consider it their home trail.”

Byard said the economic benefits gained from trails and other recreational outlets is often overlooked. “Not only do quality parks and trails have the ability to bring in visitors and tourists, but they also personify a community,” he said. “Industries and businesses scouting an area for locating take notice of parks and outdoor activities just like they do schools and city services, and it does figure into their decision.”

Continued Growth

Meanwhile, in Guin Mayor Segraves said he expects the Holiday Inn to have some company in the not-so-distant future. “The nice thing about infrastructure is that you only really have to do it once,” he said. “Future businesses will be served by the same grants. Hopefully, we will have some more neighbors pretty soon. We’ve got some folks kicking the tires right now.”

ADECA and its staff of 167 employees are committed to improving the quality of life for Alabamians through its numerous programs whether it be economic development and community jobs, law enforcement, recreation, energy conservation or other issues affecting Alabama’s cities, counties and residents. For more information on ADECA and its many programs, visit www.adeca.alabama.gov. ■



(Top) Fayette before downtown revitalization.

(Bottom) Downtown Fayette’s revitalization project upon completion. The project has led to more businesses locating downtown and increased activity.

ADECA Economic Development Grant Programs

The **Community Development Block Grant** is funded through the U.S. Department of Housing and Urban Development. The majority of the funds are awarded annually on a competitive basis, but a portion of the allocation is kept in reserve for economic development projects that help industries and businesses locate and expand in communities and provide jobs.

The **Appalachian Regional Commission**, created and funded by Congress, awards grants through ADECA for economic development in 37 Alabama counties that are part of the ARC region with the purpose of improving living standards and economic opportunities in Appalachian Mountain region.

The **Delta Regional Authority**, is another state-federal partnership funded by Congress seeking to improve living

conditions primarily in the Black Belt region in south Alabama. Twenty counties qualify for funds for programs that help attract businesses and provide jobs in the economically depressed area.

The **Land and Water Conservation Fund** and the **Recreational Trails** are both federal programs administered through ADECA to help communities expand and improve outdoor recreational facilities. In addition to improving recreation outlets, the projects are often helpful in drawing visitors who spend dollars and help local economies.

ADECA has several additional programs designed to assist communities with retail development and job creation. For more information, visit www.adeca.alabama.gov.



United States
Department of
Agriculture

Rural Development

New Businesses Locate in Collinsville

By: Beverly Helton • USDA Rural Development



The Town of Collinsville, located in northeast Alabama, offers businesses high visibility because of the volume of traffic that flows through the town on Interstate 59, U.S. Highway 11 and Alabama Highway 68. To help Collinsville continue to grow and prosper, new, suitable properties were needed to attract small businesses. Access to affordable capital funding to construct a retail development was an obstacle for this small, rural community with a population just under 2,000.

How USDA Rural Development Helped

To help promote economic development within the towns and communities served by Sand Mountain Electric Cooperative (SMEC), the electric cooperative applied for and received a \$350,000 Rural Economic Development Loan from USDA Rural Development to establish a revolving loan fund. A \$350,000 loan from SMEC’s revolving loan fund was then made to the Redevelopment Authority of the Town of Collinsville to assist with the Creekside Plaza development. The Redevelopment Authority will repay the loan to SMEC’s revolving loan fund over a 10-year period. As the loan is repaid, these funds will be available to assist the other towns and communities within Sand Mountain Electric Cooperative’s service area.

A 6,000 square foot building was constructed and subdivided to accommodate four tenants. In addition, the Collinsville Redevelopment Authority applied for and received a \$100,000 Rural Business Enterprise Grant from USDA Rural Development to assist with this project.

Outcome

The entire space is occupied with three businesses: Subway, Wills Valley Family Medical Center and Don Chico’s Mexican restaurant. Creekside Plaza is located near a heavily traveled intersection on Main Street which provides travelers easy access and a broad customer base for the businesses. The Town of Collinsville will benefit from increased tax revenue generated by the two new restaurants. A total of 18 jobs were created as a result of this project. ■

Fast Facts

Program: Business Programs

Investment:

\$350,000 Rural Economic Development Loan

\$100,000 Rural Business Enterprise Grant

Partners: Sand Mountain Electric Cooperative; Town of Collinsville; Collinsville Downtown Redevelopment Authority; and USDA Rural Development

Congressional District: 4 – Aderholt

Demographics: Collinsville population 1,983

Impact: 18 new jobs created; 6 jobs saved

Contact: Beverly.Helton@al.usda.gov

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Alabama Department of Revenue Leading Push to Collect State and Local Sales and Use Tax from Online Sellers

By: Joe Garrett • ADOR Deputy Commissioner and
Christy Edwards • Assistant Attorney General • ADOR Assistant Counsel

Most of us have bought something online without paying sales tax. It may seem insignificant, but all those tax-free purchases add up. That uncollected tax reduces state and local revenue and, in turn, the government services made possible by that revenue. How much Alabama state and local revenue is lost through online sales? Estimates vary, but they are all large amounts – hundreds of millions annually – and growing. The tax burden on Alabama taxpayers is already among the lowest of the 50 states, so we can't afford to not collect the taxes that are owed. So what *can* be done? A question ADOR is always asking. Here's one answer.

Justice Kennedy Invites State Action

In the spring of 2015, the Supreme Court ruled on a case brought by Direct Marketing Association (DMA) challenging a Colorado reporting statute requiring online retailers to report purchases made by Colorado residents to the Colorado Department of Revenue so it could collect use tax from those customers.¹ The case was decided on a procedural issue in the taxpayer's favor which was not particularly noteworthy, but, a concurrence written by Justice Kennedy has sparked anticipation about a possible overruling of the high court's decades-old decision in *Quill v. North Dakota*.²

Quill is the landmark Supreme Court case limiting state and local governments' authority to force out-of-state online sellers to collect our sales and use taxes.³ Online sellers rely on *Quill* to sell tax-free across the country, depriving state and local governments of billions of dollars of tax revenue. These are tax dollars that are already owed, but go almost completely uncollected. It's estimated that more than \$200 million of Alabama state and local sales and use tax goes uncollected each year due to out-of-state sellers hiding behind the protections of *Quill*.

In his concurring opinion, Justice Kennedy criticized *Quill's* application in today's modern economy and questioned whether *Quill* was even correct when decided.⁴ He noted that *Quill's* physical presence standard has placed burdens on states that have resulted in "[harm

to the] States to a degree far greater than could have been anticipated earlier."⁵ In his concurring opinion, Kennedy invited the legal system to present an appropriate case to the Court to reexamine *Quill*. Justice Kennedy's opinion signaled to the states that the Court might be interested in taking another look at *Quill* in light of the fact that Congress has refused to act for decades.

While Congress has the power to overrule *Quill* and give state and local governments the power to require online sellers to collect tax, it has failed to do so. Each year legislation is introduced that would address this critical issue, but each year it fails to pass. A recent variation of the proposed legislation, known as the Market Place Fairness Act, passed the U.S. Senate but has since stalled in the House. Growing frustration with Congress, along with Justice Kennedy's encouragement, has led states to act on their own.

The Department of Revenue Responds

Shortly after the decision in *DMA* was released, people in the Alabama Department of Revenue, spurred to action by Commissioner Julie Magee and with the support of Governor Robert Bentley, began contemplating how best



to accept Justice Kennedy's invitation and what the Court would consider to be a case appropriate to reexamine *Quill*. Recognizing *Quill*'s long-standing precedent, ADOR determined that whatever the action taken, it should be reasonable in light of the amount of sales into the state. ADOR also acknowledged that fairness dictated that any requirement we placed on remote sellers to collect and remit sales and use tax should be prospective. Ultimately, after much thought and discussion, ADOR decided that an appropriate case to reexamine *Quill* would be one where the collection and filing requirement placed on remote sellers was easy to comply with. Not an easy task for a state with varying state sales tax rates and more than 450 taxing jurisdictions.

The Simplified Sellers Use Tax Statute

Meanwhile, a bill was introduced in the Alabama Legislature that would create a voluntary program known as the Simplified Sellers Use Tax Remittance Program (SSUT) that would allow eligible remote sellers who participate in the program to collect, report and remit a simplified sellers use tax in lieu of the state and local sales or use taxes that would otherwise be due.⁶ Regardless of where the sale closed in Alabama, participating sellers would collect one rate of tax, and then report and remit the tax by filing one return with the Department.⁷ The Department then distributes half

(4 percent) of the SSUT collections to local government, with half the local government distribution (2 percent) going to cities and the other half (2 percent) going to counties. Each distribution is made based on population.

The Simplified Sellers Use Tax Remittance Act was signed into law by Governor Bentley with an effective date of Oct. 1, 2015. It resulted from the cooperation of state, county and city representatives working with legislative leadership. The Alabama League of Municipalities and the Association of County Commissions could have resisted this legislation, fearing that it was taking away some portion of their taxing authority. Instead they worked to pass it, having the foresight to understand it could help create access to a large, untapped revenue source.

The Remote Seller Nexus Rule

Since the *Quill* decision in 1992, ADOR has not enforced several provisions of Alabama law that required remote sellers to collect our tax.⁸ *Quill* was federal law standing in the way, but the passage of the Simplified Sellers Use Tax Program, combined with Justice Kennedy's invitation, was enough encouragement for ADOR to act through its regulatory authority.

Shortly after the passage of the SSUT, ADOR promulgated Ala. Admin. Rule No. 810-6-2-.90.03. This rule, which became effective for sales made beginning Jan.



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1, 2016, requires remote sellers with substantial sales (more than \$250,000) to Alabama customers to collect and remit tax on those sales, regardless of whether the seller has a physical presence in the state.⁹ Instead of collecting and remitting tax through the regular Alabama state and local sales and use tax system, remote sellers are given the option to participate in the SSUT system, allowing them to collect the Alabama simplified sellers use tax of 8 percent, to file one return reporting the tax, and to keep a percentage of collections as compensation for compliance.¹⁰

The Results – NewEgg, Amazon and the Success of the SSUT Program

A little more than a year after ADOR began this effort, we are starting to see results. More than 50 remote sellers have come forward to collect our taxes through the SSUT system. We are now collecting over half a million dollars of revenue each month, an amount that is steadily growing. Most importantly, Amazon.com, the largest online seller in the country, has agreed to start collecting our tax (state and local) in November – just in time for the Christmas shopping season and the biggest two sales tax months of the year. Amazon is *huge*, alone representing almost half of all online sales.

On the other end of the online seller spectrum, NewEgg decided to fight ADOR’s online seller nexus rule rather than to collect our taxes. The company recently filed an appeal with the Alabama Tax Tribunal, beginning litigation that could take us all the way to the U.S. Supreme Court. ADOR hopes that this will be the case Justice Kennedy requested, the case that will give the Supreme Court an opportunity to overturn *Quill* and free the states to collect the taxes they are owed.

Stay tuned. ■

Endnotes

- ¹ *Direct Marketing Ass’n*, 135 S. Ct. 1124.
- ² *Id.* at 1134-1135 (Kennedy, J., concurring).
- ³ 504 U.S. 298 (1992).
- ⁴ *Id.*
- ⁵ *Id.* at 1135.
- ⁶ See Simplified Sellers Use Tax Remittance Act codified at *Code of Ala. 1975*, §§40-23-191 through 40-23-199.
- ⁷ *Id.*
- ⁸ See *Code of Ala. 1975*, §40-23-66, *et. seq.*
- ⁹ Ala. Admin. Rule No. 810-6-2-.90.03.
- ¹⁰ *Id.*

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government officials simply leave business development discussions and economic development planning to those “who know better.” But, she says:

“As community leaders, however, there is likely *no one* who knows a community better than its local elected officials. City and village mayors, council members, and trustees are in an ideal position to promote economic development in their community.

“A strong community requires interaction and collaborative discussions among groups – most importantly between business leaders and local government leaders.”

She recommends the development of a “Community 101 Toolkit” of resources that are critical to community involvement and decision-making. “A community’s Toolkit should include demographic information, geographic highlights, economic information and trends, local government costs and impacts on taxpayers, and information on local businesses and employment. But, in reality, the toolkit can provide much more. Published for the benefit of local community members, this information can identify the *roles and functions* of government, business, not-for-profit and community support groups. Once community members understand the value of the contributions these groups make to the quality of life in a community, they will perhaps better appreciate efforts to preserve those community “institutions.”

I thank Ms. Smith for permission to use her article. She goes on to point out that there are two important reasons why Economic Development should begin with support for a strong community, both in and out of the business district.

While good business development is largely based on aggressive efforts to reach out to new partners, *effective* development requires that equal attention be paid to “retention.” Current relationships and institutions should not be taken for granted. Furthermore, the benefit of supporting existing businesses is two-fold. First, a thriving business community is a “*welcome sign*” to other potential investors. Second, “quality of life” is not just an abstract philosophical discussion. In today’s world, it’s a critical commodity that can determine whether a growth-oriented employer chooses to locate in your community. Corporate leaders know they can’t attract top-quality personnel to want to live and work in depressed environments.

Going One Step Further

Not only should “Community 101” information be extended to community members to encourage support for businesses and preserve quality of life, but community

leaders can further support economic development by thinking beyond their own borders.

Many local governments utilize a website as an informational resource for residents, like a dynamic community newsletter. Corporations seeking expansion, or “headhunting” business locator firms are also going to utilize your website as an informational resource. What does it say to them?

A strong community, one with a clear sense of core values and how to preserve them, will attract these individuals. The “Community 101” information will be valuable to “outsiders” looking in. In addition, critical information included on your local government website can do much to captivate these potential investors, giving you a distinct advantage over other locations.

Be Open for Business

When campaigning for new investment, local officials need to be able to show that the infrastructure *necessary to support development* is already in place or is demonstrably planned. Anything short implies to potential developers insecurity, risk, and high cost. Communities must engage in a proactive approach.

Communities cannot stop there, however. Communicating this preparedness is equally important. Community **websites** should have an “Open for Business” tab or section, which clearly describes, point by point, why investors should “look here first.”

- Information about your community should include:
Infrastructure framework: high speed internet, water and sewer systems (including plant capacities), area transportation systems;
- Proximity to transportation hubs, metropolitan centers;
- Accessibility to health care, arts / entertainment, amenities;
- General tax info;
- Available support agencies, such as an IDA, Chamber of Commerce, etc.;
- References to incentives currently in place;
- Database of currently available properties with acreage, existing infrastructure, etc.; and
- Key contacts for further info.

continued on page 22

Alabama Economy Online – A Free Retail Development Tool for Communities and Businesses

By: Arben Skivjani • Economic Forecaster • The University of Alabama Center for Business and Economic Research

Understanding the economic and fiscal impacts of an investment is crucial for all stakeholders. The investor desires to know whether it has chosen the right location to commit to the investment and state and local government entities that are providing the incentives or tax abatements are also eager to know or estimate their return on investment, both in short and long term. Community leaders also must understand the impact that a specific project will have on their community, even more so, if their local government is willing to provide any incentive to attract the investment.

Alabama Economy Online – A Free Service

With the above issues in mind, the Center for Business and Economic Research (CBER) at the University of Alabama has developed an economic development tool, Alabama Economy Online (AEO), and has made it available free of charge at www.alabamaeconomyonline.ua.edu, thanks to financial support from the Office of the President at the University of Alabama.

Since its debut, AEO has become a one-stop-shop for a number of government agencies, economic developers and private entities. The website is divided into two sections: Socioeconomic Profiles and the Impact Calculators. As its name implies, the Socioeconomic Profiles section provides socioeconomic data on Alabama and its 67 counties, such as data on demographics (population, housing, per capita income and education attainment), education, workforce (labor force activity, community patterns, workforce report), industry (employment and industry, job creation and net job flows), occupations (high-demand and high-earning occupations), as well as a number of useful maps.

Besides the socioeconomic profiles, AEO also provides two impact calculators. By selecting a county or a metro area and an industry, as well as providing total jobs and the total payroll of an investment, one can instantly obtain the economic and fiscal impact of an investment, such as its total employment impact, earnings impact, gross business sales, contribution to gross domestic product, sales and property taxes, and the present value of taxes (over 10 and 20 years). The CBER team is continuously in the process of expanding the calculator and all updates and changes are always available online as soon as they are completed.

Should you have any question regarding this useful online economic development tool, please contact Arben Skivjani at askivjani@cba.ua.edu or call at 205-348-9698. ■

Alabama Economy Online

Impact Calculator

Service provided by THE UNIVERSITY OF ALABAMA THE CAPSTONE OF HIGHER EDUCATION and CULVERHOUSE COLLEGE OF COMMERCE. Developed and maintained by CBER Center for Business and Economic Research.

County: Please Select
 Industry: Please Make a Selection
 Total Jobs:
 Total Payroll: Calculate

Direct Employment (Jobs)	0
Indirect Employment (Jobs)	0
Employment Impact (Jobs)	0
Direct Earnings (Wages and Salaries)	\$0
Indirect Earnings (Wages and Salaries)	\$0
Earnings Impact	\$0
Direct Jobs Average Earnings	\$0
Indirect Jobs Average Earnings	\$0
Gross Business Sales	\$0
Contribution to Gross Domestic Product	\$0
Local (County and City) Sales Tax	\$0
Local (County and City) Property Tax	\$0
Local (County and City) Total Tax Revenues	\$0
Present Value of Local Tax (over 10 years)	\$0
Present Value of Local Tax (over 20 years)	\$0

DISCLAIMER: This economic impact estimator uses average data for the county as a whole and therefore does not consider differences among communities in wages, tax rates, etc. For further information, please contact the Center for Business and Economic Research at The University of Alabama.

Alabama Economy Online Socioeconomic Profiles

Service provided by THE UNIVERSITY OF ALABAMA THE CAPSTONE OF HIGHER EDUCATION and CULVERHOUSE COLLEGE OF COMMERCE. Developed and Maintained by CBER Center for Business and Economic Research.

Select area: Select

State of Alabama QuickFacts

- Population: 4,822,023
- Density: 94.65 persons per square mile
- Real GDP: \$157,272 (million)
- Nonfarm employment: 1,756,828
- Private nonfarm establishments: 97,743
- Per capita income: \$34,880
- High school graduate or higher, age 25+: 81.9 %
- Housing units: 2,182,088
- Homeownership rate: 70.7%

County: Montgomery
 County Seat: Montgomery
 Population: 230,149
 Real GDP: \$11,024 (million)
 Employment: 123,340
 High school graduate or higher, age 25+: 84.0%
 Total housing units: 107,468
 Per capita income: \$39,614

This service provides profiles of the State of Alabama and its counties and covers relevant socioeconomic information.

Since 1980, CBER has produced forecasts of economic activity in Alabama covering Gross Domestic Product, employment and income by industry group that are published in the annual Alabama Economic Outlook. Forecast updates are run quarterly. For more information, visit www.cber.cba.ua.edu.

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Municipal Overview continued from page 20

These are just a few of the critical pieces of information that should be readily available to prospective developers and businesses.

Officials who are unsure about what information to include on their website should consider adopting the perspective of a “skeptical” prospective business owner. Additionally, local officials should consider meeting with business leaders to gain their perspective regarding what would attract businesses to the community. What types of new businesses would enhance those businesses already in the community as well as enhancing the community as a whole? Should specific businesses be targeted? Should special incentives be created to attract and retain businesses? The discussion can become the beginning of a Community Economic Development Plan, or a larger Comprehensive Plan (or Update).

At the very least, the communication should be the first of many insightful discussions between local government and business. Once your business community understands your efforts to support them, you will have taken bold steps

to bridge any gap between the public and private sector. As a result, you will strengthen your entire community’s appreciation for their local government.

Conclusion

Local leaders must be able to demonstrate to citizens the need to support their local businesses, to shop in the community and develop relationships with retailers. The jobs and tax and license revenue these businesses produce is crucial to the strength of our municipalities. While Ellie Walker and her pharmacy are not the sole focus of a community’s economic and retail development, she – and the many other small business owners working in our communities – must remain part of the effort. It’s no longer enough to recruit development, you must work to keep them.

Through strong, proactive efforts by leaders who focus on core values as well as the outward trappings of recruitment, local businesses will continue to thrive and grow and our municipalities, as well as the quality of life for our citizens, will be improved as a result. ■

Millport Town Clerk Lynnette Ogden Inducted as Athenian Fellow During 70th IIMC Conference

The Athenian Leadership Society is an international Academy for and of municipal clerks established in 2005 to recognize and honor municipal clerks who seek personal and professional improvements as an Athenian leader in their profession. The highest achievement for society members is to be inducted as a Fellow with all rights, privileges and recognition bestowed by the International Institute of Municipal Clerks (IIMC)

Millport Town Clerk Lynnette Ogden completed 10 eight-hour courses while attending IIMC conferences to fulfill the requirements to become an Athenian Fellow. She is the first African-American of the 10,000 IIMC membership to attain this status. She has also completed her three-year term on the IIMC Region III Board of Directors. Ogden was the 2005 Clerk of the Year for the State of Alabama, 2010 President of the Alabama Association of Municipal Clerks and will become Chair of the IIMC Conference Committee at the 2017 Conference in Montreal, Canada. ■



Pictured: Millport Town Clerk Lynnette Ogden (right) with Monica Martinez, President, IIMC)

Birmingham's Lee Frazier Named 2016 Clerk of the Year

By Lisa A. Hanks • MMC • City Clerk of Fairhope

The Alabama Association of Municipal Clerks and Administrators (AAMCA) named Lee Frazier the 2016 Clerk of the Year during its Summer Conference held in Montgomery on June 23, 2016.

Lee was born and raised in Enterprise, Alabama. After graduating from Enterprise High School, he received an athletic scholarship to Samford University. Upon graduating with a Bachelor of Science Degree in Public Administration, Lee began his career in municipal service as the City Clerk of Brighton in 1993. In 1998, he was appointed by the City of Birmingham as its first ever Deputy City Clerk. While working for Birmingham as Deputy City Clerk, Lee began moonlighting as co-host of a weekly radio talk show on 1400 WJLD, "The Relationship Show," which opened the door for his return to his alma mater, Samford University, assuming duties on the Samford Broadcast Network as a Radio and Television Color Analyst for Samford's Division IAA football team.



Lee was promoted to the position of City Clerk of the City of Birmingham in 2011 where he manages and coordinates the state's largest municipal elections process and serves as Secretary to a multitude of City Boards and Agencies ranging from the Land Bank Authority to the Historical Preservation Authority. He is the current Treasurer of the Alabama Association of Municipal Clerks and Administrators; has served as Treasurer of the Jefferson County Clerk's Association since 2014; and also served as President in 2007 and Secretary in 2003 of the Jefferson County Clerk's Association.

Because of his commitment to adding value to the city and his profession, Lee has earned a Juris Doctor from Miles Law School as well as both his CMC (Certified Municipal Clerk) and MMC (Master Municipal Clerk) designations during his tenure in municipal service. He is currently only three courses away from receiving his CERA certification (Certified Elections/Records Administrator) from the Elections Center.

Lee periodically leads workshops on Parliamentary Procedure, elections and technology issues for his state and local clerk associations. He is also the creator of the State Association's website and current logo as well as the webmaster for the site.

Lee was selected from nominees from six of the 14 statewide districts. The following clerks were nominated and represented their districts: District III - Amanda Traywick, City of Helena; District IV, Shane Smith, City of Heflin; District VIII, Victoria Southern, City of Foley; District XI, Tania Wilcox, City of Hanceville; District XII, Tony Willis, City of Arab; and District XIII, Lee Frazier, City of Birmingham. ■



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ACE Strategies to Support and Encourage Retail Development

By: Sidney Hoover • Executive Director • Alabama Communities of Excellence

The Alabama Communities of Excellence (ACE) program promotes a broad based definition of community that encourages towns to embrace all aspects of development including leadership, planning, economic development, and quality of life. We believe that this comprehensive approach creates the best opportunities for communities to achieve long-term economic growth and provide its citizens with a good quality of life. The ACE program offers a systematic approach with the necessary technical resources and tools designed to help smaller Alabama cities (populations of 2,000 to 18,000) promote growth and prosperity by focusing on their unique assets and resources. Regardless of population, however, retail development is an important part of economic development and can play a key role in having a well-rounded community that is attractive to residents, visitors and investors.

Why is retail development important?

On the surface, this probably seems like a pointless question, but the answer has several aspects that might be worth exploring briefly.

Grows the tax base. Of course there is the increase in your sales tax revenue and possibly in your property tax base. This is important because these tax revenues provide funding for essential services and for community projects. ACE emphasizes that quality of life amenities such as ball fields, parks, public buildings, etc. are also important aspects of a successful community.

Provides local jobs. Retail businesses are also employers, and provide local jobs; jobs that will very likely be filled by local residents. This is worth considering given the cumulative economic impact of small business. Do an internet search on the “economic impact of small business” and you will find multiple articles espousing their value and making statements that small businesses: drive the U.S. economy; fueled the recovery from the great recession; are job creators; provide 60 to 80 percent of all U.S. jobs; and so on. Major employers certainly play an important role in economic development, but small towns should also recognize and value the role that their small businesses play in the local economy.

Creates a vibrant community. It is vital to recognize that having a healthy retail business base helps keeps your town vibrant, dare I say relevant to your local residents. There is definitely a convenience factor to being able to shop “at home” rather than having to travel to a nearby (or sometimes not so nearby) community to make your routine purchases. Plus, if

your town has an historic downtown, then an active retail and commercial downtown business base can be crucial to maintaining the integrity of that downtown area.

Retail Development Strategies

Here are several strategies that various ACE communities have effectively employed to support retail development:

Buy Local Campaigns. “Buy Local Campaigns” are a common approach that ACE communities use to boost local retail sales. Typically, this involves a sympathetic appeal to citizens to demonstrate hometown loyalty by spending their money at home rather than supporting someone else’s tax base. Sometimes the campaign focuses on a single community, and other times it is a county-based campaign.

Make it attractive, safe, convenient. Many of our ACE communities recognize the value of retail venues with pretty streetscapes, convenient parking, and walkable access from local neighborhoods. People want to feel safe and enjoy attractive surroundings while they shop. However, most communities have limited resources, so setting priorities for improvements can be challenging.

ACE advocates that communities maintain both a short-term strategic plan and a long-term comprehensive plan to help guide their decisions. Because these plans are developed with broad-based community input, they reflect the consensus views of both citizens and businesses, and offer an objective basis for determining priorities. For instance, flower beds are lovely, but if your goal is to encourage evening activities at your retail locations, providing adequate lighting would be crucial.

Throw a party! Many of our ACE communities are very creative and effective at using festivals, celebrations, holiday parades, craft shows, sporting events, and all sorts of special activities to bring people into their community. These events are not only fun and festive, they attract both local residents and visitors. And yes, there definitely is a link between retail sales and tourism.

Consider home-grown. Another tactic is to encourage home-grown business. It may be easier grow businesses with people who already live in your community, know its value, and have a vested interest in making improvements. Think about supporting the creation and success of these businesses the same way you might consider recruiting from the outside. For example, incubator space need not be elaborate, and could be as accessible as renovating an abandoned building that has been sitting vacant for several years. The entrepreneurial spirit is alive and well, and it often lives and thrives in small towns.

Recruiting Tips

Set realistic recruiting targets. The reality is that businesses locate where they believe that they can be profitable, and generally they have a very clear idea of what is needed to achieve that goal. It may sound harsh, but the business doesn't really care how much your community wants a movie theatre, steak house, or department store. If your community's demographic profile doesn't fit their business model, then you need to understand that your chances of luring them into your town are pretty slim.

Retail demographic data and its analysis are beyond both the scope of this article, and my personal expertise. Location criteria vary based not only on industry standards, but also on that individual firm's target market demographics, which can be extremely detailed and specific. One possible method for gaining some general understanding about appropriate retail targets for your community is to look at what businesses have chosen to locate in towns with demographics similar to yours.

Another consideration when selecting targets is to avoid cannibalizing your existing businesses. As an example, recruiting a big box store might not necessarily be the overall best choice for your community, if it results in destroying your local hardware, grocery, and drug stores, especially if you have heavily incentivized that recruitment. You may want to consider seeking advice from technical experts and professional retail recruiting consultants about how to realistically evaluate your town's retail recruiting prospects.

Be prepared. Before you begin recruiting, be sure that you already have answers to their most likely questions about your community and that those are answers readily accessible. In today's high-tech world, both retail and industrial development prospects complete much of their site selection work on-line long before you or anyone else is even aware that there is a project. Make it easy for prospects to find out about your community by posting demographic data on your website, along with all your recruiting materials.

If you are prepared to incentivize retail recruitment, decide in advance what incentives you will provide and set the qualifying criteria. Offering incentives can be an effective way to attract retail business, but it is also important to carefully evaluate the "cost" of the incentive package against the "value" the business will bring to the community. This is an area where it may be in your community's best interest to work with an expert who can help weigh and balance these considerations.

Name a point person to facilitate. Whether you are talking about retail, commercial or industrial recruiting, towns with a business friendly environment will be more competitive. One of the most frustrating obstacles for developers is not knowing how to navigate the bureaucracy to get things accomplished effectively. If you provide the developer with a single point of contact who can help negotiate the complexities of your local, county and state licensing, taxing, permitting, etc. processes, then you have provided them a valuable service. One that they will appreciate and are likely remember when they have to locate their next project/business.

Conclusion

Retail development is just one aspect of a successful community. ACE believes that leveraging your community's unique assets and resources is the best approach to achieving prosperity and sustainable growth. At its core, ACE principles include the active involvement by community stakeholders across a broad demographic spectrum coupled with development of local leaders and leadership capacity and an emphasis on the importance of developing and implementing short and long-term plans to further the realization of the municipality's vision. ■

Since 2002, ACE has been providing technical services and assistance Alabama's smaller communities with populations from 2,000 to 18,000. The "Alabama Community of Excellence" designation has been earned by 32 communities and another 6 are working toward achieving that designation. If you are interested in learning more about ACE and the competitive application process used to select communities for the 2017 ACE class, please join us at the ACE Application Workshop to be hosted by University of West Alabama on the afternoon of November 18, 2016 in Livingston, Alabama. Visit our website www.alabamacommunitiesofexcellence.org for additional information about the ACE program and details about how to register for the workshop.



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Retail Development from a Main Street Perspective

By: Mary M. Helmer • CSM • State Coordinator • Main Street Alabama

The economic landscape of traditional downtown and neighborhood commercial districts has changed dramatically over the years. We no longer shop in a 30-mile radius from home – the federal highway system changed that years ago. Add in the Internet and things will never be what they were in the 1950s and '60s. The additional challenges of expanding retail competition, evolving technologies and changing lifestyle trends continue to affect business opportunities as well as the way of life in our traditional downtown business districts.

The standard answer to these challenges is a retail study or market analysis that measures the leakage and surplus within a specified trade area. Leakage represents a condition where supply is less than demand. Retailers outside of the trade area are fulfilling demand for retail products. Surplus within a specified trade area represents a condition where supply exceeds demand. Thus, retailers are attracting customers that reside outside the trade area. Seems simple enough, right? If there is leakage you should be able to recruit new businesses and capture those sales. But traditional downtown business districts are different animals when it comes to retail development. When you work on downtown development you must consider the following:

- Identify and prioritize market opportunities for both existing and new businesses
- Strengthen existing businesses before recruiting new ones
- Fill vacancies with complimentary businesses
- Assemble incentives and capital to move projects forward
- Develop underutilized space in the district, not every retailer needs 5000+ square feet
- Establish and maintain an entrepreneurial environment in the downtown district

Main Street Alabama provides our designated communities with a market analysis to promote an in-depth understanding of local and regional market

conditions and trends impacting that specific community's economic performance and opportunities for the future in the downtown district. Information and direction gained



Monroeville Main Street is working recruit retail businesses to their former bank building located on its square. The top photo is how the building currently looks and the bottom is the prosed improvements suggested via the resource team strategic plan.

throughout the study process provides a sound basis for local decision-making and strategies aimed at further enhancing their traditional downtown business district. The analysis summarizes key strategies for downtown economic development and enhancement initiatives based on an extensive review of background information and current market data; input provided via consumer and business surveys; and direction and leadership provided by the local Main Street leaders and volunteers. The process is coordinated to:

- Engage community and downtown stakeholders in an exploration of the market area and possibilities for the future of downtown
- Identify conditions that are impacting the downtown district's economic performance
- Profile the downtown trade area's retail performance and the demographic and lifestyle characteristics of prevalent consumer market segments
- Identify population and market trends in relation to potential business development and marketing strategies

- Identify potential downtown business development opportunities and related business retention, expansion and recruitment strategies
- Assess potential demand for downtown housing rehabilitation and development opportunities

The real work begins after the market analysis is completed! The local Main Street team, with the continued assistance of Main Street Alabama, will begin working with existing businesses to determine where the leakage in the market could be complimented by their product offerings, or perhaps add to what they currently provide if it compliments their business model. Recruited businesses such as franchises, look for a successful market to locate in, so spending time strengthening the existing businesses pays off in a great way! ■

For more information about Main Street Alabama go to www.mainstreetalabama.org or contact Mary at 205.910.8819

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Structuring and Incentivizing Commercial Development: A Framework for Bringing Vision to Reality

By: Alex Flachsbart • Associate • Balch & Bingham LLP

At the state level, economic development has traditionally focused on attracting and retaining industry. Volumes of literature and dozens of hours at conferences were (and still are) dedicated towards training state and local officials on how to land the next Mercedes. Over the last several years, however, Alabama's economic development community has begun to focus more and more of its attention on attracting and retaining commercial development.

Commercial development doesn't just provide jobs – it provides a new stream of tax revenue and an improved quality of life for local residents. Having a commercial development strategy means that your constituents can buy fresh produce at a great grocery store and dine out at new restaurants. In addition, a thriving downtown with every storefront filled is one of the best tools for industrial recruitment that your town can possess.

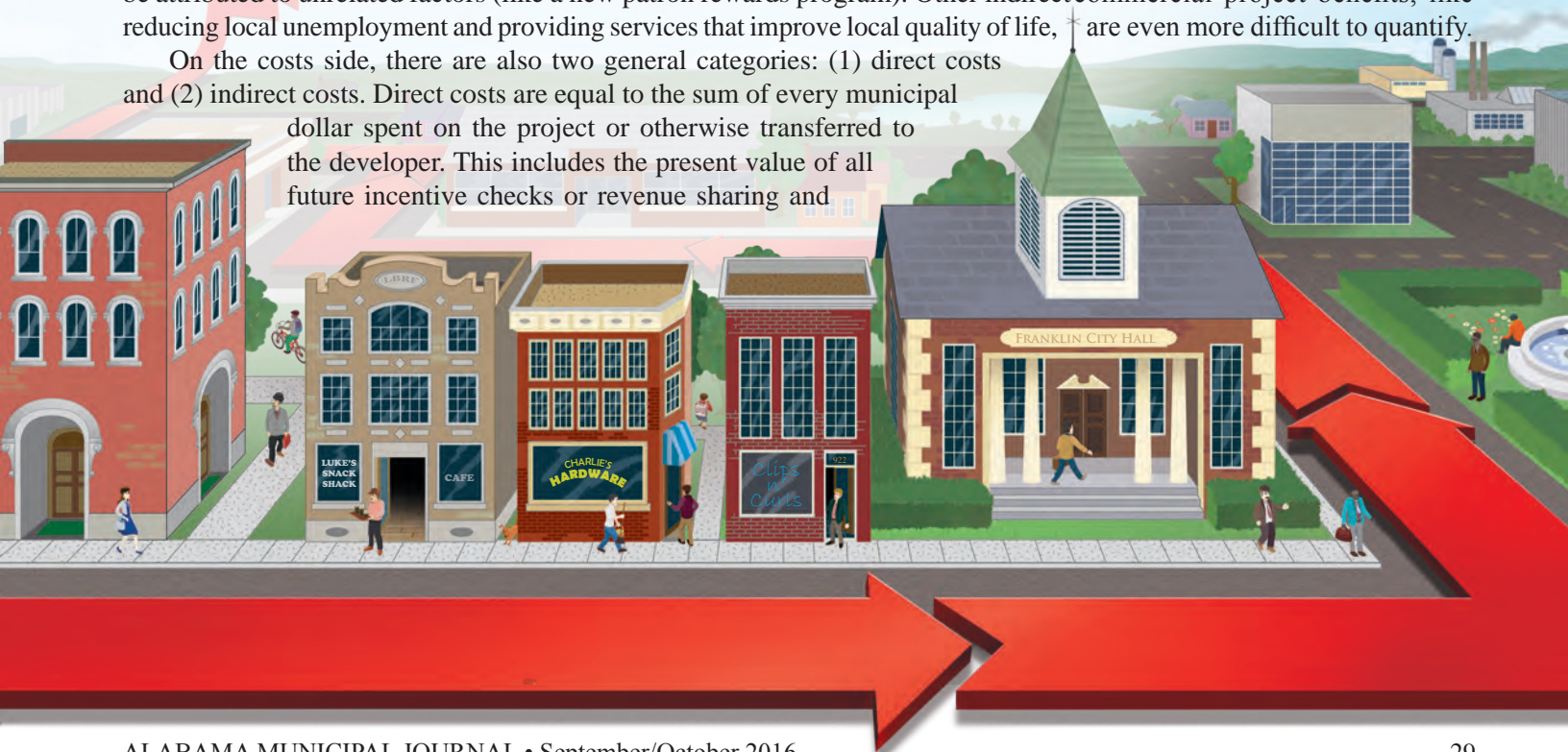
This article shares a framework that can help your community turn its commercial vision into a reality. It begins by spelling out how to perform the cost-benefit analysis necessary to set the appropriate incentive level for each project. It goes on to explain how to use Amendment 772 and state law to structure the best mix of incentives in any given transaction. Finally, it concludes with a few thoughts about guarding against the inherent risk involved in using public funds to provide commercial incentives.

A Framework for Setting Proper Incentives

Setting the proper level of public assistance for a project requires two inputs: How much are you getting as a community, and how much are you giving up in return? This sounds simple, but calculating the costs and benefits of a project requires you to sum *every public resource* that flows to a project – and every community benefit that flows from it – for the entire life of the project.

On the community benefits side of the equation, there are two general categories: (1) direct benefits from increased sales, property, lodging and other tax revenues from the project, and (2) indirect benefits from increased revenue growth at existing stores and other intangibles. Indirect benefits can be difficult to quantify. For example, if sales at a coffee shop located next to an incentivized commercial development spike, it could be attributed to the development, but it could also be attributed to unrelated factors (like a new patron rewards program). Other indirect commercial project benefits, like reducing local unemployment and providing services that improve local quality of life, are even more difficult to quantify.

On the costs side, there are also two general categories: (1) direct costs and (2) indirect costs. Direct costs are equal to the sum of every municipal dollar spent on the project or otherwise transferred to the developer. This includes the present value of all future incentive checks or revenue sharing and



any payments on debt used to finance incentives. Indirect costs are equal to the sum total of tax revenue lost from existing businesses because consumers are shopping at the new development (called “cannibalization”) and extra costs associated with providing services (like sewer service or emergency response) to the new development.

Indirect costs and benefits are difficult to calculate. Because of this, projects frequently receive incentives based solely on estimates of *direct* benefits and costs. However, even if indirect costs and benefits cannot be estimated with any precision, they should (at the very least) be a factor in deciding the next step of the incentives framework: whether your city wants to put its credit on the line for a particular project.

By guaranteeing a developer’s debt or issuing general obligation (“GO”) bonds payable from general municipal revenues to provide project incentives, a city places itself at risk if the project fails – in other words, it steps “into the chain” of credit. By issuing project-backed revenue bonds or sharing revenues derived only from the project, the city bears no risk for project failure – in other words, it remains “out of the chain” of credit. So, how do you decide whether to step in or stay out? Simple: know the *net benefit* of the project, and know the probability that the development will meet its revenue projections.

The *net benefit* of a project is the difference between total benefit (including intangibles like community benefit from the retailer) and total cost (including an estimate for cannibalization). If the net benefit is extremely high but the probability of success is low, the project is worth incentivizing, but it may not make sense to step into the chain of credit. Calculating the probability of success involves taking hard look at the developer’s track record and the numbers they are projecting. If there is a good chance that the tax receipts the developer has promised may not materialize, providing them with free land or a municipal guarantee might not be the best approach.

By the same token, it may not be worth entering the chain of credit for a particular project even if the probability of success is through the roof. Imagine, for example, a shopping center developer who asks for a city guarantee on the loan she plans to take out to build the project. The center includes a high-end grocery store that will generate huge volumes of sales tax revenue and is a slam dunk to succeed because of its brand recognition. However, most of those sales will come at the expense of two other local grocery stores. On the indirect benefits side, having access to that brand name will increase quality of life for local citizens. On the indirect costs side, the other stores may have to lay off employees or shut down altogether, and cannibalization of existing grocery sales will take a big bite out of net tax collections. In this scenario, the development may be worth incentivizing, but

the net benefit is so low that, even with the strong probability of success, the city should minimize risk to its own credit. Instead, the city could counter by offering a revenue sharing agreement that keeps the city out of the chain of credit (and avoids the cannibalization problem through a mechanism discussed later).

The Primary Mechanism: Amendment 772

When it comes to providing commercial incentives, Section 94.01 of the Alabama Constitution of 1901 (more commonly referred to as “Amendment 772”) is the howitzer in your municipal arsenal. Amendment 772 gives cities and counties four broad “economic development” powers: (1) buying and building on land for the benefit of private parties; (2) conveying land to private parties; (3) granting public funds or credit directly to private parties; and (4) incurring debt to do any of the foregoing. Cities have taken these broad powers and used them to provide the project incentives summarized in the table to the right. While this list is not all-inclusive, it does contain the most common uses for Amendment 772 in the commercial development context.

The biggest caveat to using Amendment 772 involves pre-existing constitutional amendments related to local economic development. For example, the Town of Lester has Amendment 244, which enumerates nine separate economic development-related powers, most of which track Amendment 772 exactly. However, Amendment 244 requires the town’s electorate to approve any economic development-related project before undertaking it. Can Lester rely on its Amendment 772 powers (which do *not* require voter approval) without regard to its Amendment 244 powers (which *do* require voter approval)?

Some say no – after all, Amendment 772 only applies to cities and counties “for which a local constitutional amendment has not been adopted authorizing the use of” the powers described above. Others say yes – after all, Amendment 772 “may be exercised as an alternative to, or cumulative with, and in no way restrictive of, powers otherwise granted by law” to cities and counties. Without definitive guidance from the courts or the attorney general on this question, it remains anyone’s guess as to what the Legislature intended by writing these contradictory statements into Amendment 772. If practice is any indication, a number of municipalities across the state have relied on Amendment 772 when local amendments conveyed the same powers. Suffice it to say that, before engaging in commercial development, you should consult your city attorney to determine what powers you currently have under state law and whether those can be exercised as supplements to (or in place of) Amendment 772.

Other Ways to Provide Project Assistance

Amendment 772 fixes a problem created by another provision of the Constitution of 1901. That provision (Section

The Primary Mechanism: Amendment 772

Incentive	Description
<i>Site Acquisition</i>	Cities can spend public money to buy land to create sites for “industry of any kind.” Presumably, “industry of any kind” includes retail, and historical practice by municipalities around the state indicates it does. If they lack the cash up front, cities can issue debt to finance the acquisition (using the Amendment 772 bond issuance rules described below).
<i>Site Improvements</i>	Cities can make improvements to municipal land on behalf of “industry of any kind” (including, presumably, retail). As above, cities can issue debt using the special Amendment 772 rules to finance the improvements.
<i>Conveyances</i>	Cities can lease, gift, sell or otherwise convey property to private parties for less than fair market value. The incentive is the difference between FMV and the sale price (or rental amount).
<i>Guarantees</i>	Cities can guarantee private loans. These can be guarantees on anything from construction loans to permanent financing. Guarantees can be conditional – e.g., only guaranteeing up to a certain payment amount or only triggered if a project meets certain job or revenue thresholds.
<i>Loans</i>	Amendment 772 permits two different kinds of private loans. The first is a conduit loan, wherein a city, one of its authorities or a district issues debt and then loans the proceeds to the developer. The developer then pays the bondholders back directly from project revenues. The second involves the city making a direct loan to a developer (which can be forgivable – see “Incentive Payments” below).
<i>Tax Rebates</i>	Though probably authorized by Amendment 772, certain attorney general opinions make the use of this incentive questionable at best. Incentive payments (discussed below) can be drafted to mimic tax rebates and should be used to achieve the same effect.
<i>Incentive Payments</i>	Cities can make lump-sum cash payments to developers that correlate to project success. These can be used to help a developer meet expenses before the project starts generating revenue and can be tied to certain construction milestones (like substantial completion). If structured properly, they can provide effective tax rebates. Because of the inherent risk in funding a project before it starts generating revenue, these are sometimes structured as loans that become forgivable after the development hits certain revenue or job creation targets. This structure allows the city to take a security interest in projects (which can be helpful if the project goes bankrupt).
<i>Revenue Sharing</i>	Revenue sharing is a specialized form of incentive payment. Revenue sharing allows cities to share <i>any</i> non-earmarked revenues (property taxes, sales taxes, fees, and more) with a developer irrespective of whether those revenues came from the incentivized project. These must be structured carefully to avoid certain issues raised in attorney general opinions on Amendment 772.
<i>Incurring Debt</i>	<p>If a city needs extra cash to provide any of the incentives discussed above, it can borrow to do so. This borrowing can be on a <i>general obligation</i> basis, meaning it will be repaid from generally available municipal revenues. Alternatively, the borrowing can be repaid from tax collections or lease payments from the <i>project only</i>. In either case, debt issued for Amendment 772 purposes cannot exceed 50% of the assessed tax value of land within the city.</p> <p>Broadly stated, bonds issued to fund incentives will be tax-exempt (which helps save on project costs) if they are (i) general obligations or (ii) designed to make some kind of public improvement (like roads or sewers). Otherwise, such bonds will likely be taxable.</p>

94) prevents cities, towns and other subdivisions from granting public funds to private parties. However, Section 94 does not prevent public corporations like redevelopment authorities, industrial development boards and improvement districts from providing those same incentives. The most common forms of “public entity” involvement in commercial development are summarized below.

Capital Improvement Cooperative Districts. Capital improvement cooperative districts (“CICDs”) are a means to coordinate development between multiple public bodies. A CICD is an independent district formed by two or more public entities to undertake any project that at least one member has the power to undertake. Critically, CICDs can raise their own funding by charging a fee for use of their projects. This fee mimics a sales or use tax on all transactions undertaken at the project site. The fee can be set at any “reasonable” level, but if a fee is set too high, it could cause local residents to shop elsewhere. All or a portion of this fee can be shared with a project developer or used to fund project costs.

CICDs can lease their projects to private parties and act as a “conduit issuer” on behalf of developers. This means that a CICD can issue bonds, loan the proceeds to a developer, and have the developer pay the bondholders back out of project revenues (so that the CICD is not responsible for the debt). However, CICDs can only sell property they own to other public entities under most circumstances, and can only do so after getting an authorizing resolution from each public entity that created the CICD.

Improvement Districts. Improvement districts are typically used to provide public infrastructure – roads, water, sewer, parks, parking, and even security devices – to large developments. The improvements are financed by tax-exempt bonds issued by the improvement district, which are payable from special property taxes assessed against the properties that benefit from the improvements.

Redevelopment Authorities. Redevelopment authorities (“RAs”) coordinate downtown redevelopment. They can commission and enact downtown redevelopment plans (which can include anything from façade improvements to buying and renovating buildings), borrow money to finance those plans, and make loans to private parties to facilitate downtown revitalization. Many RAs operate revolving loan funds that provide downtown businesses with working capital for expansions or improvements to their property. Unlike CICDs, RAs have no ability to tax or impose special fees and are thus dependent on revenue from their projects, grant funding, or any money shared by their host city.

Commercial Development Authorities. Commercial development authorities typically act as clearinghouses or

“one-stop shops” for commercial development. They can maintain an inventory of available commercial property and develop, sell or lease commercial property without being subject to competitive bidding requirements.

Tax Increment Districts. Tax increment districts are not “districts” in the traditional sense; they have no governance and do not take on projects independently. Instead, they exist to create a mechanism (called “tax increment financing”) that can provide funding for city projects. Tax increment districts are typically “blighted or economically distressed” areas designated by a city or county for revitalization. The city creates a revitalization plan for the district, which can include anything from land clearance and public infrastructure improvements to private developer incentives. In theory, executing that plan should improve property values in the district, and the statute takes the extra (or “incremental”) property tax collections resulting from those property value increases and places them into a special “tax increment fund.” That fund can be used for any purpose associated with the revitalization plan, but is typically used to pay back bonds issued to finance the revitalization plan.

Drafting Incentive Packages

Now that you have determined the level of incentives to provide and the credit risk you are willing to undertake, you can decide which incentives you will provide – and how you will provide them. This decision can either be made on a case-by-case basis (through a project development agreement) or on a uniform basis via an “incentives ordinance.” In either case, timing is critical. Commercial projects move through several phases from pre-closing to ribbon cutting, and there are different risks that come with providing different incentives at each stage of development. There are several ways that cities can limit these risks, including limiting incentives by *time*, limiting incentive *amounts*, tying incentives to *development goals* (then either cutting off or clawing back incentives when projects do not reach those thresholds), and using *other entities* (like CICDs) to provide assistance. The table at right summarizes which incentives are typically offered when, and how they can be structured to minimize municipal risk.

Two of the liability limitations mentioned above merit further explanation. The first is the “clawback provision,” which is used to ensure that a city can recover some of what it has already given to a developer if the developer fails to achieve certain development goals. If, for example, a city grants land to a developer, a clawback provision would allow the city to recover the land (or a fraction of its value) if the developer does not complete the project within a certain number of years.

Drafting Incentive Packages

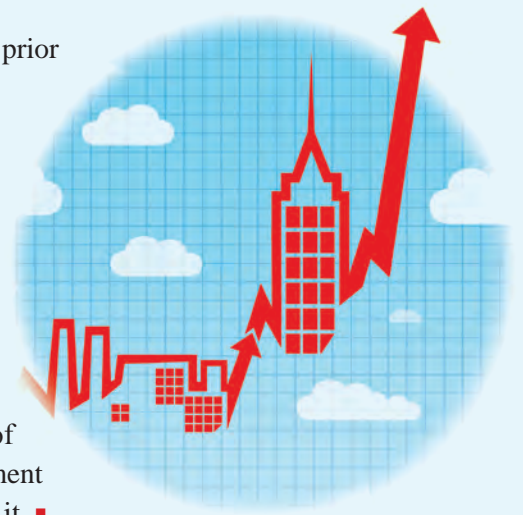
Phase	Typical Incentives Offered	Liability Limitations
<i>Property Closing</i>	<ul style="list-style-type: none"> • Loan (or guarantee of private loan) for purchase price of land and/or improvements • Purchase land and transfer to developer for less than FMV • Feasibility studies, surveys, and other pre-development costs • Incentive payments proportionate with property taxes or other fees 	<ul style="list-style-type: none"> • “Claw back” the site plus any incentive payments made if developer fails to reach substantial or final completion by a certain date • Dollar value limit on total amount to be spent or guaranteed by city • Conditional guarantees tied to “development goals”
<i>Build-out to Final Completion</i>	<ul style="list-style-type: none"> • Public improvements (e.g., extending utilities; traffic flow improvements) • Site improvements (e.g., site prep, land clearance; loans or guarantees of private loans for site improvements) • Incentive payments proportionate with sales taxes paid on construction materials 	<ul style="list-style-type: none"> • “Claw back” the private improvements plus any incentive payments made if developer fails to reach substantial or final completion by a certain date • Dollar value limit on total amount to be spent or guaranteed by city • Use public entities to facilitate improvements and incentives
<i>Final Completion to Tenant “Stabilization”</i>	<ul style="list-style-type: none"> • Up-front incentive payments or loans to attract tenants or buyers • Revenue sharing or other incentive payments with developer (or tenants) 	<ul style="list-style-type: none"> • “Claw back” prior incentives if site fails to stabilize • Tying revenue sharing or incentive payments to “development goals” (e.g., jobs created, amount of tax generated) • Dollar value and/or time limit on amount of revenue shared or payments made • CICD-based revenue sharing
<i>Long-Term Use</i>	<ul style="list-style-type: none"> • Revenue sharing and other incentive payments with developer (or tenants) 	<ul style="list-style-type: none"> • Tying revenue sharing or incentive payments to “development goals” (e.g., jobs created, amount of tax generated) • Dollar value and/or time limit on amount of revenue shared or payments made • CICD-based revenue sharing

The second involves paying out incentives only *after* a project has achieved certain development goals. Given the choice between holding onto funds until a business meets certain standards and getting funds back from a business that has not met those standards, many cities opt for the former over the latter. In addition, development goals can be crafted to solve other problems, like cannibalization. In the grocery store example discussed earlier, a city could calculate average sales taxes collected over the last three to five years from existing grocery stores in the area. It could then set a development

goal of revenue collections from all three stores at 125%, 150%, or even 175% of prior collections, and only share sales tax revenue collected over that threshold.

Conclusion

Incentives are investments in the future of a community. Like all other investments, they bear risk and come with a certain rate of return (in the form of increased tax collections) to compensate for that risk. This article is designed to give you the tools you need to achieve the best and safest rate of return you can on your commercial investments. At the end of the day, every dollar given up to pay an incentive is a dollar that could have gone into building new schools, paying first responders or putting in a new playground at the local park. Thus, it is of paramount importance to have a clear plan going into every commercial development opportunity to ensure, for the electorate's sake, that both sides make the most of it. ■



Alex Flachsbart is an attorney in the Birmingham office of Balch & Bingham LLP. He counsels governments, nonprofit corporations and private developers on how to incentivize and finance community development using grants, revolving loan funds, tax credits and other incentives. As bond counsel, underwriter's counsel and developer's counsel, he has worked on transactions involving the issuance of more than \$1 billion in tax-exempt bonds. He can be reached by phone at (205) 226-3419 or by email at aflachsbart@balch.com.

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Legal Clearinghouse

Rob Johnston, Assistant General Counsel

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. When trying to determine what Alabama law applies in a particular area or on a particular subject, it is often not enough to look at a single opinion or at a single provision of the Code of Alabama. A review of the Alabama Constitution, statutory law, local acts, administrative law, local ordinances and any relevant case-law may be necessary. 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

Arbitration: Arbitrator's failure to disclose financial dealings with one of the parties showed evident partiality that warranted a vacatur of award. *Municipal Workers Compensation Fund, Inc. v. Morgan Keegan & Co., Inc.*, 190 So.3d 895 (Ala.2015)

Workers' Compensation: Evidence showed that claimant's mental injuries were not caused by auto collision, which occurred in the course of her employment. *Billingsley v. City of Gadsden*, 189 So.3d 738 (Ala.Civ.App. 2015)

Tort Liability: City employees could not be held liable for tortious interference with a city contract. *Allied Co. of Wiregrass, Inc. v. City of Dothan*, 191 So.3d 804 (Ala.Civ. App. 2015)

DECISIONS FROM OTHER JURISDICTIONS

Second Amendment: Ordinance prohibiting a gun store from being located within 500 feet of any residential district, school, other gun store, or establishment that sold liquor burdened conduct protected by the Second Amendment because the right to keep and bear arms encompassed the purchase and sale of firearms. *Teixiera v. County of Alameda*, 822 F.3d. 1047 (C.A. 9 Cal. 2016)

ATTORNEY GENERAL'S OPINIONS

Municipal Courts: If the municipal court assesses any court costs in a case, then it must assess the additional costs and fees in Section 45-6-81(a) of the Code of Alabama. The Court may retain, use, and expend the additional costs and fee in Section 45-6-81(a) under the terms designated by the city council. AGO 2016-038

Zoning: Pursuant to Section 11-52-85(b) of the Code of Alabama, a city is not required to provide a requested rezoning statement to a property owner who does not reside in the affected area in a dwelling or otherwise continuously or on a regular basis so as to demonstrate a minimal level of permanency of physical presence. AGO 2016-043

Elections: Section 11-46-25(g) of the Code of Alabama does not authorize an individual to have that individual's name printed on the ballot for the desired municipal office as a qualified elector when the individual is only 17 years of age as of the last day to qualify to run for the office of city council. A municipality may not utilize a statement of candidacy that contains language that materially alters what is expressed in Section 11-46-25(g). AGO 2016-044 (**NOTE: The Circuit Court of Lauderdale County ordered that a 17 year old plaintiff candidate was allowed to sign, execute and file his Statement of Candidacy with the city clerk since the clerk and mayor did not have authority to judge the qualifications of a candidate. The issue of whether the candidate is a "qualified elector" was not presently before the Court and not ripe for adjudication. *Holcombe v. City of Florence*, No. CV-2016-29 (Lauderdale County Cir. Ct., July 18, 2016)**)

Capital Improvement: Pursuant to Section 11-29-6(a) of the Code of Alabama 1975, a county commission may use capital improvement funds to replace the x-ray security machine in the county courthouse. AGO 2016-045 ■

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Why Municipal Websites Matter to Your Community and How to Get One

By: Joe Watts, freelance website developer and proponent of nature tourism in Alabama

In a world where things are often decided from far away, the public face of your community is often your website. People – and companies – visit many online resources to find out more about your town before they visit, relocate or decide to investigate more closely for a new business. One of the first online stops they will make will almost undoubtedly be your municipal website.

If your town has a website, great. That's a start. You may be ahead of the game. However, don't pat yourself on the back just yet. Have you made your website all that it can be, both for potential future retail developers, visitors *and* your citizens? Read on and see if your website lives up to the basic goals that all municipal websites should strive to achieve.

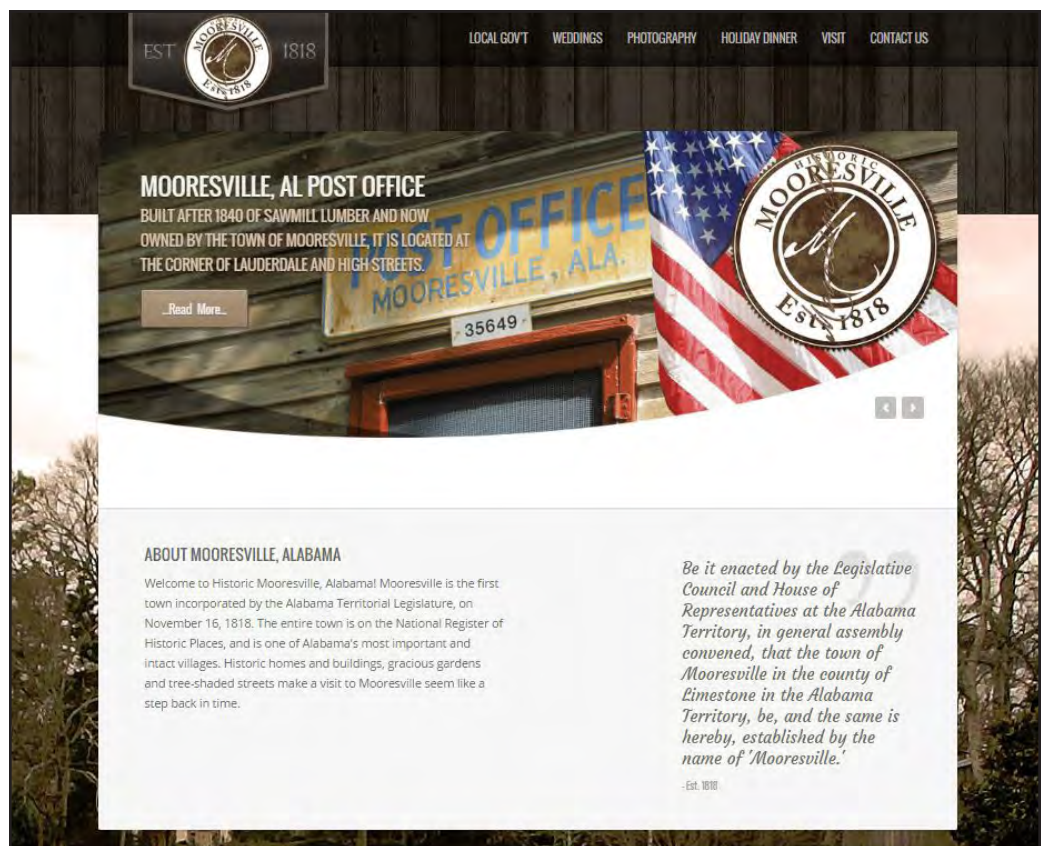
Getting Started: Homework

Understand your goals. A website can be many things. It can (and should) be a useful tool for citizens of your community as well as a helpful way for businesses and individuals to interact with city government. It can help visitors and residents alike spend more time and money inside your city limits. It can provide an avenue for potential businesses to explore the livability and practicality of locating a storefront inside the city limits.

Don't misunderstand. A website for a small community (or a large one) can be more than one thing, but it helps to understand your basic goals in advance because those goals will influence the design and function of your website. A simple way to start the process of deciding is to look at what is already available for your community or for the surrounding region. Do you have an active and effective tourism group working to promote your area? Do you have a meaningful economic

development website taking the lead on attracting new businesses? The approach here is to create a *small* team of staff and volunteers to help steer the project. This isn't something that one person needs to take on – there are way too many variables and too much work. Choose people who love your town and who have an understanding of what you might need.

With your new team in place, review other websites with goals similar to yours. Take a look at websites around Alabama built for towns similar in size to your community. Different towns have different budgets, so don't expect a web developer to be able to give everything you might want for a specific budget; however, it never hurts to point out things you like. Some of the most complicated looking aspects of today's websites are extremely easy to develop; some of the simplest looking parts of websites are often the most complicated and time-consuming. Don't limit your review to just towns in Alabama or just towns with your population base. Aspire to greatness. Look at towns similar to what you want to become.



Moorsville, Alabama - population 56

And don't just make a list of those town websites: pick the five items you like most about each one. In addition, name the one thing you really *don't* like about each one.

Gather the content you think is important for your town to reach the goals you've set. Find the best photos of your community – and remember to secure permission to use the photos in writing. Based on your goals and the review of other websites, start to make a rough draft outline/chart of your website. Identify the language you already have: town history, description of city services, information about arts and culture – whatever you want to include. Gather all that information and put it into documents that you can edit and change. Read it carefully. Edit it. Update it. Make it fresh and exciting. Consider hiring a copywriter to review and edit or find someone in the community with those skills who is willing to do the work pro bono. Always remember: your website is the public face of your city. Make it look good. And more importantly, make it accurate and easy to read.

Gearing Up: The How and Who of Building Your Town Website

Platform is important. In today's world of web technology, the general consensus is very much to build your

site using a content management system (CMS). Doing this separates the appearance of the website from the content and allows you to change the look of the website with greater ease in the future. It also allow you much more freedom to edit the content without compromising the website. What's the right CMS for you? That's a choice you should make after some research. There are a few open-source options: WordPress (26.4% of the top 10 million websites), Joomla (the second most popular CMS after WordPress) and Drupal (with 2.2% of websites) are perhaps the largest three. Weebly and Wix are two additional options that some consider potential and there are even more that are in use within Alabama and elsewhere. Pluses and minuses exist in each system. But, when making the choice, whatever it is, look at the direct support your developer can provide coupled with support that you can get from the larger community of developers. The wider the use, the easier it can be to find someone who has already created something that does exactly what you need your site to do. Sometimes, these are paid additions; other times they are free. There is no need to create everything from scratch. Need a calendar? Don't have a developer build one, use a pre-built calendar that you can pay a small price for. Want to create a



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form for your residents to provide information about street conditions – use a form builder created by someone else. There is no need to spend precious resources to recreate the wheel.

Finding the Right Developer/Designer. Once you've decided tentatively on a content management system, you can begin to look for the right person or firm to help you develop your site. Designers typically specialize in one content management system, though larger firms often have someone on staff who can work effectively in multiple systems. From one person developers to large agencies that have teams of developers working on projects, there's a developer to fit your needs. From the in-town person who built a site for the local dog park to out-of-town agencies and even developers in faraway places like India, many people are interested in building a website for you.

How do you choose a developer/designer who will be right for you?

The skill set is critical. Demonstrated ability to create something similar to what you want is important.

The complexity of your initial inventory of assets and the collection of potential content should give you an idea of how complicated your website will be. Even more important than skills is the ability to effectively *communicate*. A good developer can build a functional site that doesn't include any of the things you want. A good designer can build a beautiful site that doesn't work well.

You need both, coupled with someone who understands what you need and who communicates well with you. Don't make the mistake of choosing someone solely because of their technical abilities – they need to be enjoyable to talk with and understand the needs, and limitations, of your community and your budget. The process of building your website – or rebuilding it – should be informative and help everyone have a better understanding of your community.

Finishing Up and Moving Forward

Once you've developed your goals and created a foundation of content for your site, chosen the platform and hired a designer, the real choices begin – which will involve some direct and mindful conversations between you, your

committee and the designer. Then, before bidding farewell to whoever developed the site for you, there are a few things you need to be familiar with such as:

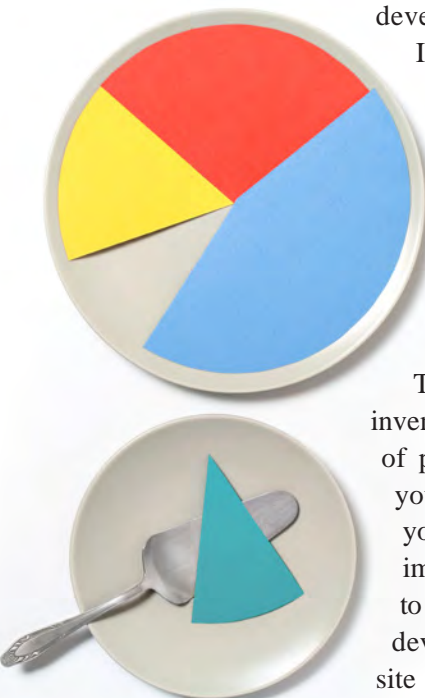
Hosting. Where does your site “live?” Websites are hosted on computers and your domain name tells the internet which computer to look for just like an address or a phone number. There are two parts to making your website live and functioning: the host and the domain name. (We'll talk domain names shortly.) The type of web host depends on a lot of things. Managed hosts are typically somewhat more expensive, but you end up with a much faster website that is more secure than otherwise. Ask your web developer about this. Find out if you have full access to the account. Find out what the cost will be for future years. ***Be clear about who from within your organization will have access and be particularly sure to find out about how your site is protected with backups.*** Daily backups can mean the difference between a problem that gets fixed in five minutes and one that is a complete disaster. Backups are good!

Domains. Simply put, you should register your domain name (www.yourtown.org) and it should be in the name of someone with the town's staff, retrievable by others in case that individual leaves. Domains must be renewed periodically – the default being each year. Don't miss this deadline. It can be very costly.

Security. See hosting above. But also talk with your web developer about security features and be sure to implement them. Safe, remote backups are a good fallback for if your security procedures fail, but having strong passwords and regularly updated files is the first line of defense. Ask for information about keeping things up-to-date.

If you follow these steps (or if your current town website lives up to the steps outlined above), your municipality will be well on the way to providing important, useful information to everyone, from potential retailers to the new resident who wants to know what day garbage is collected! ■

When he isn't busy building websites, Joe is a passionate proponent of nature tourism in Alabama. He regularly works with the University of Alabama Center for Economic Development on trails and tourism-related projects, including websites for the Alabama Birding Trails (alabamabirdingtrails.com), the Alabama Trails Program (alabamarecreationtrails.org) and others. He became a Certified Interpretive Guide in 2013. He's been building websites since 1999, including several municipal sites. For more information about Joe or his services, visit www.joewatts.com. You can email him at joe@joewatts.com.



to select municipalities with a population of 2,000 to 18,000, led to the development of a comprehensive strategic plan for the community in 2005 – a plan the city still uses more than 10 years later and is part of Segraves’ long view to success. “ACE gave us a track to run on,” Segraves said. “They evaluated our community overall – from medical services to schools to economic development opportunities to how the town looks, everything that an outsider would notice coming into your area. ACE provided specialists to help us determine where we were weak and where we were strong and help us establish benchmarks through a fresh set of eyes.”

In addition, Segraves participated in the 2009 DesignAlabama Mayors Design Summit where he worked with a panel of experts to enhance the viability of his community through the development of a master plan featuring mixed-use buildings, pedestrian-oriented neighborhoods, commercial development and diversified industries.

Vision and Determination

Les Walters, managing editor of Marion County’s *Journal Record*, has been covering the news and events of Marion County and the surrounding area since 1979. While he doesn’t live in Guin, he has known Segraves for many years and is impressed with the progress that has taken place in the community, particularly in the last few years. “The thing about Mayor Segraves is he’s always had a vision,” he said. “He’s an advocate every day for the City of Guin, but at the same time he’s also promoting the entire county – and he takes advantage of every opportunity he can. If he thinks he can make it work for his city and what he wants to accomplish, he’ll be the first one through the door. His strength is knowing how to build relationships and find the right connections to help accomplish a lot with a little. I guarantee you the contacts he’s made have been invaluable.”

Walters said he didn’t know of another elected official in the area who was moving in as many directions as Segraves to accomplish as much: “He is a wealth of knowledge. He knows the pathways – which ones to take and which ones to stay away from – and he’s made things happen because he knows how to work the system.”

Segraves’ quest to improve his community began well before he was elected to municipal office. In the early 1990s, when he served as Chair of the Parks Board, Guin opened a waterpark featuring a large, 328-foot waterslide and an Olympic-sized community pool. For more than two decades it has been a community commodity – continually drawing in people from an eight-county region.

“I was heavily criticized for it at the time – swimming pools are loss leaders; you don’t make money with swimming pools,” he said. “The way you keep your pool vibrant and profitable is you bring something in that can generate revenue. And, at that time, a waterslide was something the park board felt would work because within five minutes of Guin there are 15,000 folks who all run in and out of each other’s community. So the company we used provided me with a list of 51 cities nationwide of 10,000 people or below where they’d installed a waterslide in the previous five years. I then called 51 cities and asked what they did right and what they did wrong. Five of them had lost money and all five had a common trait – the waterslides were too small and too short. The ones that made money had a big slide so we put in a 328-foot slide – and it made money.”

More than two decades later, it still does.

Knowledge and Relationships

Knowledge is an acquired commodity and Segraves uses every avenue available to expand his base, beginning with the Alabama League of Municipalities, where he has been an active member since first entering elected office and currently serves as League President. “The League is invaluable in representing

continued on page 58



Community Investment Potential in Alabama's Small Cities

By: William Lambe • Senior Adviser for Community and Economic Development • Federal Reserve Bank of Atlanta

Small cities in the Southeast act as nerve centers connecting the regional economy. In the South, more than 100 small metro areas are home to 25 million – or 20 percent – of the region's total population. In Alabama, these are cities like Decatur, Gadsden, Huntsville and Tuscaloosa. Small metros are the hearts of their respective regions, where military bases, colleges, hospitals, industries and local governments anchor the economy. In many cases, they are hubs for education, employment, health care and retail services for people living in surrounding rural areas. At the same time, conditions of economic distress such as poverty, blighted property, stagnant income, and crumbling infrastructure remain prominent challenges confronting municipal leadership in smaller cities. The economic trajectory of Alabama's small cities is complex and varied.

Small City Economic Dynamism Index

To support local leaders working on community and economic development in smaller cities, our team at the Federal Reserve Bank of Atlanta created the Small City Economic Dynamism Index. We were motivated to do so by the lack of consistent data on smaller cities in our region. Our national index ranks 245 small cities across 14 indicators of economic dynamism in four categories: demographics, economics, human capita, and infrastructure. It includes all U.S. small cities in metropolitan statistical areas with populations less than 500,000.

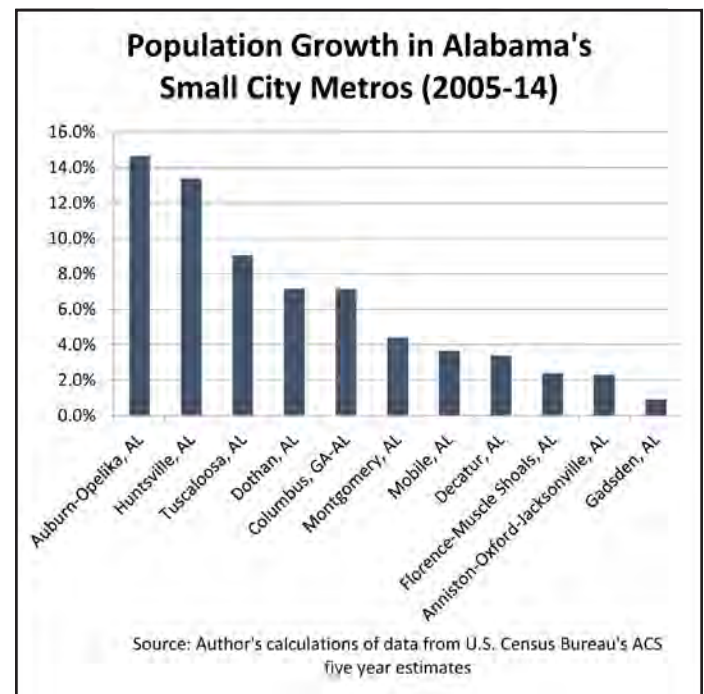
Our bank's measure of economic dynamism is intended as a partial proxy for the potential of a city to attract and absorb "community investment." Community investment seeks to deliver social benefits to economically distressed places and people while also generating a financial return. Common sources include philanthropy, public debt, bank loans, bond, and other forms of debt and equity aimed at improving socioeconomic outcomes in a community. We presume that many but not all small cities have unrealized community investment potential.

Small Cities in Alabama

In Alabama, 11 small city metro areas are home to 53 percent of the state's population. Huntsville and Mobile are the largest, with metro-level populations of 430,000 and 414,000, respectively, while Gadsden and Anniston-Oxford-Jacksonville are the smallest, with 104,000 and 117,000 residents, respectively. From 2005 to 2014, population grew

in all of Alabama's small city metros; growth rates ranged from more than 15 percent in Auburn-Opelika to slightly less than 1 percent in Gadsden (see figure 1). In all of the state's small cities, population growth at the metro level has been accompanied by increased population density at the local (county) level, suggesting that trends associated with reurbanization and downtown revitalization are not limited to large urban markets.

Figure 1



The percentage of residents with some college education in all of Alabama's 11 small city metros has risen in recent years. Job and labor force trends have presented more mixed results, with about half on an upswing and half trending down, with losses in both the aggregate number of jobs and workers in the labor force. Nine out of 11 of the state's small cities are attracting an increasing number of commuters during the day, suggesting that, despite inconsistent job and employment growth, most of these cities remain important economic engines for their respective regions.

There has been clear, steady forward progress on a number of important measures in Alabama's small cities, but persistent challenges remain. Increasing poverty rates and rising income inequality are evident in a majority of the state's small cities. Median household income has increased, but only in the state's

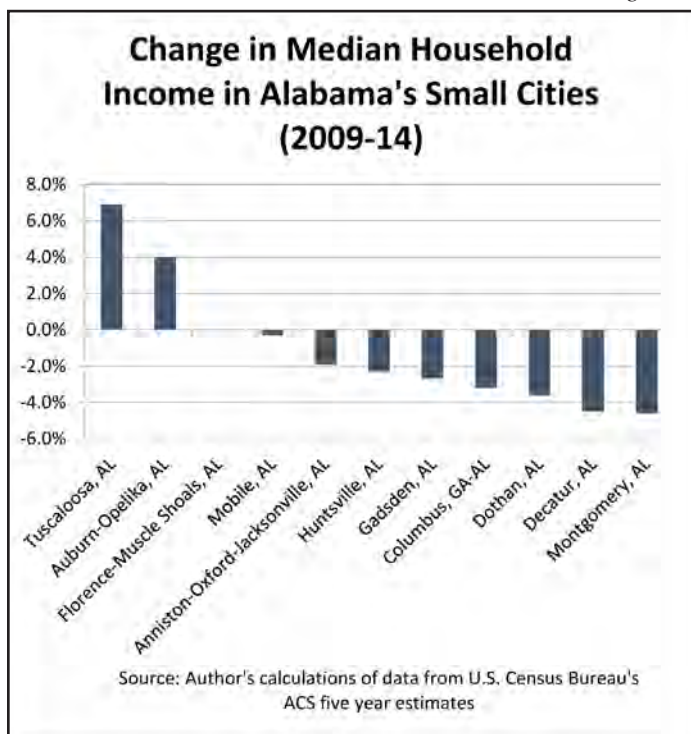
university towns of Tuscaloosa and Auburn-Opelika (See figure 2 for median household income trends.)

These challenges are not unique to Alabama, nor are they necessarily unique to small cities. But even the most economically dynamic small cities struggle to attract community investment because, in many cases, they are overlooked for initiatives located in larger urban areas where banks, foundations, insurance companies, and other investors have offices, staff, and preexisting networks.

Unlocking community investment potential in Alabama's small cities the question then becomes, how to increase the volume and effectiveness of community investment in smaller

cities. What are the keys to unlocking local as well as extra-local sources of community investment aimed at addressing persistent socioeconomic deficiencies? An emerging body of research from Robin Hacke of the Kresge Foundation and David Wood and Katie Grace of Harvard focuses on the "capital absorption capacity of places." Capital absorption capacity is the ability of a place to attract and deploy community investment. Through dozens of interviews and workshops in cities across the United States, the researchers have identified three critical functions for increasing the capital absorption capacity of cities of all sizes. These include:

Figure 2



- Shared priorities: Agreement on and articulation of a clearly defined set of the community's strategic priorities
- Pipeline: Development of a pipeline of feasible investment opportunities that will help achieve the priorities
- Enabling environment: Creation of an enabling environment of policies, processes, practice, and platforms that support the development of socially useful investments

With conscious and deliberate efforts to organize the demand for community investment in Alabama's smaller cities, local officials can attract new resources and address persistent challenges. Proactive cross-sector leadership in cities can unlock the potential for more investment into affordable housing, small businesses, health care, charter schools, and infrastructure to support economic revitalization. ■

William Lambe is a senior adviser for community and economic development at the Federal Reserve Bank of Atlanta. He can be reached at william.lambe@atl.frb.org.

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Shop Alabama: Join the Movement



By: **Melissa Johnson Warnke • Manager of Communications and Engagement • Alabama Retail Association**

The message of shop local is not a new one. For years, local retailers have worked to educate their communities about the power of supporting small business. Thriving cities in America all have one thing in common – a vibrant local retail scene. You don't visit a new place and seek out the shops and dives you can find in every other city. You want the local flavor and flair. Downtowns, especially, are only as strong as the vibrancy of the stores and restaurants lining their streets. What's more – when people shop with locally owned businesses, those tax dollars go into the city coffers to help fund education, infrastructure and other vital services.

Keeping It Local

Al's Flowers in Montgomery, for several weeks, featured a buzz-worthy message on its marquee, "The Internet Did Not Pave Carter Hill Road. Shop Local." Owner Al Cantrell said, "I've heard many people complain about Carter Hill Road needing repaving, and now they're out there working on it. I just thought, this is an opportunity to let people know where the money comes from to pave that road."

Little did Al know, his simple message got people thinking (see photo page 45). It encouraged them to realize the value of their purchase. In the age of point, click and arrive at your doorstep next day, there seems to be a renewed interest in shopping local – not just here in our community, but throughout the state. The Alabama Retail Association created the Shop Alabama campaign to capitalize on that momentum and create a movement to educate, inspire and empower people to spend their money with locally owned and Alabama-based retailers.

#ShopAlabama

We kicked off Shop Alabama this summer by taking the message to retailers across the state through a #ShopAlabama social media campaign, news interviews and a new website, www.ShopAlabama.org. The website explains how shopping local creates a powerful ripple effect, but also serves as a central location for retailers and consumers to gather resources and facts to support the movement. It was our hope that by highlighting the contributions of local retailers in their respective communities, Alabamians would want to join the movement and help us spread the message.

It's an idea that's easy to get behind. Everyone knows a local retailer – a friend, family member or neighbor, the sponsor of your child's Little League team, or the person who always donates an item to your school fundraiser and church

auction. Local retailers are the backbone of a community; they reinvest their time and money back into other local businesses and causes.

"When you go online and order something, they're not going to be the ones who give you a donation for your silent auction or for the fall festival. We may give three or four of those because different customers ask us. That's something that we enjoy, being able to give back," said Margaret Hamm, who owns Monograms Plus of Cullman, a specialty gift and embroidery shop.

Fleet Feet Sports in Montgomery offers another example of giving back. For the past three years, the store has hosted "Treadmills for Charity," organizing 24 hours of nonstop running to raise money for Hope Inspired Ministries, a nonprofit that trains unemployed men and women to obtain and maintain a job.

"Giving back is ingrained in our mindset every day," said Avery Ainsworth, who owns the running and apparel shop. "It's not just about selling a pair of shoes, or getting people to be more active, it's also about how we can use our time and our business to make this community a better place."



Photo by Melissa Johnson Warnke, Alabama Retail Association

It's a common thread that connects retail owners – a genuine desire to help and support the causes that matter to them personally and their customers. As we visited with local retailers in cities across Alabama, we found shop and restaurant owners who are so passionate about their communities that they often lead the charge, in their spare time, to create new initiatives and activities that energize their entire city.

"It's our city. We are never going to sit here and hope people come here to shop. We see it as our mission to do our part to bring people into our downtown," said Barbara Levitt, president and general merchandise manager of M & F Casuals, a locally owned boutique in downtown Fairhope.

Levitt also serves as an executive board member for the Downtown Fairhope Business Association. In addition to organizing community events, the association goes as far as to put together the city's official visitor's guide, so tourists get the most out of their stay in town.

The Shop Alabama campaign has just begun. It's our hope that it becomes a year-round call-to-action and point of pride. We want people in Alabama to understand the long term value in supporting their local retailers. We all spend money on clothes, food and leisure. This campaign encourages Alabamians to keep those dollars in state. Join our movement and help us spread the message. We all benefit when you Shop Alabama. ■

ShopAlabama.org

Retail is the No. 1 private sector job creator in our state. Some 400,000 Alabamians work in retail; which means Alabama retailers employ 1 in 4 of all employees outside government. Retail, including restaurants and drinking establishments, accounts for almost 10 percent of the state's GDP, bringing in more than \$2 billion every year in sales tax revenue for the state. Spending your money with an Alabama-based retailer returns the most to your local economy. Shop Alabama promotes that simple message: support the retailers who support you and your community.



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Retail Development: Sales Tax Collections Lost to Online Sales Hurt Alabama's Municipal Budgets

By: Lacy Beasley • President & COO of Retail Strategies

What is the future of brick-and-mortar retail when e-commerce is so easy? And what does that mean to municipal budgets that are dependent on retail sales tax collections?

Retail is a Catalyst for Economic Development

Retail vibrancy is critical to Alabama's economy as a significant driver of jobs and tax collections through property tax and sales tax. International Council of Shopping Centers (ICSC) 2015 estimates in Alabama alone, approximately \$31.8 billion retail sales dollars were collected in 1,718 shopping centers adding 189,120 jobs making up 9.7% of employment for the state.¹ According to the National Retail Federation, if you calculate all retail related jobs beyond direct shopping center employment, the total number would be enough to fill The University of Alabama stadium six plus times with more than 590,000 retail supported jobs.²

It's all about the experience

It's Black Friday. You are recovering from a Thanksgiving induced food coma. It's cold outside. You have a choice. You can bundle up in the early morning hours, wait in long lines and run the risk of being trampled ... or you can sleep in, spend the day enjoying your family and then sit on the couch with your computer on Cyber Monday for a better selection and better deals *and* have all gifts shipped to your home.

Every time you spend your money, you are placing a vote for what you want to see in the future of the marketplace. During the recession, consumers placed a vote for value and convenience. Today's trends point towards consumer shopping experience. Shoppers crave a pleasant and convenient experience, whether that is online or in the physical location. Traditional retailers are getting creative, finding ways to use technology to improve the customer experience while gathering insight into the buying habits for improved marketing. Omni-channeling is the seamless integration between brick-and-mortar locations and e-commerce. Retailers are finding ways to combine the convenience of e-commerce with the shopping experience found in brick-and-mortar locations.

Not Fair

How are the changing trends in e-commerce vs. brick-and-mortar effecting municipalities? When

an online sale occurs, sales tax is only charged if the business has a physical presence in the state. "Nexus" is the legal term used to refer to requirements on companies without a sufficient physical presence to not collect and pay taxes in that state. However, the tax, by law, is still due and it is the responsibility of the consumer to calculate and pay when filing state taxes. There is a misunderstanding among average consumers that if the tax is not collected at the time of purchase, it is not their responsibility to pay the state tax. The reality is, Alabama state tax payers are required to pay four percent on their purchases if no tax was collected at the time of purchase. The State of Alabama Department of Revenue recommends that the shopper contacts the local office for information on how to pay the municipal tax in addition to the state tax.⁴ It is not a new tax, but it is often an uncollected tax. This places a significant disadvantage on state and local budgets.⁵ The confusion, inconvenience, and difficulty for the shopper paying tax on online purchases, often causes consumers to unintentionally fail



Photo courtesy of ShopAlabama.org

to pay taxes that they are legally obligated to pay. As a result, local municipalities and states are suffering from millions of dollars in uncollected sales and use taxes.

Federal legislation proposed to level the playing field for brick-and-mortar, and close the online sales tax collection “loophole”, has been pending for over two decades without action from Congress. This legislation to create clarity is an initiative supported by the International Council of Shopping Centers (ICSC), large online retailer companies and others in the retail industry. ICSC requests that Senators cosponsor S. 698, the Marketplace Fairness Act of 2015. Additionally, ICSC requests that Representatives cosponsor H.R. 2775, Remote Transactions Parity Act.

“ICSC has long advocated that a sale is a sale, regardless of if the purchase is made online, on main street or on a mobile device, and the reality is that the sales tax is already due on all of these purchases, whether the retailer collects it or not,” said ICSC’s Chief of Staff and VP of Strategy and Operations, Leslie Fox. “Retailers should be competing on attributes like convenience, customer service and price, not on differing tax treatments. We need Congress to fix this problem.”

An August 2014 poll by Opinion Research Organization identified that 70 percent of Americans support federal legislation that would require online-only sellers to collect sales tax at the time of purchase and 82 percent of Americans think it would be easier to collect sales tax from online-only vendors at the time of purchase.⁶

The annual losses at a local level have motivated states to take action creating a patchwork of state legislation. In the past four years, more than 70 bills related to e-fairness have passed. As of May 1, 2016, bills have been introduced in 16 states. Alabama state officials have taken action in the right direction to offset budget shortfalls and protect the state’s brick-and-mortar businesses to even the playing field for online sales.

“Some are making it a shopping center issue when it’s a lot bigger than that. If they lose sales tax dollars, which is how states like Alabama live, that’s critical,” Bayer Properties CEO, Jeffrey Bayer said. “That’s where the focus should be.”

Alabama’s Simplified Use Tax Remittance Program Act of 2015 allows retailers without a physical presence to participate in a flat 8% sales tax collection. Of that collection, 50 percent of the funds collected go to the state, 25 percent goes to cities and the remaining 25 percent goes to counties, prorated based on population. According to a July 1, 2016 *Birmingham Business Journal* article, since the program began in November 2015, more than \$2 million has been collected from the 50 retailers who have opted in to the program to capture online sales originating in Alabama.⁷ Three quarters of the money collected by the state will go into the General Fund, with the remaining 25 percent funneled toward the Education Trust Fund.

Even the country’s largest online retail company, Amazon, is in support of this legislation. The online giant has agreed to the participate in Alabama’s Simplified Use Tax Remittance Program Act and will begin collecting and remitting an 8% sales

tax on Nov. 1. One study estimates that Alabama has missed out on uncollected online sales and use tax totaling approximately \$300 million annually. Amazon makes up the lion’s share of online sales in the state.⁸

What’s Next?

Surprisingly, E-commerce only accounts for approximately 8% of overall retail sales.⁹ However, E-commerce is the fastest growing trend in retail businesses today. This percentage will continue to increase at a rapid rate. Online sales will not be the demise of brick-and-mortar locations but they are a critical component for retail companies to incorporate for the consumer’s desired experience. Alabama has taken steps in the right direction to pass state legislation to collect sales and use tax for online sales. Closing the “loophole” will not only level the playing field for brick and mortar locations, it will also collect sales and use tax in the state and eventually the country to offset budget deficits. ■

Endnotes

¹ ALABAMA ICSC http://www.icsc.org/uploads/gpp/Alabama_2016.pdf

² ALABAMA National Retail Federation <https://nrf.com/advocacy/retails-impact/al>

³ “Why buying things online could get more expensive” Leada Gore, AL.com, June 16, 2015

⁴ “Don’t forget to include the tax on online purchases” State of Alabama Department of Revenue, January 22, 2016

⁵ 21st Century Retail <http://www.efairness.org/case-for-fairness/index.html>

⁶ ICSC Talks to Congress About Industry Issues June 17, 2016 <http://www.thecenterofshopping.com/news/icsc-talks-to-congress-about-industry-issues>

⁷ “Major online retailers to begin collecting sales tax for Alabama” Tim Steere, Birmingham Business Journal, July 6, 2016

⁸ “What Amazon sales Tax could mean for the state of Alabama” Tim Steere, Birmingham Business Journal, July 8, 2016

⁹ US E-commerce sales as a percentage of retail sales: 7.80% for Q1 2016 https://ycharts.com/indicators/ecommerce_sales_as_percent_retail_sales

Lacy serves as President & COO of Retail Strategies, a full-service advisory firm based in Birmingham, AL that works with municipalities to bring retail and restaurant businesses to the community. She has been involved in the commercial real estate industry since 2005 and has spoken on retail trends and best practices in retail recruitment at more than 75 events including ICSC, American Association of Retirement Communities, American Public Power Association, Tennessee Valley Authority, ElectriCities of NC, Georgia Power, Southeastern Economic Development Council and state-wide economic development and municipal associations in AL, AZ, GA, KY, LA, OK, MS and TN. She can be contacted at lacy@retailstrategies.com.

DesignAlabama

Good Design is Great for Development

By: Gina Clifford • Executive Director • Design Alabama

For nearly 30 years, DesignAlabama has aimed to educate citizens throughout the state about how important design is in our everyday lives, particularly its importance in building community and place in Alabama. From our cars to our homes to our worksites, every aspect of our lives is affected by design, though we may not always recognize that fact or pause to reflect on what design really is.

Design is defined as the purpose, planning or intention that exists behind an action, fact or material object. DesignAlabama has successfully advocated for the design arts (architecture, planning, landscape architecture, graphic design, product and fashion design) and in turn, shown the state what good design is and why it is important – and how it makes a difference in our everyday lives. DesignAlabama has set out to make people more aware of why we are happier in green spaces located among a downtown full of steel and concrete or why we are able to get dinner on the table a little faster because of the design of a new appliance. We believe the quality of life and the economic growth of Alabama are enhanced through attention to and investment in good design.

Originally formed through the Alabama State Council on the Arts (ASCA) via a grant from the National Endowment for the Arts, DesignAlabama now works as a statewide partner of ASCA to deliver a variety of design programming across Alabama. Initially DesignAlabama set out to make people aware of design's positive influence through the *DesignAlabama Journal*. Since the first issue was printed nearly 25 years ago, it has become a centerpiece of our organization and is how many people know us. More importantly, it

made many people aware that thoughtful design is impactful and necessary.

As DesignAlabama continues to move forward with our mission of advocating for the design arts and their importance in building places and communities, we are evolving with both new and old programming. Each year we host a Mayors Design Summit, an intensive, two-day event specifically for municipal officials. During the Summit, mayors from a region of the state are invited to work together, along with a team of design professionals, on a specific design and planning issue in their community. This program has served 49 mayors and 46 communities over the years and has proved extremely successful in promoting and enhancing community design and development.

For example, during the 2009 Mayors Design Summit, Mayor Gordon Stone of Pike Road (located in Montgomery County and incorporated in 1997) brought to the table

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that an exception exists when the only newspaper in the municipality is owned by a municipal official. In this case, the city may go ahead and advertise in that paper as required by law. It is reasoned that the publication requirement overrides the conflict prohibition; it is further noted that publication rates for legal advertisements are established by law. 56 Q. Rep. Att. Gen. 108.

A municipal employee may not use municipal facilities to conduct Tupperware or jewelry parties on a lunch break or after hours, when the party will result in a financial gain to the employee or a business with which he or she is associated. AO NO. 1996-59.

A member of a city council, who is employed by an insurance agency, may not vote, attempt to influence or otherwise participate in any matters coming before the city council involving a client of their employer, if either the employer or the councilmember stands to benefit from council action. AO NO. 2004-07.

Members of a city council may vote on a rezoning issue affecting the neighborhood in which they or a family member resides, as there is no personal gain, nor will the members be affected any differently than the other residents of the neighborhood. AO NO. 2004-08 and AO NO. 2008-03.

A municipality may sell real property to a group of citizens, one of which is a councilmember, provided the city receives the fair market value of the property and the councilmember does not take any part in the consideration of the sale and does not vote on the sale of the property. It is the best public policy to sell such property by competitive bidding. The councilmember should make a public disclosure of the potential conflict of interest. AGO 1993-194.

In *Mobile v. Cochran*, *supra*, the Alabama Supreme Court ruled that members of separately incorporated boards are not officers of the city and, therefore, are not governed by the restrictions of Section 11-43-12, Code of Alabama 1975.

The chair of a municipal water and sewer board may accept employment with the city housing board as long as the individual does not use either position to financially benefit either the waterworks and sewer board or the housing authority. AO NO. 1993-126.

A councilmember may not hold the job of municipal clerk even though no pay is received for services as a councilmember. AGO to Hon. Lloyd Barnes, November 26, 1956. A municipal employee who is elected to the council may not continue to serve as an employee when he assumes office on the council. AGO to Hon. Charles Adams, July 31, 1956.

Although public officials and employees may accept free athletic tickets to sporting events or other social occasions, they may not solicit these tickets. AO NO. 1999-16.

Section 11-50-313, Code of Alabama 1975, allows councilmembers serving as directors of utility boards to receive

compensation for their service. Also, Section 11-43-80, Code of Alabama 1975, specifically allows the mayor to be hired as superintendent of utilities for additional compensation. An individual may not serve on a utility board and also be employed as manager of the board. AGO 1993-052.

An employee of a separately incorporated municipal utility board, incorporated pursuant to the provisions of Act 175 of the 1951 Regular Session of the Alabama Legislature, may serve on the board of a municipal housing authority. AGO 2006-003.

The spouse of a city council member may serve on the board of a municipal housing authority. AGO 2006-003.

A person may serve as a postmaster and as a part-time councilmember. AGO 2005-019.

Section 11-43-12, Code of Alabama 1975, has also been interpreted to prohibit a city parks and recreation director from simultaneously serving as mayor. AGO to Hon. T. E. Whitmore, April 6, 1976. It also prohibits the same person from simultaneously serving as city judge and as city attorney. AGO to Hon. Bobby Claunch, November 21, 1972. However, different members of the same law firm may serve as municipal judge and as municipal attorney, provided the earnings of neither position become revenues of the firm and are not taken into account when firm profits are divided. AGO 1992-044.

This section prohibits a town from purchasing land from its mayor. AGO 1981-239 (to Hon. Charles Couch, February 10, 1981). A municipality may, however, condemn the property of a municipal officer or employee provided that the officer or employee refrains from the decision-making process regarding the condemnation. AGO 1996-231. A municipality may purchase property owned by the mayor's mother when the mother is not a member of the mayor's household, not financially dependent on the mayor and the mayor does not participate in either the discussion or the vote. AGO 1997-140. A city may enter into an agreement, which involves the mayor's son as a real estate broker, provided the mayor does not reside in the same household as his son, is not financially dependent on his son, and does not participate in the discussion or vote on whether or not to enter into the agreement. AGO 2005-181.

The section also prohibits a company in which a councilmember owns a majority of the stock from selling materials to an independent contractor who is working on a city project if such materials will be used in the city project. AGO 1981-258 (to Hon. William J. Trussell, February 19, 1981). A councilmember who is a landlord may not participate in a community block grant program in the municipality for which he or she serves. AGO 1996-323.

A councilmember may not be employed by an engineering firm as a resident inspector for a project where the engineering company is performing services under direct contract with the city. AGO 1982-077 (to Hon. Charles E. Bailev, November 16.

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Alabama Small Business Commission - A Community Partnership

By: Kib McKibbens • Director • Governor's Office of Small Business Development • Montgomery/Tuscaloosa

When Governor Robert Bentley first assumed office in 2010, Alabama was still recovering from the “Great Recession,” with high unemployment, rising underemployment, frequent business closings around the state, and decreasing tax revenues to fund basic education and government functions. In speeches around the state, Governor Bentley frequently notes that small businesses are the backbone of the Alabama economy. In support of that belief, he decided to establish the Alabama Small Business Commission (SBC) in the fall of 2014.

The SBC is as an independent body consisting of small businesses owners from around the state, representing a broad cross section of industry, who come together to advise the Governor on matters related to small business growth and development. For the purposes of selecting the membership, a small business is defined as a private company headquartered in Alabama with at least one full time employee and fewer than 50 employees. Currently the SBC has 30 members, and it is the first known entity of its kind in the United States.

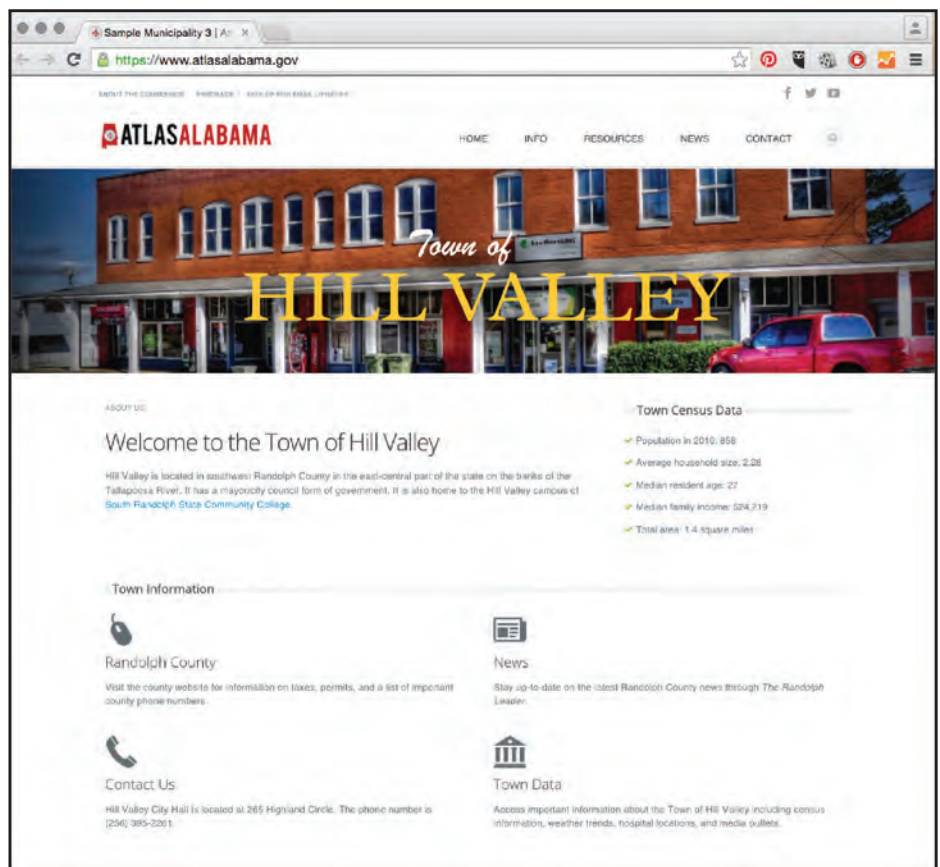
The purpose of the SBC is to promote small business development in the state, improve access to business resources, and provide a channel for direct communication with the small business community. In addition, the SBC serves as an advisory body to the Governor and key state agencies by:

- Evaluating and advising on issues critical to the economic growth and expansion of existing small and independent businesses
- Exploring best practices and areas of reform in state agencies which interface with small business
- Assessing state requirements for starting a business and discussing ways to help small businesses thrive in the Alabama economy
- Communicating key issues and concerns from the small business community
- Encouraging innovation in the state's many regulatory relationships with small business

- Developing recommendations focused on executive branch practices, legislative priorities, and other rules and regulations affecting small businesses

Advisory Committee

Governor Bentley recognized that the Commission, consisting of full-time business owners, would need the support and subject matter expertise of government and other affiliated organizations in order to navigate the government and policy world. For this reason, he also organized the SBC Advisory Committee, which consists of state agency heads, economic development leaders, and education and association representatives, including Ken Smith, Executive Director of the Alabama League of Municipalities. Other Advisory Committee members with significant interaction with the small business community include the heads of the Alabama Department of Labor, Alabama Department of Revenue, Alabama Department of Commerce, Alabama Department of Economic and Community Affairs (ADECA) and the Alabama Community College System.



The Advisory Committee attends and participates in SBC meetings and serves as a material resource to the members. They provide guidance on current practices and proposed recommendations, as well as information and data needed to bolster decision-making by the SBC members. The Committee does not vote on SBC initiatives, but they do provide valuable, personal input on matters relating to state government practices; existing policies and procedures; and local government relationships.

Small businesses know firsthand that many of the regulations affecting business activity are managed at the state level, through policies and management. For example, many licensing, permitting, and tax functions are administered by executive branch agencies, which report to the Governor. These entities interact with small businesses on a regular basis, and thus it is important to ensure that processes guiding those interactions work smoothly and consistently for small business owners.

It is also important for state agencies to promote small business development by encouraging growth and success rather than undermining it with the proverbial red tape. It is imperative that small business owners work with agency

personnel constantly to evaluate policies and procedures and ensure that the costs of regulation and compliance do not exceed the benefit of the intended purpose. Working with the Advisory Committee in this way, SBC members offer a direct feedback loop to the state leaders who are responsible on a day-to-day basis for many small business regulatory functions.

Community Partners

SBC members are often leaders in their local business communities and can be found promoting “Small Business Saturday” events for local businesses or leading volunteer and civic organizations. SBC members provide “two-way traffic” for information and communications with state and local officials. Members already do an excellent job of communicating with local media, Chambers of Commerce, and industry trade associations to share important business updates and accomplishments. They also use these networks to gather feedback and provide input on issues affecting small businesses at SBC meetings. These diverse, statewide networks

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- A Must Have in Today's World

By: **Chuck Stephenson** • Director of Information Technology • ALM

Email. A necessary evil for some; a vital tool for others. For most of us, it's somewhere between the two, depending on the day/hour. According to the Radicati Group, a technology market research firm, in 2015 there were over **4.35 billion email accounts**. This figure is predicted to reach **5.59 billion** by 2019, an increase of more than 26 percent. The estimated number of emails sent per day in 2015 was around **205 billion**, which means almost 2.4 million emails were sent every second with some **74 trillion** emails sent that year.

We send emails for everything from lunch invitations to business proposals to out of office notices. Therefore, regardless of which category you fall into, the fact is, email is not going away. In fact, email usage continues to grow.

Challenges

One of the challenges faced by many organizations is a lack of reliable Information Technology support. (Setting up and maintaining email servers is a full-time responsibility; therefore, most large businesses and organizations have a dedicated team to maintain their email servers.) This is particularly true for smaller businesses and municipalities. In the past, this void has made it difficult for such entities to have corporate or municipal email domains (the unique names used for email addresses) and has led smaller municipalities and businesses to have a piecemeal approach to email. Many of these officials and employees established personal email addresses to be used for business purposes or chose to use their personal email addresses as a corporate account as well. This can be especially problematic when there is turnover. Because the addresses listed on accounts as a business address were actually a personal account, the municipality has no access to it, or has to contact the former employee to try and gain access.

Not having an email address at all is even more problematic, especially for professionals who must correspond with clients or officials who need to be available to citizens and staff. In addition, many organizations now require the use of an email address in order to register for services. Without an email account, registering for certain events, receiving e-newsletters and updates or participating in professional continuing education is impossible.

Fortunately, in the last few years there have been some very interesting changes in the technology services available for smaller organizations.

Solutions

In the second half of 2010, Google moved its Google Apps suite, which included email, a calendar, a word processor application and an instant message application, from a beta testing release to a full production release. Shortly thereafter, Google introduced "Google Apps for Business," which has since been renamed to "Google Apps for Work" – a much more robust release requiring a nominal monthly subscription. Google has since added a file and synchronization service, a spreadsheet application, a presentation application and a forms application for PDF editing. There is also a cloud storage service available called Google Drive. All of the applications are now included in the Google Apps for Work suite. The great thing about this is that an organization can choose to just purchase the email portion of the suite for less than if they were to subscribe to the entire suite. The email portion allows organizations to brand their emails with their domains or business names. For example: **mayor@yourcityname.com**. Google will even reserve a domain name for the entity if they don't already have one. These addresses are easily set up and managed (including passwords) from a central webpage. At the time this article was written, the monthly cost for the entry level, email only subscription is \$5 (*five dollars*) per user. According to Google, more than five million subscribers

Terms of the Trade

- **Email** – messages that are distributed via electronic means from one computer or mobile device to one or more recipients via the Internet.
- **Domain** – a unique name for an entity to be used as an Internet address for websites, email, and other electronic communications.
- **Beta** – a trial of machinery, software or other products, in the final stages of its development.
- **Suite** – a collection of computer programs – usually application software that are related in usage, often with some ability to smoothly exchange data with each other.

currently use Google for Work. Amit Singh, Google for Work President, claims 60 percent of Fortune 500 companies are using Google for Work services.

In late 2010, Microsoft announced that it would launch an improved online services suite designed to bring together its existing online services and add new functionality by including Exchange Online (Microsoft's email server application), SharePoint (for internal social networking, website design and file collaboration) and Lync (for instant messaging, Voice over IP (VoIP) phone communications and conferencing). The new suite labeled Office 365 was made available for public release in June 2011 and included a cloud storage service called OneDrive. Of course, Office 365 also includes Microsoft Office. However, there is an option available to purchase just an Exchange Online subscription. As with the Google email service, there are two levels of service for Exchange Online. The entry level subscription is \$4 (*four dollars*) per user each month. According to Microsoft, Office 365 has more than 60 million active subscriptions.

Additional Options

There are, of course, additional options that you can consider. Many municipalities and organizations have accounts with

cable providers or other telecomm entities. Often these accounts include the ability to create (usually up to 5) individual email addresses at no extra cost. While email addresses will not be branded to reflect the organizations name, they can be customized in other ways if needed. For example: **mayorofcityname@yourcableco.com**.

There are also a number of free email services still available. For instance, Google continues to offer its original Gmail for free. Microsoft offers Outlook.com addresses for free and Yahoo Mail is another free service. All of these services can be configured to be received on smartphones and other mobile devices relatively easily. They also all have easy to navigate websites to check your email, or can be configured to use Microsoft Outlook as a client. (Yes, I know, that's easy for me to say as an IT guy ...)

The Bottom Line

There's no denying the fact that email as a business tool is almost as necessary as a checking account. Indeed, there are very few organizations that can function sufficiently without email in today's technology-infused environment. Fortunately, there are many options that will allow you to very easily and inexpensively set up and use email – and, really, *why wouldn't you?!* ■

2016 Orientation Conferences for Elected Officials and Municipal Personnel

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8 a.m. to 5 p.m., \$125 per person, lunch is included

- **Tuesday, November 1, 2016**
- Arthur R. Outlaw Convention Center, One South Water Street, Mobile, AL 36602
- **Thursday, November 3, 2016**
- Embassy Suites, 300 Tallapoosa Street, Montgomery, AL 36104
- **Wednesday, November 9, 2016**
- Von Braun Center, 700 Monroe Street, Huntsville, AL 35801
- **Thursday, November 10, 2016**
- Sheraton Birmingham Hotel, 2101 Richard Arrington Jr. Blvd. N., Birmingham, AL 35203

Topics Include:

The League and Your Municipality, Working with the State Legislature, Finance and Budgeting, Your Duties and Authority, Conducting Effective Council Meetings, The Municipal Year Ahead

This conference has been approved for five (5) Basic, Advanced or Emeritus hours in the Certified Municipal Official Program. Any municipal employee may register, but only elected officials will be awarded credit hours in the CMO Program. CMO core curriculum credit will not be awarded for attending this session.

New Over-Time and Exemption Rule Takes Effect December 1st

By: Kelly Cochran • Director of Human Resources • Warren Averett

In 2014, President Obama directed the Secretary of Labor to update the overtime regulations to reflect the original intent of the Fair Labor Standards Act. On May 18, 2016, the Department of Labor (DOL) issued the “Overtime Rule” or “Final Rule” extending overtime protection to several million additional Americans in the public and private sectors who are not currently eligible under federal law.

The new overtime rule goes into effect December 1, 2016, and modifies minimum wage and overtime pay regulations for executive, administrative and professional exempt employees. **The rule increases the exempt employee salary threshold to \$47,476 annually (\$913 per week), which more than doubles the current threshold of \$23,660 (\$455 per week).** The new rule allows for the inclusion of up to 10 percent of non-discretionary bonuses, incentive and commission payments to satisfy the salary requirement if paid on a quarterly or more frequent basis. In addition to more than doubling the salary threshold, the new overtime rule includes automatic updates every three years beginning January 1, 2020.

The new rule also increases the Highly Compensated Exemption from \$100,000 to \$134,004 annually if such employees are paid at least the minimum salary requirement of \$913 per week and meet other applicable requirements. Under the Highly Compensated Exemption, bonuses and incentive payments can be included in the annual salary threshold, but not the weekly salary requirement.

Potential Impact to Municipal Employers

Although this new rule could result in a considerable increase in compensation costs for many municipalities, options are available to minimize the impact. Those not paying fair wages will be impacted the most while municipal employers that are paying employees fairly for all hours worked will have options to manage and control costs through thoughtful planning and analysis.

There are numerous implications to consider as a result of this change in addition to analyzing the various pay options. Municipalities will have to determine how to handle the increased exempt salary threshold, as well as consider the

effects on other employees in the same or similar position who are not impacted by the new threshold requirement. Changes in some employees’ pay could likely result in pay compression issues.

As if that isn’t enough, there are also administrative issues to consider. If a municipal employer changes employees from exempt to non-exempt, how will all hours worked be tracked? Do these employees travel? Do they work from home or via mobile devices after hours? Will you limit after-hours work? Should you consider a policy allowing for the option of comp time in lieu of overtime if the employee agrees? Will benefits, such as vacation, be impacted as a result of changing employees from exempt to non-exempt status?

While the exemption duties test did not change, this is a perfect opportunity to review all exemption classifications to ensure compliance; review and update job descriptions; and reassess compensation structures and strategies.

Don’t Delay! Take Action Now.

While you have until December 1, 2016 to comply with the new overtime rule, municipalities, like all employers, should start planning and taking steps now. With proper analysis, planning and communication, the impact can be minimized and have a positive result for your workplace.

To start, municipalities should immediately audit their workforce and payroll to identify executive, administrative and professional exempt salaried employees whose compensation falls below the new exempt threshold. For those that fall below the new \$47,476 compensation requirement, there are several pay conversion methods endorsed by the Department of Labor that can be used to convert or change a salaried employee’s pay to comply with the new overtime rule. One size does not fit all; therefore, municipalities may want to consider soliciting the assistance of an HR Consultant to help calculate and analyze the available options, as well as an attorney to assist with potential legal implications.

To calculate and analyze the various pay methods, municipal employers will need to know the number of hours worked by impacted exempt employees. If unknown, they

will need to obtain or estimate such hours. This may be accomplished by soliciting input from employees and/or having them track all hours worked for a period of time taking busy or seasonal periods into account that may fall outside of the tracking period.

Once a pay strategy is determined, all employers, public and private, should take the opportunity to review policies and benefits to determine any impact on employees as a result of the change. Communication will be key. To minimize concerns of all involved, municipalities should develop communications for employees and managers explaining how the new overtime rule affects them, including any changes to policies and benefits.

With thoughtful analysis and planning, the impact can be minimized. ■

Resources

- US Dept. of Labor – Overtime Final Rule and State and Local Governments: www.dol.gov/sites/default/files/overtime-government.pdf

- Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the FLSA: www.dol.gov/whd/overtime/fs17a_overview.htm
- Wage and Hour Division – Final Rule: Overtime: www.dol.gov/whd/overtime/final2016/
- Wage and Hour Fact Sheet: Final Rule to Update the Regulations Defining and Delimiting the Exemption for Executive, Administrative, and Professional Employees: www.dol.gov/whd/overtime/final2016/overtime-factsheet.htm

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DesignAlabama

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the question of how to create a sense of place for a town experiencing rapid growth in non-contiguous areas. Mayor Stone acknowledged that to continue to grow in a smart and organized pattern, the challenge was to find the proper location to place the ‘heart’ of their community. Their growth pattern of acquiring parcels of crossroads communities prompted Mayor Stone to inquire at the Mayors Design Summit “how we could collectively get the value of having a municipal tool but still maintain the identity of all those areas.” The panel recommended creating a series of villages instead of one big downtown area, as well as identifying a location for a new municipal facility. It also recommended having a pedestrian-friendly area that had the feel of a neighborhood commercial district with access to a full range of services. The town had already begun plans to construct a trails network. With this in mind, the panel recommended the town use its current trails project to connect the various crossroads communities that are not contiguous.

Since the 2009 Summit, Pike Road has implemented many of the panel’s recommendations. The town acquired the Pike Road Station complex at the corner of Pike and Vaughn roads and remodeled the building as its Town Hall complete with rooms for community group meetings and entertainment, as well as offices for the town’s employees. A grant through transportation enhancement funds, along with help from Auburn University landscape architecture graduate students, has allowed the town to make significant progress

on a trails network connecting its crossroads communities with both bicycle and footpath options.

A few years later, in 2012, Mayor Drew Gilbert of Cordova, located in Walker County, attended the Mayors Summit and said this about his experience: “Coming into office the year after we were devastated by the tornado outbreak of 2011, the design challenges we faced were a bit overwhelming. The thought process, design assistance and contacts made at the Mayors Design Summit are tools that forever shaped the face of my hometown and continue to do so now.”

DesignAlabama is also working on a number of other programs, including ConnectLivity, which is a series of regional charrettes (intense periods of design activity) examining local and regional assets for collective reasons to visit Alabama’s amazing communities – for a day, a weekend or a week! The goal is to develop itineraries as well as long-range plans to help regions fully utilize their assets and attractions as well as creating tools for recruiting the amenities necessary for tourism – and for thriving, livable places that can then attract entrepreneurs, retirees and new businesses. Through ConnectLivity and all of our programs, DesignAlabama aims to help Alabama’s communities and citizens understand design and appreciate its importance in our everyday lives. Good design is truly good for the soul. For more information on DesignAlabama, visit designalabama.org. ■

provide valuable perspectives on what small businesses are experiencing at the local level, all around the state, on an ongoing basis.

Donna Kerr, an SBC member from Fayette, is the owner of Robbie's of Fayette, a retail clothing store with a significantly growing online presence. "It is so much easier to start a business today," she said, "with online licensing and registration, and the ability to launch a business over the web, anybody can do it. And that makes it easier to put revenue back into our local communities." Kerr also strongly supports the August sales tax holiday, calling it a "real game changer for retailers in the state ... it encourages people to make purchases they might otherwise put off, and it increases the buying intensity for the month of August." Direct feedback from SBC members like Kerr helps state and local officials in their decision-making, as they evaluate new and existing legislation.

One way the SBC has been proactive in expanding access to small business resources at the local and state level is through its home on the internet, Atlas Alabama (www.atlasalabama.gov). In addition to member profiles, news and information, users will find all sorts of small business resources, access to state and local government functions, and support services designed to assist new entrepreneurs and existing business owners. While the website is live, it is also constantly under development, as it expands online functionality and its relationships with state agencies and local governments (see sidebar).

SBC looks forward to continuing its partnership with Alabama's communities to encourage innovation and discuss critical issues affecting economic growth throughout the state. ■



Your Municipality's Portal to New Business

Atlas Alabama (www.atlasalabama.gov) is a website and online portal launched in 2014 dedicated to serving the small business community in Alabama. Using the Atlas Alabama website as a starting point, the goal is to simplify and streamline the process for obtaining basic, comprehensive information related to the full life cycle of a business: launching, growing, managing, and even exiting a business. This website provides useful resources, including information, checklists and helpful links to state agency websites so that entrepreneurs can follow the steps required to launch or manage a business.

While Atlas Alabama is already in the process of developing content and links to all relevant state agency websites and continually updating online services to meet the evolving needs of small businesses in Alabama, one critical area of need for entrepreneurs and new business owners is Local Resources.

Your Municipality and Atlas Alabama

New this year, Atlas Alabama is developing its Local Resources section on the website by providing free landing pages, for all counties and municipalities, complete with news, demographic information, and directories with links to local business resources. These locality landing pages on Atlas Alabama will connect entrepreneurs and small business owners directly with the local business license officers, tax officials and chambers of commerce in those localities in which the entrepreneur is interested in operating a business.

Under the Local Resources section on Atlas Alabama, a Municipal Directory of landing pages is being developed which will allow entrepreneurs to sort municipalities by county, population, and median household income. Further, these landing pages will serve as a portal to your municipality's website and business resources. If your municipality doesn't have a website, the Atlas Alabama municipal landing page can provide businesses with the basic information they need to know about operating a business in your locality, such as contact information for city hall and business licensing offices, and other information about your municipality that is of particular importance to potential or existing business owners.

Having a landing page developed for your municipality on Atlas Alabama is simple – go to www.atlasalabama.gov/locality-landing-page-questionnaire/ and complete the questionnaire form, providing necessary information about your municipality. Email the completed form to info@atlasalabama.gov and someone from Atlas Alabama will contact you or your designated staff and develop your municipality's portal to new business! For additional information, contact Arleen Alexander at 334-353-2369 or via arleen.alexander@revenue.alabama.gov. ■

1981). A councilmember may participate in the appointment or election of a son-in-law or stepfather to a city board provided the relative is not financially dependent upon the councilmember and is not an employer or employee of the councilmember. AGO 1983-112 (to Hon. Fred W. Purdy, December 29, 1982). A police dispatcher cannot serve as an agent for a bail bonding business in the city. AGO 1993-116. A mayor and members of the council may receive water and cable television discounts only if granted as part of their salaries. AGO 1991-173.

Section 41-16-60, Code of Alabama 1975, states that no member of the municipal governing body or of a municipal board shall be financially interested or have any personal beneficial interest, either directly or indirectly, in the purchase of or contract for any personal property or contractual services. This section is part of the competitive bid law applicable to municipal purchases of personal property or contractual services. The office of the Attorney General has determined that a member of a municipal utility board who is the sole owner of a business may not sell trucks to the utility board, with or without bids. AGO 1999-098. Section 41-16-60, Code of Alabama 1975, precludes a member of the Water Works and Sewer Board from having any personal or financial beneficial interest, directly or indirectly, in a contract for the provision of services to the Board. Whether a direct or indirect benefit actually exists is a question of fact for the Board to determine. AGO 2007-078.

The Alabama Firefighters' Personnel Standards and Education Commission/Alabama State Fire College may employ off-duty municipal firefighters and paramedics during their "off time" as educational adjunct fire instructors for the Commission's "open enrollment" training classes to teach educational training classes to other firefighters and paramedics, including his or her own coworkers who may also be enrolled in such classes. This employment does not violate section 11-43-12 of the Code of Alabama. AGO 2011-019.

Violation of Section 11-43-12 is deemed a misdemeanor and constitutes grounds for impeachment. A violation of Section 41-16-60 also constitutes a misdemeanor punishable by fine not exceeding \$500 or imprisonment not exceeding 12 months. Removal from office is mandatory.

Exception for Class 7 and 8 Municipalities

Exceptions to Sections 11-43-12 and 41-16-60, Code of Alabama 1975, are provided by Section 11-43-12.1 for Class 7 and 8 municipalities (under 12,000 population according to the 1970 federal decennial census). Notwithstanding any statute or law to the contrary, any Class 7 or 8 municipality may legally purchase from any of its elected officials or employees any personal service or personal property, provided the elected official or employee is the only domiciled vendor of the personal service or personal property within the municipality. The cost or value of such personal property or service shall in

no event exceed \$3,000. The elected official or employee, who proposes to sell to the municipality, shall not participate in the decision-making process determining the purchase but shall make any disclosure required by the state ethics commission. The governing body of such municipality shall determine and find that the elected official is the sole vendor domiciled in the municipality and that the selling price of such service or property is lower than could be obtained from a vendor domiciled outside the municipality. In making such determination, consideration may be given to the quality of service or property proposed to be supplied, conformity with specifications, purposes for which required, terms of delivery, transportation charges and the date of delivery. The office of the Attorney General has determined that a Class 8 municipality may contract, under the provisions of Section 11-43-12.1, with a wood-waste recycling business partially owned by a council member if the provisions set out in the statute are followed. AGO 2003-014.

This law also allows any Class 7 or 8 municipality to legally purchase from any of its elected officials any personal service or personal property under competitive bid law procedures. This authority is not restricted to situations where the elected official or employee is the sole vendor within the municipality. The elected official or employee, if he or she proposes to bid, shall not participate in the decision-making process determining the need for or the purchase of such personal property or personal service or in the determination of the successful bidder. The governing body shall affirmatively find that the elected official or employee is the lowest responsible bidder as required by the state law. It shall be the duty of the municipality to file a copy of any contract awarded to any of its elected officials or employees with the state ethics commission. All awards shall be as a result of original bid taking. In the event an elected official or employee offers to sell or submit a bid to the municipality, he or she shall make full disclosure of his or her ownership or the extent of ownership in the business organization with which he or she is associated, under oath, to the municipality.

Other Exceptions

Although Sections 11-43-12 and 41-16-60 have been used as authority for prohibiting numerous activities, the courts and the Attorney General have ruled that certain exceptions, other than Section 11-43-12.1, do exist. For instance, a municipal official's son is not prohibited from bidding on a municipal contract because of kinship as long as the father has no financial interest in the son's business. AGO to Hon. James C. Wood, September 10, 1975. A person whose spouse serves as a municipal judge may serve on the municipal council provided he recuses himself from voting on issues dealing with his wife's position as judge. AGO to Hon. James H. Sims, July 8, 1975. A councilmember may serve as a volunteer firefighter for the municipality provided he receives no compensation for his services other than reimbursement for expenses incurred in

the performance of his municipal duties. AGO to Hon. Paul Shipes, February 8, 1974. An incorporated water board may purchase insurance from an insurance agency owned by the municipal attorney. *Mobile v. Cochran, supra*. A municipal official may rent TV sets to patients in a municipal hospital. AGO to Hon. Oscar Peden, June 11, 1971.

These sections prohibit a municipal official or employee from doing business with the municipality, even if the contract is made on a competitive bid basis. However, the Attorney General has ruled that these sections do not prohibit a municipality from doing business with incorporated firms which have municipal officers or employees as shareholders or corporate officers. 128 Q. Rep. Att. Gen. 30. A municipality may not, however, do business with the incorporated firm if the firm is a **family-held** corporation or if the municipal official is a majority shareholder in the corporation. *See*, AGO to Hon. Frankie J. Kucera, April 6, 1976; AGO to Hon. Wayne Harrison, December 6, 1973; AGO to Hon. Herbert G. Hughes, August 9, 1968; and AGO to Hon. Andrew J. Gentry, Jr., March 8, 1974.

These sections do not prohibit a municipal official from bidding on real property being sold by the municipality, 129 Q. Rep. Att. Gen. 48, nor does it prohibit a corporation which employs a municipal official from selling automobiles to the municipality which the official serves. AGO to Hon. Robert S. Milner, April 4, 1975.

A municipality may do business with a bank where the mayor of the city serves on the bank's board of directors and is a minority stockholder, provided, however, that the mayor does not vote on matters relating to the bank that are brought before the city council. AGO 1993-168 and AGO 2005-047.

Other Statutory Restrictions

No officer of a municipality may be surety for any person having a contract, work, or business with the municipality for the performance of which a surety may be required. Section 11-43-12, Code of Alabama 1975. Certain exceptions exist for public works bids. *See*, Section 39-1-4, Code of Alabama 1975.

No officer or employee of a municipality, personally or through any other person, shall deal or traffic in any manner whatsoever in any warrant, claim or liability against the municipality. Violation constitutes a misdemeanor and grounds for impeachment. Section 11-43-14, Code of Alabama 1975.

A councilmember or mayor is prohibited from voting on questions which come before the council in which he or she or his or her employer or employee has a special financial interest, either at the time of voting or at the time of his or her election. Section 11-43-54, Code of Alabama 1975. The Attorney General has ruled that this section requires a councilmember whose spouse is employed as a teacher in the city's school system to refrain from voting on all matters pertaining to compensation, tenure and benefits of his or her spouse. AGO 1989-084 and AO NO. 1992-87. However, the Attorney General has ruled that a mayor whose spouse is employed by the city school system

may vote on school board appointments or on appropriations to the school system if the vote of the council ends in a tie. AO NO. 1992-83. Section 36-25-5(a), Code of Alabama 1975, permits a councilmember, whose spouse is employed in a private capacity by a person who is a current member of the city board of education, to vote on the appointment of a new board member. AO NO. 1991-51.

A county commissioner may not vote on a one-cent sales tax that would benefit a city board of education which employs him or her. AO NO. 1994-33. Councilmembers who are employed by a board of education cannot vote on a proposed sales tax increase for school system capital outlays. AGO 1991-041. A councilmember may not vote on a budget which would benefit his or her spouse, nor vote on a disciplinary matter, if the vote might affect his or her spouse financially. AO NO. 1992-98.

No member of a municipal council may be appointed to any municipal office which has been created or the emoluments of which have been increased during the term for which he or she was elected. He or she may not be interested, directly or indirectly, in any contract, job, work, material or the proceeds thereof or services to be performed for the municipality, except as provided by law. Section 11-43-53, Code of Alabama 1975.

Chapter 10 of Title 13A, Code of Alabama 1975, as amended, sets out a number of offenses against public administration, such as obstructing governmental operations, refusal to permit inspection, failure to file a required report, tampering with governmental records, bribery of public officials, failure to disclose conflict of interests, trading in public office, misuse of confidential information and perjury. Municipal officials should become familiar with these statutes.

The Theft of Honest Services Act did not make criminal undisclosed self-dealing by a public official or private employee, i.e., the taking of official action by the employee that furthers his own undisclosed financial interests while purporting to act in the interests of those to whom he owes a fiduciary duty. The honest services statute covers only bribery and kickback schemes. *Skilling v. U.S.*, 561 U.S. 358 (2010).

And finally it is important for municipal officials to always keep in mind the Alabama Ethics Law, found in Chapter 25 of Title 36, Code of Alabama 1975. For a more detailed discussion of the Alabama Ethics Law, see the article titled "The Alabama Ethics Law" in the Selected Readings for the Municipal Official (2016 ed.)

Conclusion

Being aware of conflicts between one's private interests and their role as a public official should always be in the forefront of a municipal official's mind. As this article points out, there can be legal consequences for failing to do so. And even though there are some legal exceptions to some potential conflicts of interest, it never hurts to remember the age-old adage that "just because you can, doesn't mean you should." ■

its members and what is best for our cities,” Segraves said. “It exists to serve municipal officials and staff through education, information, cooperation and bringing us together as one voice comprised of 462 cities – big and small, rural and urban.” For many years, Segraves has been a participant in the League’s Certified Municipal Official (CMO) program, which was launched in 1996. He was part of the first graduating class in December 2015 to earn Emeritus Status – the highest CMO level. He also serves as president of the Board of Directors for the Municipal Workers Compensation Fund, Inc. (MWCF), an affiliate organization of the League.

In addition to the Alabama League of Municipalities, ACE and DesignAlabama, Segraves has aligned himself with a number of agencies and organizations to benefit from expertise and funding opportunities Guin would never be able to secure or afford on its own, such as Alabama Mountain Lakes Tourism Association, the Alabama Department of Economic and Community Affairs (ADECA), Appalachian Regional Commission (ARC), Alabama Commerce Department, the Economic Development Association of Alabama (EDAA), USDA Rural Development, University of Alabama Center for Economic Development, Auburn University Government and Economic Development Institute and the Northwest Alabama Council of Local Governments (NACOLG).

For instance, to aide in planning and grant writing, Guin has used its close relationship with NACOLG, a voluntary regional planning and intergovernmental coordination association of 37 governmental agencies in the five-county region of Colbert, Franklin, Lauderdale, Marion and Winston counties. NACOLG was created by the Alabama Legislature in 1967 as an extension of city and county government for officials to decide issues of region-wide importance and collaborate to solve problems that stretch beyond local government boundaries. Among its many services, NACOLG offers support and resources for economic development, community development, community and regional planning, transportation planning and senior centers.

Segraves emphasized that, in addition to professional relationships, he’s established a number of outstanding friendships throughout his journey to improve Guin. “For a community of less than 2,500 people, building outside relationships is more than critical,” he said. “You’ve got to understand each agency and who you need to know at each agency. Then you need to get to know those individuals. The game constantly changes. What worked last year may not work this year. You have to stay on top of it. A lot of the money that comes to Alabama through Washington will be assigned to a specific agency to handle the funds. Because Guin is small, it doesn’t receive direct appropriations from sources such as CDBG. We have to compete with other municipalities and we’re scored on the process.”

Identifying resources and funding is an art Segraves has perfected over the past two decades: “Part of the money for our industrial road came from the Small Business Administration (SBA). Why? Because that agency was chosen to administer

that particular block of money. So SBA guidelines then apply to those funds. Another portion of the money for the road came from the Alabama Regional Commission (ARC), which chose the Department of Transportation to administer the funds. So DOT guidelines apply to that block of money – which are different from the guidelines for the SBA funding. And if you don’t understand that – how it all works – you’re going to be lost in high weeds. Relationships with the agency employees help keep you from getting lost.”

Thanks to his tireless efforts, he understands where to spend his energy and how to present Guin in the best possible light. “Our competition isn’t really our neighboring communities – it’s cities throughout the region that are trying to recruit similar projects,” he said. “Companies looking for a place to locate don’t want to work with a community that’s in disarray. They want to know that the citizens are in support of the project. When they commit to a site visit, they’ve already checked you out. They’ve looked at your local newspaper to see what’s going on in the area. They’ve researched your community, looked at your municipal website, learned all they can. They do their homework. Many communities are eliminated having never known they were even in the game.”

With his long view for success and a shovel-ready industrial and commercial site along I-22 featuring a Holiday Inn and the necessary infrastructure for growth, Segraves has ensured Guin is poised for progress – and doing everything possible to not only remain in the game, but to finish as a winner. ■

Editor’s Note: Several agencies and organizations mentioned here, as well as articles offering practical advice for retail development and commercial growth, are featured in this issue of the Alabama Municipal Journal.





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