

The Alabama Municipal JOURNAL

March 2008

Volume 65, Number 9



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The Alabama Municipal JOURNAL

Official Publication, Alabama League of Municipalities

March 2008 • Volume 65, Number 9

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Cover Photo:

Second Runner-up, 2008 Photo Contest
Photographer: Vaughn Bowers, Opp

Deans Pharmacy, on the corner of Main Street and Hart Avenue, was built in 1925 by Dr. Benjamin C. Stewart and is a three-story structure. It was built with the first floor as Deans Pharmacy; the second floor was to be a hospital; and the third floor was for the Masons and Eastern Star as a Masonic Lodge. Due to Dr. Stewart suffering heart trouble, a hospital never opened on the second floor. The building now serves as Opp's Cultural Arts Center featuring art of all types from local artist.

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A Message from the Editor



For those of you who don't already know, I was raised in Bladenboro, North Carolina, a one stoplight town that was (and still is) the heartbeat for a rural, farming community. I grew up with tobacco fields and boiled peanuts; wading barefoot in ditches searching for tadpoles and frogs; building bamboo forts with my cousins; stocking shelves in my mother's hardware store; and eating fresh field peas, butterbeans, tomatoes, sweet corn and every other garden-grown vegetable imaginable. My entire family – my parents, my brother, his wife and two daughters, my favorite aunts, uncles and cousins – still live in Bladenboro, a 500-mile drive from my doorstep to theirs. Needless to say, sometimes I find myself a bit homesick.

So, this month I'd like to take a moment to pay tribute to Jane and Nina – two hard-working, resourceful sisters as alike as raindrops and unique as snowflakes. Two extraordinary women who were forever busy yet always had time; who did without so their children wouldn't; who could run a hardware store, top a tobacco field, vaccinate a pig, referee rowdy children and still look good in church on Sunday. These are the women – my mother and my aunt – who nurtured and loved me through my childhood as they taught me to be independent, industrious, appreciative, virtuous, respectful and adventurous. These are the women who inspired me – sometimes with a warm hug, sometimes with a switch snatched from the nearest bush, but always with an intensity that left no question my welfare was a priority. These are the women – sisters, mothers, aunts, grandmothers – who, I hope, recognize a part of themselves in the person I've become. We should all be so fortunate to have one – let alone *two* – such incredible women touch our lives. My cup runneth over.

Congratulations to photographer Vaughn Bowers whose beautiful picture of Opp's Cultural Arts Center, formally Dean's Pharmacy, was the 2nd Runner Up in our 2008 Photography contest and graces the cover of this issue of the *Journal*. This 1925 building located on the corner of Main Street and Hart Avenue features artwork created by area artists.

The League welcomes our newest employee, Dan St. Pierre, who trekked from Michigan to Montgomery to join our staff on February 1st as our Information Systems Specialist. Dan graduated with honors in 2007 from the University of Michigan with his BS in Computer Information Systems. We look forward to working with him!

Mark your calendars! A new round of CMO training sessions will be held from 9:30 until 3:30 April 2 in Loxley, April 4 in Huntsville, April 7 in Birmingham and April 8 in Wetumpka. "Dos and Don'ts of Municipal Law and Liability" will be covered during the morning and "The Fair Standards Labor Act" will be discussed following lunch. Registration materials were mailed last month. For additional information, contact Theresa Lloyd, CMO Administrator, at 334-262-2566 or via email at theresal@alalm.org.



My mother, Jane (left), with her sister, Nina.

The League's Annual Convention will be held May 17-20 at the Birmingham-Jefferson Convention Complex (BJCC). Please note that the program has changed from past years and *begins* on **Saturday, May 17** with registration from 8 a.m. until 5 p.m. A tentative program can be found on page 27 or by visiting www.alalm.org and clicking on the "2008 Convention" button on the left side of the screen.

The joint Spring Municipal Law Conference for AAMA and AMJA is scheduled for March 28 at the Pelham Civic Center Complex in Pelham and offers a full day of comprehensive training for municipal attorneys, prosecutors and judges (see program on page 28). For registration materials or additional information, call Sharon Carr, Legal Services Administrator, at 334-262-2566 or via email at sharonc@alalm.org or visit www.alalm.org and click on the AAMA link under the "League Programs" tab at the top of the page.

In closing, I'd like to thank Kirksey Whatley with the Alabama Department of Public Health for providing the extremely important article on radiation emergency response planning found on page 25.

Carrie

The President's Report



Charles W. "Sonny" Penhale
Mayor of Helena

RDS/AlaTax Provides Experienced Approach to Collecting Unpaid Debt

Each year millions of dollars worth of fees for services provided by Alabama's municipalities go uncollected. Few municipalities have the dedicated staff or centralized collection offices to handle the accounts that need attention. One solution to your debt collection problems may be the Revenue Recovery (debt collection) program. This League-endorsed program is a partnership with RDS/AlaTax and provides local governments a politically sensitive and experienced approach to collecting unpaid debt.

In these unsure economic times collecting delinquent receivables provides governments new revenue from existing revenue streams. Capitalizing on these existing revenue streams is a smart choice for local governments. It's another way you're able to show voters that you understand your fiscal responsibility and that you take seriously the goal of leveling the playing field for all taxpayers.

There are many types of debt that can be collected under this program. Some of the debt collection opportunities include utility bills such as water, sewer, gas, power or cable. Other debt categories include court fines and fees, or any other debt exclusive to your city.

This program addresses specific client needs while following all collection laws and respecting the rights of the debtors, understanding clearly they are constituents. Specifically, this program strictly adheres to the Fair Debt Collection Practices Act (FDCPA) and the Taxpayer Bill of Rights (TBOR).

No Up-Front Costs

Your municipality will see increased revenue with no up-front costs with the contingency-based fee structure. The service is offered on a specially-negotiated contingency fee basis,

depending on the amount and age of the debt. Another attractive feature of the RDS service, in addition to the discounted fees, is the monthly reports showing the amount of debt placed, the total dollars collected, and web-based access providing your municipality with the status of their delinquent accounts.

It is simple to begin using the debt collection service. Once the contract is signed, the city provides an electronic file of all debt to RDS. The RDS staff will review and clean the data, insuring that the information is accurate and collectible. Once the collection efforts begin, they will process incoming monies and disburse the funds by check on a monthly basis.

RDS has a long standing relationship with local governments in Alabama. With more than 275 local jurisdictions currently using the services.

Is Debt Collection Right for You?

If your city is experiencing difficulty collecting past due bills, fines, fees or taxes, I hope you will consider taking advantage of the League's endorsed debt collection service. You can find information about RDS by visiting the League's website at www.alalm.org, placing your cursor on the tab at the top of the page and then clicking on the link.

The debt collection program may **NOT** be good for your municipality if:

- **Your municipality does not have at least \$100,000 in total delinquencies.**
- **Your debt is more than three years old.**
- **The data is not in electronic format.**

To determine if the Revenue Recovery program is right for your city please contact RDS debt collection customer service representative Sara Woggerman at 800.556.7274 x34125 or by email at swoggerman@revds.com. ■

ALABAMA LEAGUE OF
MUNICIPALITIES



SESSION 026

TOPICS

Program Time: 9:30 a.m. - 3:30 p.m.

Topics:

Morning Topic:

Do's and Don'ts of Municipal Law & Liability

Afternoon Topics:

The Fair Labor Standards Act

- General Overtime Provisions
- Overtime Provisions for Public Safety Employees

Overview of Federal Anti-Discrimination Laws

Lunch served on site. Lunch is included with registration fee.

Speakers:

Robbie Hyde

Attorney, Webb & Eley, P.C.

Ken Smith, Deputy Director/General Counsel

Alabama League of Municipalities

DATES AND LOCATIONS

Loxley

April 2, 2008

Loxley Civic Center

Huntsville

April 4, 2008

Huntsville Marriott Hotel

Birmingham

April 7, 2008

Cahaba Grand Conference Center

Wetumpka

April 8, 2008

Wetumpka Civic Center

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Municipal Overview

Understanding the Alabama Legislature



Perry C. Roquemore, Jr.
Executive Director

One of the prime functions of the League of Municipalities is to represent the interests of municipal government at the legislative level by informing members of legislation introduced that might affect municipal government and by presenting bills to the Legislature on behalf of the municipalities of this state.

It is important for municipal officials to have a good basic understanding of the legislative process in Alabama. This article briefly explains the workings of the Alabama Legislature and how legislation is passed by that body.

Constitutional Provisions

Article IV, Alabama Constitution, 1901 (Sections 44 through 111) establishes the legislative department of state government. Section 44 states that the legislative power of the state shall be vested in a Legislature composed of a Senate and a House of Representatives. Section 44 has been construed by the Alabama Supreme Court to give plenary power to the state Legislature. *State v. Lane*, 181 Ala. 646, 62 So. 31.

According to the Court, the Alabama Legislature possesses all of the legislative power which resides in the state under the United States Constitution, except as that power is expressly or impliedly limited by the Alabama Constitution. This differs from the powers granted to the United States Congress in that Congress can exercise only those powers enumerated in the Constitution of the United States or implied therefrom.

Article IV prescribes the manner of drafting bills, the organization and qualifications of members of both houses, authorizes each house to determine the rules of its proceedings and establishes procedures for the enactment of laws. Due to space limitations, only the provisions most applicable to the interests of municipalities will be discussed in this article.

Composition of the House and the Senate

The Alabama Legislature consists of 35 Senators and 105 members of the House of Representatives. This number was established by order of a three-judge federal district court for the Middle District of Alabama, Northern Division, in the case of *Sims v. Amos*, 336 F. Supp. 924, aff'd, 409 U.S. 942 (1972). In the decree, the court divided the state into 105 House districts and 35 Senatorial districts. Each House district is entitled to one Representative and each Senate district is entitled to one Senator. Each district has approximately the same number of people as any other district.

Qualifications of Legislators

Section 47, Alabama Constitution, 1901, states that Senators must be at least 25 years of age at the time of their election and Representatives must be at least 21 years of age at the time of their election. Both Senators and Representatives must also have been citizens and residents of Alabama for three years and must have lived in their respective districts for at least one year immediately preceding their election.

Section 60, Alabama Constitution, 1901, states that no person convicted of embezzlement of public money, bribery, perjury or other infamous crimes is eligible for membership in the state Legislature.

Each house has the authority, given by the Alabama Constitution, to punish its members. With the concurrence of two-thirds of either house, a member may be expelled. A member who has been expelled for corruption is not thereafter eligible for membership in either house. Sections 53 and 54, Alabama Constitution, 1901.

Election and Terms of Members

Members of the House and the Senate are elected, for four-year terms, on the first Tuesday after the first Monday

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in November in the even years which are not leap years. Their terms begin on the day following their election. Their terms expire on the day after the election of their successors four years later. Section 46, Alabama Constitution, 1901. Amendment 57 (Section 48.01), Alabama Constitution, 1901 provides that each house shall judge the qualifications of its members.

Organizational Session

The state Legislature meets in Organizational Session on the second Tuesday in January following the election of members. The only business that may be transacted at such a session is the organization of the Legislature for the ensuing four years, the election of House and Senate officers, the appointment of standing and interim committees, the canvassing of election returns and the determination of contested elections.

During the Organizational Session, the House membership elects a Speaker who has the duty of presiding over the House of Representatives. The House membership also elects a Speaker Pro Tem to preside over the House in the absence of the Speaker.

The Senate is presided over by the Lieutenant Governor. During the Organizational Session, the Senate chooses a President Pro Tempore to preside in the absence of the Lieutenant Governor.

Pursuant to Section 53, Alabama Constitution, 1901, the House and the Senate adopt rules of procedure for the next four years.

Legislative Committees

The standing committees of each house are established by the rules of each house. These committees, which are required by the Alabama Constitution, operate throughout the session for the consideration of legislation assigned to them.

Committee members are named at the Organizational Session and hold membership throughout their terms. The members of House standing committees are appointed by the Speaker of the House. Members of Senate standing committees are appointed by the Senate President Pro Tem.

Length of Sessions

Amendment 339 (Section 76), Alabama Constitution, 1901 requires the state Legislature to meet in annual regular sessions. Each regular session is limited to 30 legislative days within 105 calendar days. Each special session called by the Governor is limited to 12 legislative days within 30 calendar days.

A legislative day is a day on which either house of the Legislature is actually in session. Normally, the Legislature

will meet in session two days per week and schedule committee work on the other days.

Types of Bills

Amendment 397 (Section 110), Alabama Constitution, 1901 states that a general law is a law which in its terms and effect applies either to the whole state or to one or more municipalities of the state less than the whole in a class.

A special or private law is one which applies to an individual, association or corporation.

A local law is a law which is not a general law or a special or private law.

Section 11-40-12, Code of Alabama 1975, establishes eight classes of municipalities based on population. The Legislature has the authority to pass measures which affect only those municipalities within a specified class or classes. Such classification legislation is defined as general law by Amendment 397 (Section 110), Alabama Constitution, 1901. Any such legislation which has application to only one municipality must be advertised prior to introduction according to the provisions of Amendment 341 (Section 106), Alabama Constitution, 1901, which states that notice of all local bills must be published, prior to introduction, at least once a week for four consecutive weeks in some newspaper published in the county. If no newspaper is published in the county, then the notice must be posted, prior to introduction, for two consecutive weeks at five different places in the county.

Steps in Passing Legislation

If a member of the Legislature decides that a proposal has merit and that legislation should be enacted, the legislator prepares a bill or has a bill prepared for introduction into the house of which he or she is a member. That legislator then becomes the sponsor of the bill.

Many bills are introduced in both houses of the Legislature on or about the same date. This practice is not prohibited except the Constitution, in Section 70, requires that all bills to raise revenues shall originate in the House of Representatives. There is no limitation upon the number of sponsors that may sign a particular bill.

After introduction, the bill is assigned a consecutive number, for convenience and reference, and is read by title only.

This action is known as the first reading of the bill. The Speaker of the House of Representatives or the President Pro Tempore of the Senate, depending on the body where the bill was introduced, refers the bill to a standing committee of the House or the Senate.

Section 62, Alabama Constitution, 1901 states that no bill shall become a law until it has been referred to a standing committee of each house, acted upon by such committee in

continued on page 21

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The Legal Viewpoint

By Ken Smith
Deputy Director/General Counsel



Dedication of Lands

Dedication, in real property law, is an appropriation of land to some public use, made by the owner, and accepted for such use by or on behalf of the public. A dedication may be **express**, as where the intention to dedicate is expressly manifested by a deed or declaration of the owner of his or her intention to donate the land to public use. Or, the dedication may be **implied**. An implied dedication may be shown by some act or course of conduct on the part of the owner from which an inference of the intent to dedicate may be drawn.

McQuillin defines “dedication” as “the owner’s offer, either express or implied, of appropriation of land or some interest or easement therein to the public use, and acceptance thereof, either express or implied (when acceptance is required).”

The Court, in *Manning v. House*, 211 Ala. 570, 100 So. 772 (1924), defined the term by stating, “A dedication is a donation or appropriation of property to public use by the owner, accepted by the public. It may be in writing or in parol; may be evidenced by words or acts; by one declaration or unequivocal act; or by a course of conduct evincing a clear purpose to dedicate.” In *Newsome v. Morris*, 539 So. 2d 200 (Ala. 1988), the court upheld the use of parole evidence to prove a dedication of property.

History

The principle of dedication was known to the common law. Dedications are classified as **common law** and **statutory**. The difference between the two consists in the mode of proof. Statutory dedications are necessarily express, while common law dedications may be express or implied.

Municipal corporations in Alabama have the authority to accept or reject grants or dedications of property. Section 35-2-51, Code of Alabama, 1975, provides that the recording of plats or maps (recorded in probate court) shall be a conveyance of the areas marked or noted thereon as donated or granted to the public. The premises intended for street, alleyway, common or other public use, as shown, shall be held in trust for the uses and purposes intended. Section

35-2-52, Code of Alabama, 1975, requires a probate judge to decline to receive for record any map or plat upon which any lands lying within the corporate limits or police jurisdiction of any city having a population of 10,000 or more inhabitants are platted or mapped as streets, alleys or public ways, unless such map or plat shall have noted thereon the approval of the governing body or city engineer. In *Tuxedo Homes, Inc. v. Green*, 63 So. 2d 812 (1953), the court held that the recording of the map or plat **does not add** to its effect as an acceptance of the dedication. [Emphasis supplied.] See also *CRW, Inc. v. Twin Lakes Property Owners Association, Inc.*, 521 So. 2d 939 (Ala. 1988).

A good discussion of the law regarding dedication is found in the Alabama Supreme Court case of *Ritchey v. Dalgo*, 514 So. 2d. 808 (Ala. 1988).

Elements of Dedication

It is essential to a dedication that the land is owned by the person making the offer and it is necessary that the owner intends to dedicate the land or some interest therein. Equally vital is the act of acceptance for or on behalf of the public by proper authorities.

The offer or intention to dedicate does not have to be in writing. It may arise from an oral dedication or be manifested by acts that reveal the intent to dedicate the property. In *Town of Leeds v. Sharp*, 218 Ala. 403, 118 So. 572 (1928), the Court considered the validity of an alleged common-law dedication and stated:

“To establish such a dedication the ‘clearest intention’ on the part of the owner must be shown ... It requires some distinct act by the city to constitute an acceptance, such as a formal resolution or by acts and conduct of the city authorities recognizing it as a dedicated street. After the city has accepted its dedication there are certain duties and responsibilities imposed by statute upon the city.” See also Section 11-47-190, Code of Alabama 1975.

No specific grantee needs to exist at the time dedication is made since the “public” is an ever-existing grantee capable

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Revenue Recovery Through Debt Collection

Typical types of debt collected:

- Court fines & fees
- Water and sewer services
- Utility bills
- Business license
- Occupational taxes
- Parking tickets/moving violations
- Emergency medical services (EMS)
- Unpaid tolls and red light camera violations
- Real/Personal property tax
- Local taxes

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of taking a dedication for public uses.

Purposes of Dedication

Courts recognize dedication of streets, highways, alleys, public squares, parks, cemeteries, public wharves and landings, schoolhouses and public buildings. Sewers, drainage ditches and wells may be subject to dedication.

The owner dedicating land to the public may impose reasonable conditions, restrictions and reservations, if not inconsistent with the uses or purposes for which it is dedicated. The recipient, by accepting the dedication, agrees to such conditions or restrictions.

Intentions and Acts of Dedication

The vital principle underlying a dedication is the **intention** to dedicate. Courts have ruled that the “clearest intention” to dedicate must exist. In *City of Birmingham v. Graham*, 202 Ala. 202, 79 So. 574 (1918), the court held that there should be an “unequivocal act of the owner of the fee manifesting the intention that it shall be accepted and used presently or in futuro.”

The existence of an intent to dedicate, or the lack of an intent to dedicate, must be resolved from the facts of a particular case. Such facts may be shown by either positive or circumstantial evidence. See *Manning v. House*, 100 So. 772 (Ala. 1924).

Intention is easily shown by proof of a written instrument—for example, a plat or map placed on record. In *Burton v. Johnson*, 222 Ala. 685, 134 So. 15 (1931), the court held that “the platting and sale of lots with reference to such map was per se a dedication of this parcel ...” Even though a map is insufficient to satisfy statutory requirements, if places on the map are shown as streets, alleys, parks, etc., it is said to be evidence of intention to dedicate after the map is recorded. The proprietor of the land, if lots are sold in conformity to the map, would be estopped to deny a dedication as against his purchasers.

The intention to dedicate may also be shown by recitals in a deed in which the rights of the public are recognized. Additionally, in a few cases, the court has found that uninterrupted use by the general public of a roadway--when there is no evidence to contradict the presumption of dedication--shows intention to dedicate. See *Newell v. Dempsey*, 219 Ala. 513, 122 So. 881 (1929). In these circumstances, however, the use must be shown to have been with the knowledge and consent of the owner. This type of case is important in the law relating to prescriptive rights.

Evidence showing lack of intention on the part of the owner to dedicate is admissible. *Thomas v. Vandersliff*, 201 Ala. 73, 77 So. 367 (1929). The burden of proof to establish a dedication is on the party asserting it and it is never presumed in the absence of evidence of an unequivocal intention on

the part of the owner.

However, once a dedication is made, it generally cannot be withdrawn unless statutory procedures are followed. In *Pritchett v. Mobile County*, 958 So.2d 349 (Ala.Civ. App.2006), the Court of Civil Appeals held that a county’s alleged failure to use a right-of-way, which was dedicated for public use as a roadway, did not cause the right-of-way to be vacated. After there has been a proper dedication to the public, that dedication is irrevocable and it cannot be altered or withdrawn except by statutory vacation proceedings.

Acts of Acceptance

As stated above, there must be something on the part of the public entity showing an intent to accept the dedication in question. In *Ivey v. City of Birmingham*, 190 Ala. 196, 67 So. 506 (1914), the court declared that “The owner of the property through which this street was originally laid off could not impose his dedication of the street upon the public by platting the territory and disposing of lots according to the plat. He thereby made it a way, irrevocable as to purchasers; but to devolve upon the public the duty of maintaining the way as a public road or street it was necessary that there should be an acceptance by the public of the dedication.” Acceptance requires some distinct act by the city or conduct of the city authorities recognizing the declaration. *Oliver v. Water Works and Sanitary Sewer Board*, 261 Ala. 234, 73 So. 2d 552 (1954).

Mere acceptance of a plat for recording is not in itself sufficient to complete the dedication. *Tuxedo Homes v. Green*, 258 Ala. 494, 63 So. 2d 812 (1953).

Acceptance may arise by express act, by implication from acts of municipal officers and by implications from uses by the public for the purpose for which the property was dedicated. Without doubt, an ordinance or resolution of the governing body in accepting a dedication would be sufficient. But an ordinance or resolution is not necessary to show acceptance of the dedication.

In *City of Birmingham v. Graham*, 262 Ala. 202, 79 So. 574 (1918), the court enumerated methods of acceptance as follows: “... that it must be by competent authority; that it may be evidenced in several ways: (1) by deed or other records; (2) by acts that operate as an estoppel in pais; or (3) by long continued use on the part of the public in such wise that a dedication and acceptance is presumed.”

As early as 1881, the court, in *Steele v. Sullivan*, 70 Ala. 586 (1881), held:

“Such acceptance by a town or city may be manifested, among other methods, by long and uninterrupted use by the public without objection; by the expenditure of corporate money or labor in repairs, and by recognition of the street or alley in the official maps of the municipality, prepared under their authority or direction.”

In view of the decisions in several later cases, there may be doubt as to the accuracy of the last sentence, depending on how “official” the map is made by the municipality.

The length of time of use of streets and ways is usually not as important as the character of the use. In *Valenzuela v. Sellers*, 246 Ala. 329, 20 So. 2d 469 (1944), the court stated:

“True, it [the alleyway in dispute] might not have been to any great extent used by the traveling public, but as was observed in *Still v. Lovelady*, it is the character rather than the quantum of use that controls.”

In new subdivisions, streets normally connect with existing public streets and become extensions of the streets. Since municipal authorities almost invariably approve and supervise the type of construction used in new streets, those streets are, in fact, accepted when joined to existing streets and opened to use by the public.

The general rule is that proof of acceptance by the public must be unequivocal, clear and satisfactory and consistent with any other consideration. See *Mobile v. Chapman*, 79 So. 566 (Ala. 1918).

Use of Dedicated Lands

In general, property dedicated to the public must not be used except for the purpose named. The court, in *City of Troy v. Watkins*, 78 So. 50 (1918), quotes with approval:

“A public highway cannot be used in a manner foreign to its dedication and any encroachment thereon or use thereof which is inconsistent with some purpose will constitute a nuisance which may be enjoined.”

It is permissible for the dedicator and dedicatee to change the purposes of the dedication. However, if the interests of a third person have intervened and would be damaged by the change, consent of the third party is also necessary.

A dedication of property to a municipality under Section 35-2-50 and Section 35-2-51, Code of Alabama 1975, cannot be revoked unless statutory vacation procedures are followed. *Montabano v. City of Mountain Brook*, 653 So. 2d 947 (Ala. 1995).

An abandonment is generally a question of fact, but abandonment of a part is not an abandonment of the whole. Non-use is usually not considered as abandonment.

Parks

Land may be dedicated and accepted for public use as a park. Often, a landowner may subject the grant to conditions and restrictions and the municipality may receive lands so conditioned. If the condition requires the use of the property as a public park subject to reverter, an abandonment of the park may work a reversion of the title.

The park lands may be utilized in any manner consistent with use as a park, such as construction of playgrounds for

children, tennis courts, flower gardens or other recreational areas.

Municipalities may adopt reasonable rules and regulations for the use and protection of the parks. Such regulations may establish speed limits for driving in the park or may establish hours for opening and closing. See Section 11-47-22, Code of Alabama, 1975.

Provisions Relating to Parks

In 1956, Section 94 of the Constitution was amended (Amendment 112) to provide that the Legislature might enact general, special or local laws authorizing political subdivisions and public bodies to alienate, with or without a valuable consideration, public parks and playgrounds conditioned upon the approval of a majority of the duly-qualified electors voting at an election held for such purpose. In keeping with the authority, the Legislature enacted the law now found at Sections 35-4-410 through 35-4-412, Code of Alabama 1975. These statutes establish the procedures for publishing the terms of the proposed conveyance and the holding of a referendum election to determine the desire of the electorate.

Section 11-47-22 authorizes municipalities to exercise police jurisdiction over all lands purchased or acquired for parks.

Sections 11-47-20 and 11-47-21 authorize sales and leases of property “not needed or public or municipal purposes.” In *Moore v. City of Fairhope*, 277 Ala. 380, 171 So. 2d 86 (1965), the Alabama Supreme Court limited the usefulness of Section 11-47-20, Code of Alabama 1975, where a public entity is attempting to alienate dedicated park property. In that case, the city attempted to dispose of park lands upon which the court found there had been a common law dedication and longtime use by the public. The decision turned on the question:

“... does [this section] confer upon the city power and authority to convey to a private individual or corporation property within its corporate limits which has been subject to a common-law dedication for use by the public as a park? We think not ... Indeed as we construe [this section] the legislature has not attempted to authorize the sale of property held by the city in trust such as that with which we are dealing.”

In *Mobile County v. Isham*, 695 So.2d 634 (Ala. Civ. App. 1996), the Court of Civil Appeals held that because the county failed to show that it had accepted property dedicated to it as a park before the property owner divided the property into lots and sold them, the dedication was revoked and the county cannot now claim ownership of the property.

Abandoned Streets and Unneeded Property

Generally, the owner of the abutting property of a street

owns the fee to the middle (medium line) of the street but subject to the easement of the public. If the public way is abandoned, the abutting owner may normally reclaim the property since it has been freed of the easement. In view of this general rule, it is a mistake for a municipality to assert ownership to the fee in such an abandoned street until the title is thoroughly searched. The rights of a municipality in a public way are generally limited to the surface and so much of the depth as is customarily used, as streets are used, for example, for sewers, drains, cables and so forth. See *Citronelle v. Gulf Oil Co.*, 270 Ala. 378, 119 So. 2d 180 (1960).

If a municipality has acquired its right of way by condemnation, it is possible that it will own the entire fee, depending on the eminent domain proceeding at time of the acquisition. Ordinarily, a municipality, by condemnation, merely acquires an easement for public street purposes.

Caution is the watchword before committing a municipality to any course of conduct regarding the disposal of unneeded property until the full facts are ascertained as to the extent of the city's title. Section 94 of the Constitution of Alabama of 1901 prohibits a municipality from giving away public property. Therefore, if the city does, in fact, have a right to dispose of property it must be for an adequate consideration. ■



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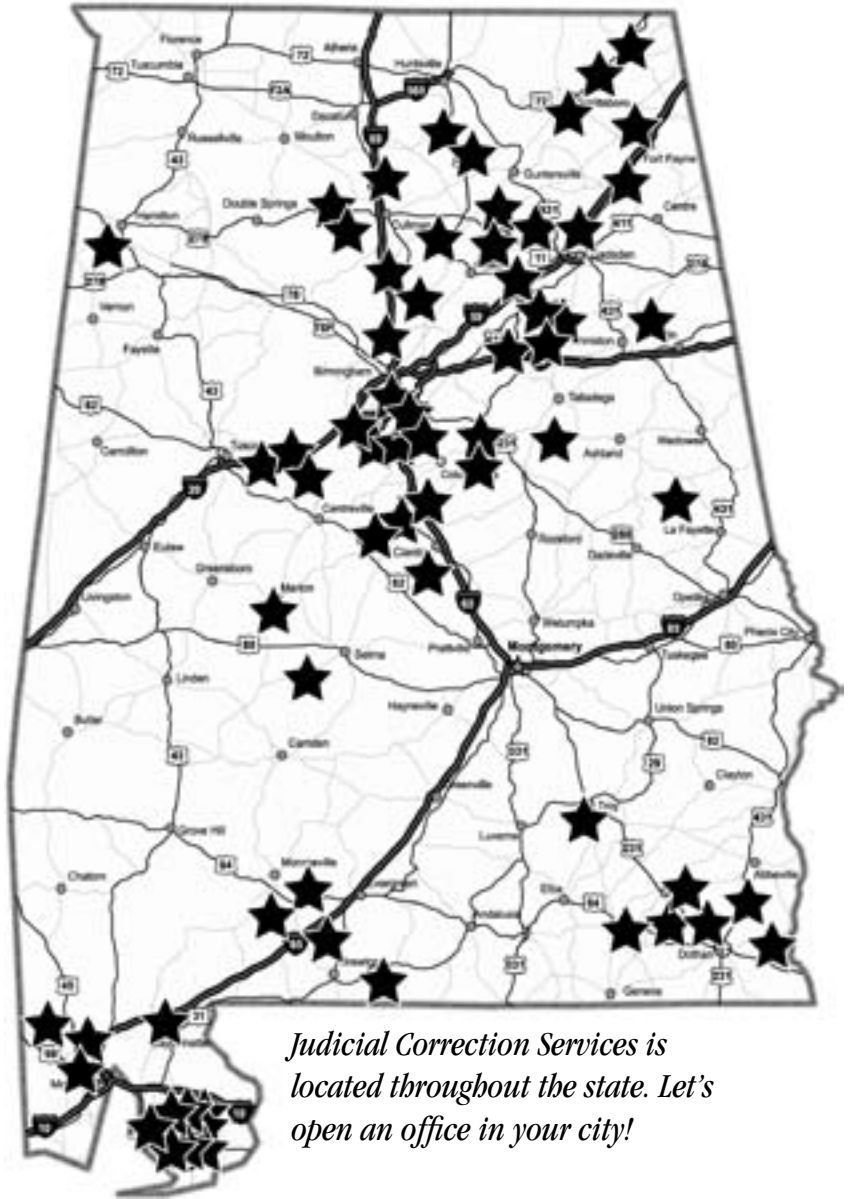
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INTRODUCING ...



Dan St. Pierre

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LEGAL CLEARINGHOUSE

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

ALABAMA COURT DECISIONS

Tort Liability: City and the city's planning director were immune from liability to landowner for flooding of property as a result of construction of a subdivision. Immunity applies to employees of municipalities in the same manner that immunity applies to employees of the state. *City of Birmingham v. Brown*, 969 So.2d 910 (Ala.2007)

Zoning and Planning: An "unnecessary hardship" sufficient to support a variance from a zoning ordinance exists where the ordinance, when applied to the property in the setting of its environment, is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private property. The "unnecessary hardship" which will suffice for the granting of a zoning variance must relate to the land rather than to the land owner himself. A mere personal hardship does not constitute sufficient ground for the granting of a variance. A self-inflicted or self-created hardship may not be the basis for a zoning variance or for a claim thereof. *Ferraro v. Board of Zoning Adjustment of City of Birmingham*, 970 So.2d 299 (Ala.Civ.App.2007)

DECISIONS FROM OTHER JURISDICTIONS

First Amendment: Permit and badge requirements for street performers and a 30 foot buffer zone imposed between all speech activities and captive audiences in the City Center entertainment zone do not violate the First Amendment's free speech clause. *Berger v. City of Seattle*, 512 F.3d 582 (C.A.9, 2008)

First Amendment: A municipal ban on scrolling or flashing electric signs does not violate the First Amendment's free speech clause. *Naser Jewelers, Inc. v. City Of Concord, N.H.*, --- F.3d ----, 2008 WL 162521 (C.A.1, 2008)

Housing and Community Development: The Contracts Clause applies to municipalities. A City may have violated the Constitution when it repealed a program intended to increase the opportunity for land ownership, thwarting the efforts of a group of condominium lessees who were in the process of trying to take advantage of the program. *Matsuda v. City and County of Honolulu*, --- F.3d ----, 2008 WL 115138 (C.A.9, 2008)

Schools: States and local school districts need not comply with the requirements of the 2001 "No Child Left Behind Act" for which federal funding is inadequate. *School District of the City of Pontiac v. Secretary of the U.S. Dept. of Education*, --- F.3d ----, 2008 WL 60187 (C.A.6, 2008)

ATTORNEY GENERAL'S OPINIONS

Ad Valorem Taxes: A taxpayer has 10 days (or now 30 days) from the date of a statement of increase of valuation of his or her property to file a protest with board of equalization. AGO 2008-44

Ad Valorem Taxes: Residential property owned by a limited liability company may be properly classified as Class III property if occupied by an individual pursuant to an executory sales contract. AGO 2008-049

Tracy Roberts
Assistant General Counsel



Compensation of Officers: The city council members of a City who have a fixed and unexpired term of office may not receive the insurance subsidy allowance provided to employees of the city during their current term of office without running afoul of sections 11-43-2 and 11-43-9 of the Code of Alabama. Council members may receive the \$150 monthly subsidy beginning in the next term, so long as the resolution authorizing such is passed at least six months prior to the municipal general election for the City to be held in August 2008. AGO 2008-040

Dormant Municipal Corporations: Towns or cities that have permitted their organization to become dormant and inefficient may petition the probate court for an order to reinstate the municipality pursuant to section 11-41-7 of the Code of Alabama. Once a municipality has been dissolved the town or city may not be reinstated under section 11-41-7, but may be able to incorporate pursuant to sections 11-41-1 through 11-41-6 of the Code of Alabama if the population requirements are satisfied. A community with a population of less than 300 may not be incorporated pursuant to section 11-41-1 of the Code of Alabama. AGO 2008-039

Elections: The county commission is authorized to determine the number of electronic voting machines for each voting place, so long as the number of voters allowed for each electronic voting machine does not exceed 2,400 or the maximum number recommended by the manufacturer if that number is less than 2,400. AGO 2008-048

Juveniles: Juveniles who fail to appear on a citation for possession of tobacco contraband in municipal court may be arrested for contempt. Any minor found in possession of tobacco or tobacco products may be prosecuted under section 28-11-14 of the Code of Alabama. Disposition of any violation of this statute shall be within the jurisdiction of the district or municipal court and not the juvenile court. Violation of this statute shall not be considered a criminal offense, but shall be administratively adjudicated. AGO 2008-047

Police Department: Neither county departments nor state departments and agencies would be considered a “person” under the definition given in the Alabama window tint law. Because municipal corporations are not clearly covered under this definition, a police officer driving a city vehicle is not considered a “person” for purposes of section 32-5C-2 of the Code of Alabama and a municipal police officer is not a “person” as that word is used in the state window tint statute. AGO 2008-041

ETHICS COMMISSION ADVISORY OPINIONS

AO No. 2008-02: Pursuant to section 36-25-13 of the Code of Alabama, for a period of two years after leaving her employment as an administrative assistant for a member of the County Commission and going to work for an entity that contracts with the County Department of Environmental Services, a former employee may work on the contract between her employer and the County Department of Environmental Services, but may not represent her new employer in dealings with the County or interact directly with employees of the County Department of Environmental Services.

AO No. 2008-03: A member of the City Council may request a street to be paved on which her parents and in-laws reside, as well as where she and her husband own a house, provided her parents, in-laws and her property are not singled-out for special treatment; that there are a significant number of other residents who will be affected by the paving; and where other streets in the town are also being paved. ■

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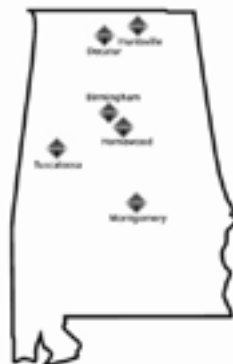
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Municipal Overview, *continued from page 9*

session, and returned therefrom.

Standing committees are charged with the important responsibility of examining bills and recommending action to the full House or Senate. At some time when the House or Senate is not in session, the committees of each house will meet and consider the bills which have been referred to them and decide whether or not particular bills should be reported to the full membership. It is during these committee sessions that members of the general public are given an opportunity to speak for or against the measures being considered by the standing committees.

Bills which are favorably acted upon by the standing committees are reported to the entire house for consideration and are placed on the regular calendar. Bills reported unfavorably are placed on the adverse calendar. If a committee fails to act, the membership of each house, by a vote, may require the committee to act and report its action to the body at its next meeting.

The committee reports a bill to the full house when the reports of the committees are called. The bill is given its second reading at that time and is placed on the calendar. The second reading is by title only.

Section 63, Alabama Constitution, 1901 requires that every bill be read on three different days in each house and that each bill be read at length on final passage.

Bills are listed on the calendar by number, sponsor and title in the order in which they are reported from committee. Bills are considered for a third reading (passage) in the order of the calendar unless action is taken to consider a bill out of regular order.

Important bills can be brought to the top of the order by special order or by a suspension of the rules. Special orders are recommended by the Rules Committee and must be adopted by a majority vote. In the final days of a session, both houses usually operate daily on special orders.

When a bill comes up for consideration, the entire membership of the house considers its passage. The bill is read at length, studied and debated. In general, regular parliamentary rules of procedure apply when a bill is being debated on final passage. Each house has special rules which limit debate.

A majority vote in each house is necessary for passage of legislation except in cases where the Constitution requires more than a simple majority. For example, a proposed Constitutional Amendment must receive the vote of three-fifths of all members elected. Section 284, Alabama Constitution, 1901. In a special session, any legislation not covered in the Governor's call, or proclamation, must receive a two-thirds vote in each house. Section 76, Alabama Constitution, 1901.

After a bill has been voted on, any member who voted with the prevailing side may move to reconsider the question,

but the time within which bills may be reconsidered is limited in both houses.

Bills passed in one house are sent to the other house by a formal message and the bills then receive their first reading in the second house. Proposals go through the same procedure in the second house committee study and report, second and third readings and floor debate and votes.

If the second house passes the bill without amendment, it goes back to the originating house for enrollment. If a bill is amended in the second house, it must be returned to the first house for consideration of the amendment. The first house may vote to concur or not to concur, in which case the bill dies. The first house may vote not to concur and request a conference committee to work out the differences between the two bills. If the other house agrees to a conference, the presiding officers of each house appoint members to the conference committee.

The conference committee meets and tries to reconcile the differences in the two versions of the bill. If agreement is reached and both houses adopt the conference committee report, the bill is finally passed.

Sometimes a house may refuse to adopt the report of the conference committee and ask for a further conference. If the committee is still unable to reach an agreement, it may ask to be discharged and request the appointment of another conference committee to begin the process again. If the conferees never agree, the bill is lost.

When a bill is passed in both houses in identical form, it is enrolled or copied in its final form and sent to the house of origin for signature by the presiding officer in the presence of the members. The measure is then sent to the second house where it is also signed by the presiding officer in the presence of the members. Then the bill is sent to the Governor. The Governor is not required to sign proposed Constitutional amendments, they are sent directly to the Secretary of State for submission to voters for ratification at the time prescribed in the legislation.

Action by the Governor

When a bill reaches the Governor, he may sign it and thus complete the enactment of a bill into law. However, if the Governor objects to the bill, he may veto it or suggest amendments to the bill and return it to the house of origin. The bill is then reconsidered, first by the originating house and, if passed, by the second house. If a majority of the members elected to each house agree to the proposed amendments, the bill is returned to the Governor for his signature.

If both houses cannot agree to the Governor's amendments or if the Governor proposes no amendments but returns the measure, the bill has, in effect, been vetoed. The houses then may try to override the Governor's veto. An affirmative vote

continued page 23

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Municipal Overview, continued from page 21

of 18 Senators and 53 Representatives is required to override the Governor's veto.

If the Governor fails to return a bill to the house of origin within six days after it is presented to him, Sundays excepted, the bill becomes law without the Governor's signature, unless the return was prevented by recess or adjournment. In such a case, the bill must be returned within two days after the Legislature reassembles or the bill becomes law without the Governor's signature.

Bills which reach the Governor less than five days before the end of the session may be approved by him within 10 days after adjournment. Bills not approved within that time do not become law. This is known as the pocket veto.

The Governor has the authority to approve or disapprove any item or items of an appropriation bill without vetoing the entire bill.

Budget Isolation Resolutions

Amendment 448 (Section 71.01), Alabama Constitution, 1901 states that the Governor must submit a proposed budget to the Legislature by the second day of each regular session. The Legislature must make the basic appropriations necessary for the current budgetary period before passing any other legislation. However, if three-fifths of a quorum adopt a resolution declaring that this restriction does not apply to a certain bill, that bill may proceed to final passage. This is

known as the budget isolation resolution and permits the Legislature to enact legislation prior to adopting a budget.

Unfunded Mandates

Amendment 621 (Section 111.05), Alabama Constitution, 1901 provides that any general law whose purpose or effect is to require a new or increased expenditure of funds held or disbursed by the governing body of a municipality or county, or instrumentality thereof, shall not take effect unless (1) it is approved by the affected governing bodies or (2) the Legislature provides funding to pay for the mandate or (3) the legislature passes the legislation by the affirmative vote of two-thirds of those voting in each house.

The amendment does not apply to: (1) local laws; (2) acts requiring expenditures of school bonds; (3) acts defining new crimes or amending definitions of crimes; (4) acts adopted prior to the ratification of the amendment; (5) acts adopted to comply with federal mandates, only to the extent of the federal mandate; (6) acts determined by the Legislative Fiscal Office to have an aggregate insignificant fiscal impact on affected governments; or (8) acts of general application prescribing the minimum compensation for public officials.

The term "aggregate insignificant fiscal impact" shall mean any impact less than \$50,000 annually on all affected governments statewide. ■



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Alabama Department of Public Health

Does your city or town have a written plan to manage a radiation incident and protect your first on-the-scene responders from radiation?

With the horrendous terrorist attacks of September 11, 2001, we have all become more aware that our cities and towns, regardless of location, are vulnerable to acts of terrorism. Therefore, it is critical that each municipality examine the adequacy of all existing emergency response plans. Equally as important, if written emergency response plans do not exist, they should be developed and put into place as soon as possible.

Even though there exists in every city, town and rural area in Alabama a real possibility of having to manage a radiation incident – the most likely of which would involve a vehicle transporting radioactive material – very few Alabama municipalities have a written plan in place. Radioactive materials are transported every day over the streets, roads and highways throughout the state. An accident involving a vehicle transporting radioactive material can interrupt traffic flow for lengthy periods of time and present safety concerns for first on-the-scene responders. In addition, industrial sources of radioactive material are used in most cities and towns in Alabama, either on a permanent or temporary basis. With few exceptions, all hospitals and many medical clinics receive and use radioactive material daily. Therefore, threats such as fire, weather, industrial accidents and transportation accidents represent a potential radiation risk to all first on-the-scene responders.

In recent years, there has been increased concern for the threat of a terrorist attack where a “dirty bomb” is detonated. Such an attack could, in fact, shut down a municipality for a significant period of time and place thousands of people at risk. Therefore, it is very important to have a written plan to manage radiation incidents and to protect first on-the-scene responders from radiation exposure. However, developing such a plan requires expertise in the principles of radiation safety.

All emergencies are managed under the National Incident Management System (NIMS). A NIMS-compliant emergency response plan requires that the

Incident Commander have the services of a Subject Matter Expert at his/her disposal. In all likelihood, very few communities have a qualified person to serve as the Radiation Subject Matter Expert to the Incident Commander. Fortunately, a plan – as well as Subject Matter Expert advice on radiation – is available.

The Alabama Department of Public Health is designated by statute as the Radiation Control Agency for the State of Alabama. Duties and responsibilities of the Agency are performed by the Office of Radiation Control (ORC) on a daily basis. ORC staff can provide – at no cost – assistance to municipalities in developing NIMS-compliant, written radiological emergency response plans tailored specifically for each city and town. ORC staff will also assist in securing needed radiation protection training for responders at no cost to the municipality.

Not only is it important to know how to activate a radiation detector, understanding what the meter readings indicate and how to apply those readings to the radiation emergency is crucial. If your city or town currently has radiation detection equipment but needs help in learning how to better use the equipment, or if you need consultation about types of radiation detection equipment to purchase, contact Kirksey Whatley, Director, Office of Radiation Control, Alabama Department of Public Health at 334-206-5355 or via email at kwhatley@adph.state.al.us. ■



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Distinguished Service Awards

Presented at 2008 Annual Convention

This year, the League will present its Distinguished Service Awards to elected municipal officials, attorneys, judges, mayors, administrative assistants and clerks who have served for 20, 30 or 40 years in municipal office. Service in multiple positions may be combined to make the required number of years. These service awards will be presented at the 2008 Annual Convention at the BJCC during the luncheon on Tuesday afternoon, May 20. Please help us prepare for the presentation of the League Distinguished Service Awards by notifying League Headquarters **before April 24, 2008** of any official who has served for 20, 30 or 40 years in municipal office and **has not previously received a service award for the number of years submitted**. Visit www.alalm.org to download the appropriate form for this purpose.

2008 ALM EXPO

MAY 18-19, 2008
BJCC, Birmingham, Alabama

**League Welcome Reception,
Sunday May 18, 2008, 5:30 -7:00 p.m.**



TENTATIVE PROGRAM: 2008 CONVENTION

IMPORTANT ANNOUNCEMENT: This year's Convention will begin on *Saturday, May 17*. Some events, such as the Ask Your Attorney/Round Table Discussions, have been moved to a new time and date. **PLEASE NOTE THESE CHANGES!** This year's convention will conclude at 2:00 Tuesday afternoon, May 20, following the Noon luncheon. Most meetings and activities will take place in the Birmingham-Jefferson Convention Complex (BJCC) unless otherwise noted. Attendees can earn CMO credits for the Certified Municipal Officials Training Program by attending sessions at the convention. The official Convention Program will contain the amount of credit hours that can be earned. Visit www.alalm.org for registration information and convention updates.

Saturday, May 17

| | |
|-----------------------|---|
| 8:00 a.m. – 5:00 p.m. | Registration for Full Convention – BJCC |
| 11:00 a.m. | Resolutions Committee Meeting |
| 1:00 p.m. | Alabama Municipal Insurance Corporation (AMIC) Membership Meeting |
| 2:00 p.m. – 5:00 p.m. | Ask Your Attorneys/Roundtable Discussions |
| 6:00 p.m. | League Welcome Party |

Sunday, May 18

| | |
|-----------------------|--|
| 7:30 a.m. | 2008 Annual Municipal Golf Tournament – Ballantrae Golf Club, Pelham |
| 1:00 p.m. – 5:00 p.m. | Convention Registration |
| 2:30 p.m. – 4:00 p.m. | General Sessions |
| 4:00 p.m. – 5:30 p.m. | ABC-LEO Reception |
| 5:30 p.m. – 7:00 p.m. | League Showcase and Exhibitors Reception |

Monday, May 19

| | |
|------------------------|--|
| 8:00 a.m. – 5:00 p.m. | Registration |
| 8:30 a.m. – 9:00 a.m. | Coffee Service |
| 9:00 a.m. – 10:30 a.m. | Opening Session |
| 8:30 a.m. – 9:30 a.m. | Clerks Breakfast and Business Meeting |
| 9:30 a.m. – 5:00 p.m. | Clerks Meeting |
| 8:30 a.m. – 5:00 p.m. | Alabama Association of Public Personnel Administrators |
| 9:30 a.m. – 11:00 a.m. | Spouse's Breakfast – Sheraton |
| 10:30 a.m. – 4:00 p.m. | Exhibits Open |
| 11:00 a.m. – Noon | General Session |
| 12:15 p.m. – 1:45 p.m. | Luncheon |
| 2:00 p.m. – 5:15 p.m. | Concurrent Workshop Sessions |
| 6:00 p.m. | Reception |
| 7:15 p.m. | Banquet and Entertainment |

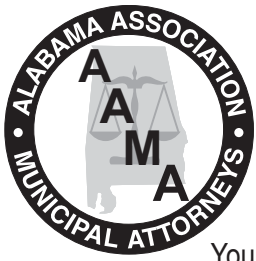
Tuesday, May 20

| | |
|-------------------------|----------------------------|
| 8:00 a.m. – 2:00 p.m. | Registration |
| 8:00 a.m. – 8:30 a.m. | Coffee Service |
| 8:30 a.m. – 10:30 a.m. | Annual Business Session |
| 9:00 a.m. – 10:30 a.m. | General Session |
| 10:45 a.m. – 11:45 a.m. | General Session |
| Noon – 2:00 p.m. | Luncheon and Entertainment |

Meetings and/or events are subject to change.

EXHIBIT INFORMATION

For exhibit information, contact Laura Anne Whatley of the League staff at 334-262-2566. The exhibits will open on Sunday night with a reception in the Trade Show and on Monday from 10:30 a.m. to 4:00 p.m.



Upcoming Conference



Mark your calendars now!
AAMA/AMJA Spring Municipal Law Conference
March 28, 2008

You don't want to miss the 2008 AAMA/AMJA Spring Municipal Law Conference at the Pelham Civic Complex in Pelham.

A full day of comprehensive legal training in municipal law for attorneys, prosecutors and judges.

Morning Session

- 8:30–9:00** **Attorney General's Opinions Update**
Brenda Smith, Chief, Opinions Division, Alabama Attorney General's Office
- 9:00–10:15** **NIMS/FEMA**
Capt. Edward Vaughn, Tuscaloosa Police Dept.,
Gary Sherrer, Sherrer, Jones & Terry
- 10:15-10:30** **BREAK**
- 10:30-11:30** **Electronic Document Production**
Khristi Driver, Haskell Slaughter Young & Rediker, LLC
- 11:30-Noon** **Legislative Update,**
Perry Roquemore, Executive Director, Alabama League of Municipalities
- 12:00-1:00** **Lunch (Provided)**

Afternoon Sessions

Judges/Prosecutors Track

- 1:00-1:45** **Use of Prior Convictions in Municipal Court**
Tommy Spina, Municipal Court Judge,
Vestavia Hills
- 1:45-2:30** **Fines, Restitution and Court Costs**
Sonny Rodenhauer, Municipal Court
Judge, Huntsville
- 2:30-2:45** **BREAK**
- 2:45-3:20** **Off Road Vehicles**
Brandon Hughes, Traffic Safety Resource
Prosecutor, Office of Prosecution Services
- 3:20-3:55** **Victims' Rights vs. Defendant's Rights**
Trisha Mellberg, Deputy District
Attorney, Montgomery County District
Attorney's Office
- 3:55-4:30** **Commercial Drivers License Law**
Tom Howard Sherk, Assistant Prosecutor,
Woodstock

Attorneys Track

- 1:00-1:45** **Drug Testing Municipal Employees**
Robbie Hyde, Attorney, Webb & Eley
- 1:45-2:30** **Elections Law**
Panel- Ken Smith, Lori Lein, Tracy
Roberts, League Attorneys, ALM
Brenda Smith, AG's Office
Rob Johnston, Elections Division
Secretary of State's Office
- 2:30-2:45** **BREAK**
- 2:45-4:30** **Elections Law**
Panel- Ken Smith, Lori Lein, Tracy
Roberts, League Attorneys, ALM
Brenda Smith, AG's Office
Rob Johnston, Elections Division
Secretary of State's Office

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Alabama League of Municipalities

Legislative Bulletin

For the 2008 State Legislative Session, there will be weekly Legislative Bulletins posted on our website (www.alalm.org). Please select "State Legislation" on the opening page of our website. From that section of our website, you will be able to access information on the 2008 State Legislative Session. Please feel free to check this as often you would like during the Session. You may make copies of the weekly Legislative Bulletin for your municipal officials and fellow employees if needed.

Throughout the Legislative Session, if you see any bills that affect your Municipality negatively, please notify our office at League Headquarters (334-262-2566).

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For more information, visit www.alalm.org or contact AMFUND Marketing Director Greg Cochran at 334-262-2566 or via email at gregc@alalm.org.

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