

# THE ALABAMA MUNICIPAL JOURNAL

June 2002

Volume 59, Number 12

## Citizen Newsletters: Are They Worth the Trouble?

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Summer Issue

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## Troy State Dedicates Tennis Complex Named for Mayor

The Troy State tennis program celebrated its first season at the Lunsford tennis complex with dedication ceremonies in May. The courts were named in honor of Mayor Jimmy Lunsford.

The project, which was completed in five months at a cost of \$1 million dollars, features 12 lighted tennis courts, a state-of-the-art pro shop and houses the coaching staff offices. ■



Mayor Jimmy Lunsford

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## Five Public Libraries Recognized by Library Association

This year five public libraries have been recognized by the Alabama Library Association for excellence in library service. They are the Cullman County Public Library for "One Star Level"; the Helena Public Library for "Two Star Level"; the Leeds Jane Culbreth Library, the Columbiana Public Library, and the Washington County Public Library for "Three Star Level".

These five public libraries have attained various levels of achievement of the seventy-one Alabama Public Library Standards that measure excellence in library service. An objective group of public librarians from around the state met and evaluated these five public libraries and then awarded them their respective levels of achievement. ■



Pictured left to right are: Karen Jessee, Director, Washington County Public Library; John Paul Myrick, Director, Cullman County Public Library; Pat Valenti, Director, Helena Public Library; Doris Jarvis, Director, Leeds Jane Culbreth Library; and Heather Johnston, Director, Columbiana Public Library.

# Citizen Newsletters: Are They Worth the Trouble?

By: Wendy L. Hassett  
Assistant City Manager, Auburn, Alabama

A citizen's image of his or her community is affected every day by a host of things, like the appearance of rights-of-way, interactions with local government employees, articles in the local newspaper, the existence or absence of litter and potholes, or the feeling of community a person can get just by walking down the street. A positive relationship between a local government and the citizens it serves is critical for public administrators and managers to establish and cultivate.

Localities trying to tackle the challenge of maintaining or even improving their image may take any of a number of different paths to do so. Typical strategies include press releases, public speaking, civic programs, radio programs, and the like. There is no question that negative stories involving a city or county make the news. Too often, it is the more positive, image-building stories that are ignored by the press.

These positive stories—about the proactive steps a locality is taking, innovative programs offered, or national awards or recognition received—could enhance the city or county's image if citizens were made aware of them. Newspapers often do not find newsworthy the more mundane yet critical, community-related information about local achievements, public meeting times, local board vacancies, holiday closures, changed trash collection schedules, or special local cable programming.

When it comes to addressing the image of a community and its communications with residents, several issues should be considered:

**Results are what matters.** If the information generated by the media is not accurate or does not reach the intended audience, it makes no difference how many and how widely press releases have been distributed. In the same way, public hearings are not successful if citizens do not attend and express their opinions.

**Resources are limited.** As local governments with vast responsibilities and even more community "wants," we are constantly challenged to do more with less. Would a public relations campaign to increase communication with citizens rank higher on the list of priorities than school funding, street maintenance, additional police officers, or new

sidewalks? Probably not. In order to get the most for each public dollar, it is important to leverage public dollars with private dollars, grant funds, or other means to make our scarce public resources stretch further – both in addressing these fundamental government concerns and communicating to citizens.

**A "general public" does not really exist.** Seniors care about different things than do working mothers; business executives have different priorities from college students; teenagers get their information differently than the rest of us do. Believe it or not, everyone does not subscribe to the local newspaper, and only a portion of the community relies on the local radio stations for news updates and reports. It is a challenge for us, then, as city and county administrators, to get pertinent information out to all of our citizens in a way that is effective, appealing, and useful.

What, then, is the best way to achieve the goal of an interactive government that communicates effectively with all of its citizens? Using multiple methods is probably the most effective approach. As we challenge ourselves to be innovative and to find new and better ways of doing things, we have tried to identify new methods, both to convey information to our citizens and also to hear what the citizens have to say about us.

Localities can establish Web sites, which have been found to be effective tools to get specialized information to citizens. Of course, segments of the population lack access to the Internet. In some places, then, an annual citizen survey is a major means used to involve and engage citizens in a dialogue about satisfaction with the performance of existing services and about community desires for new services. In spite of the various efforts made, there seems always to be a desire – especially among elected officials – for more and better communication channels.

## Auburn's Experience

Auburn, Alabama, decided in early 2000 to publish and distribute a monthly direct-mail newsletter to its citizens. Since that time, city administrators have found that a newsletter is a potent tool they can use to communicate

*continued next page*

directly to the citizenry without having to rely on the local newspapers to filter (or, worse, ignore) stories or pertinent information that managers want to get "out there." Although the concept of a newsletter was not new, *Open Line* was this city's first attempt at producing a newsletter for its citizens.

In March 2000, the first issue was sent to readers with a letter of introduction from the mayor as the lead story. In explaining the purpose of the newsletter, the mayor stated, "We want very much to have an 'open line' of communication between you and your city government." Since that time, the periodical has proven to be a cost-effective vehicle for communicating accurate, timely, objective, and important information that residents can use in their everyday lives.

### Expenditures

The costs of producing and distributing a monthly newsletter can get out of control quickly. Postage alone can make the undertaking cost-prohibitive for some communities. But when it comes to fostering a positive public image and making a direct link to residents on a monthly basis, the benefits far outweigh the expenses. There are, however, several ways to reduce costs.

To save on **postage**, include the publication in a monthly mailing already being sent to all citizens, like the water bill. The newsletter should be designed (size, length, and weight) to be inserted into an envelope without costing additional postage. If this approach is used, only simple coordination between the department producing the newsletter and the one sending out the mailing is needed.

In Auburn, a conversion from a card billing system to an envelope billing system actually provided cost savings in billings for the water utility. At the same time, it allowed the inclusion of the newsletter. Local governments without this option might consider contacting another local utility to request that it include the newsletter in its bill.

Editing and composition can be done in-house on existing staff time. Most articles can be written from materials already being produced in the manager's office, such as press releases, e-mails, and memorandums or other communications to elected officials. A great deal of staff time spent in composing new stories should not be necessary, as the manager already is updating the council and citizens on projects and programs in other ways. Department heads who want to get specific information into the newsletter can submit their articles to the newsletter coordinator.

Obtain **competitive printing prices**. If the newsletter is attractive and professional in quality and has the reputation of being the timely and accurate voice of the local government, it will spark the interest of printing companies, who most likely will compete to print it. Since the introduction of the newsletter in Auburn, local and regional printing

companies have battled to get the business and the chance to say they print the city's newsletter.

Regarding **design** considerations, remember that a newsletter printed in one color costs substantially less than one with two or more colors. At present, printing 14,000 copies costs the city approximately \$1,300 per month, which is less than 10 cents per household per month. In addition, paper costs vary substantially. The paper chosen should look professional while still being cost-effective. As for **length**, the newsletter should be short enough that it does not require a major time commitment but long enough to offer articles and information of substance.

### Benefits and Gains

Since the introduction of *Open Line*, Auburn has realized many direct and indirect benefits. The newsletter:

**Improves public relations.** Citizens' response to the newsletter has been overwhelmingly positive. The general sentiment from the community is that it makes residents feel that they know what is going on. Current contact information, including phone numbers and e-mail addresses for councilmembers, city manager, assistant city manager, and department heads, is included in each issue. After Auburn received a request to include contact information for the city schools superintendent, this information was added as well. As comments and suggestions are received from the staff and the public, modifications are made in an effort to make the newsletter increasingly useful to residents.

**Introduces new services.** After reading about the events, issues, and new services that are featured, citizens increasingly show up to participate, become involved in, and sign up for city services and programs. The excellent response to new programs highlighted in the newsletter indicates that the message is getting across.

For example, a newly introduced Young Adult Coffeehouse, offered by the city library and featured in *Open Line*, solicited such overwhelming response that the program was converted into a regular program. Citizens who bought donation bricks for a newly constructed veterans' memorial mentioned that they had learned about the project through the newsletter.

**Highlights and supports existing services.** In addition to increased publicity for new programs, existing programs have been featured to encourage additional participation. Current programs that have received excellent responses have included the recycling program, the city library's children's reading program, the white-goods disposal program, and the roll-out-cart option for home garbage service.

For example, after the roll-out garbage-cart service option was spotlighted in the July issue, the environmental

*continued page 15*



# The President's Report

George W. Roy  
Mayor of Calera

## Funding Update for Homeland Security

Funding for Homeland security continues to be on the minds of Alabama's municipal officials. The following article written by Shane Peterson for *Nation Cities Weekly* provides the latest information on the issue.

Homeland security dominates the consciousness of all levels of government. And though the spotlight is finally shining on the needs of local governments to respond to emergency situations, local governments still find themselves on the wrong end of the funding trail. The Bush administration's recently released FY 2003 budget allocates a massive amount of funding for homeland security — \$37.7 billion, according to the Office of Homeland Security. The FY 2003 budget also focuses on four specific policy initiatives in relation to that funding: supporting first responders, defending against bioterrorism, securing America's borders and using 21st-century technology to secure the homeland.

State and local governments bear the brunt of the responsibility in deploying first responders, and the president's budget earmarks \$3.5 billion to support those efforts. Despite that funding commitment, how those funds get to the right level of government is stirring debate across the country.

The Bush administration is proposing that the Federal Emergency Management Agency (FEMA) act as the point and will "implement a streamlined and simple procedure designed to speed the flow of resources to the states and localities," according to the "President's Homeland Security Policy and Budget Priorities." Though local governments are happy that federal funding is being made available, they have been lobbying the Office of Homeland Security to change the way funds are disbursed.

The National League of Cities, the U.S. Conference of

Mayors and the National Association of Counties have all been actively making their case to the Bush administration. Representatives of the NLC have visited Washington, D.C., to meet with federal officials, and the NLC has created a Homeland Security Task Force to devise the appropriate strategy.

Mary Poss, member of the Dallas, Texas, city council, is a co-chair of the NLC's Homeland Security Task Force, along with Mayor Michael Guido, of Dearborn, Mich. The Task Force met in mid-February in Dallas to discuss local governments' role in preparing homeland security initiatives

"We have to continue working with the president and Congress to make sure that a larger share of the dollars that are available for homeland security are, indeed, given directly to the communities," Poss said. "We absolutely believe that the local fire chiefs, police chiefs and other personnel can make the best decisions about how money needs to be spent."

She said a group of NLC representatives met with the president and the Office of Homeland Security in January, noting that the Bush administration increased the recommended budget for direct funding to cities by 1,000 percent.

"We're very pleased with that, but we also believe that out of a total of \$38 billion, there can be an even larger share available directly for local police, fire and medical," she said.

### Block Grants

During the January meetings, representatives of the NLC lobbied hard for homeland security funds to be distributed to cities directly, along the lines of community development block grants.

"We always find that a certain percentage gets lost in administrative costs at the state level," Poss said. "It just makes more sense to get a bigger bang for the buck by giving it to communities directly."

Poss also cited a considerable slowing down of the funding timeline when a state gets involved — due to the state application process — as another compelling reason for local governments to get the funding directly.

President Bush's plan stipulates that state emergency managers would keep 25 percent of the \$3.5 billion first-responder funds and distribute the remaining 75 percent to local governments that provide a 25 percent "in-kind" match,

*continued page 13*



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As evidenced by the opening of a new location in Auburn, Alabama in May 2001, McCauley has continually worked to grow and meet the needs of an ever changing arena.

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# Municipal Overview

By  
PERRY C. ROQUEMORE, JR.  
*Executive Director*

## Hatch Act: Important Information for Municipal Employees

Did you know that many municipal employees are prohibited from running for public office in partisan elections? A federal law known as the Hatch Act regulates the political activity of state and local employees who work in connection with federally funded programs. Employees covered by the Act are prohibited from running for public office in a partisan election, from misusing their official authority to interfere with the results of an election, and from coercing political contributions from other state and local employees.

### Who is covered by the Hatch Act?

The Hatch Act applies to an officer or employee of a state or local agency whose principal employment is in connection with an activity funded in whole or in part by loans or grants made by the United States or a federal agency. The Hatch Act only applies to employees in the executive branch of the government. Employees of the legislative and judicial branches are not covered by the Act.

### Are there any state or local employees who are exempt from the Hatch Act?

An individual who works for an educational or research institution, establishment, agency or system that is supported in whole or in part by a state or political subdivision of the state is not covered by the Act. This exemption applies to employees of public school systems, including community colleges and state college and university systems.

### What does "principal employment" mean under the Hatch Act?

"Principal employment" is an individual's primary job. If an individual has only one position or job, that is his principal employment. When an employee holds two or more jobs, principal employment is usually deemed to be the job at which the employee spends the majority of his time and from which he earns the majority of his income.

### What are "duties in connection with a federally funded activity"?

An employee is covered by the Act if as a normal and foreseeable incident to his employment he has duties in connection with an activity financed in whole or in part by federal funds. An employee does not need to have administrative or executive discretion over the federal funds to be covered by the Act. Simply working in connection with the federally funded program causes the employee to be covered. Additionally, whether the employee's salary is funded in whole or in part with federal funds does not determine whether or not the Hatch Act applies. An employee whose salary is derived from municipal funds may still be covered by the Act if he has duties in connection with a federally funded program. Similarly, if an employee has duties in connection with federally financed activities, he cannot sever that connection simply by changing his salary source from federal to state funds.

### How do I track federal funds that do not come directly to my agency?

If the municipal agency receives the federal funds indirectly, e.g., they pass through the state on the way to the city or town, the money is still federal for purposes of the Hatch Act. Any employee who has duties in connection with these funds will be covered by the Act. Moreover, application of the Act is not affected by whether the federal contributions are made in advance or as a reimbursement.

### What activities are prohibited by the Hatch Act?

Covered employees are prohibited from misusing their official authority or influence for the purpose of interfering with or affecting the result of an election. Examples of acts involving misuse of authority include, but are not limited to, use of one's official title while participating in political activity, and use of one's authority to coerce any person to participate in political activity. This prohibition is aimed at activities such as threatening to deny promotion to any employee who does not vote for certain candidates, requiring employees to contribute a percentage of their pay to a political fund, influencing subordinate employees to buy tickets to political fundraising dinners, and advising employees to take part in political activity.

Covered employees are prohibited from directly or indirectly coercing, commanding or advising a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes. This prohibition prevents employees from asking other state or local employees to contribute money or time to political organizations or parties.

Covered employees are prohibited from becoming  
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candidates for public office in partisan elections. A partisan election is an election where the candidates are running with party affiliation, i.e., an election in which any candidate represents, for example, the Democratic or Republican party. Employees should be aware that the prohibition against candidacy applies not only to formal announcement of candidacy, but also to preliminary actions leading up to announcement, such as circulating nominating petitions, raising money and organizing a campaign committee.

### **What types of activities are employees permitted to participate in under the Hatch Act?**

Employees covered by the Act are permitted to actively campaign for and against candidates, take an active part in the management of political organizations and campaigns, endorse candidates, attend and speak at political meetings and rallies, work at the polls on Election Day, and make a monetary contribution to a political organization.

### **Does the Hatch Act prohibit a covered employee from holding office in political parties or clubs?**

The Hatch Act does not prohibit a covered employee from holding a position within a political party. An employee may serve as president, vice president or treasurer of a political party, as a delegate to a political party convention, and as a committee person for national, state and local political parties.

### **Does the Hatch Act prohibit covered employees from participating in nonpartisan activities?**

The Hatch Act does not prohibit covered employees from participating in nonpartisan activities. Covered employees may run for public office in nonpartisan elections, i.e., an election where none of the candidates are running with party affiliation.

### **Does the Hatch Act prohibit employees from holding public office?**

While the Hatch Act prohibits employees from becoming candidates for public office in partisan elections, it does not prohibit them from holding public office. If an employee holds elective office prior to accepting appointment to a covered state or local position, the employee may finish out the remainder of his term. The employee is however, prohibited from running for reelection if the election is partisan. Additionally, the Hatch Act does not prohibit a covered employee from being appointed to public office.

### **Who is responsible for enforcing the Hatch Act?**

The U.S. Office of Special Counsel (OSC) is charged with enforcing the Hatch Act. Complaints of violations should be made in writing to OSC. When OSC makes a

determination that a violation of the Act has occurred, a complaint for disciplinary action may be filed with the Merit Systems Protection Board (MSPB). Full opportunity is provided to contest the charges, including a right to a hearing before the MSPB.

### **What is the penalty for violating the Hatch Act?**

If the MSPB finds that a violation has occurred there are only two alternatives: removal or no penalty. To decide if removal is warranted, it must be determined whether the prohibited activity was substantial in scope and whether the circumstances demonstrate that the employee knowingly acted in disregard of the law. Once the MSPB finds that a violation warrants removal, the MSPB notifies the state or local agency. If the MSPB finds that the agency failed to remove the employee within 30 days of its decision, or finds that after removing the employee, the employee has been rehired within 18 months after his removal by a state or local agency within the same state, the MSPB must certify to the appropriate federal agency an order requiring that the federal agency withhold federal funds in an amount equal to two years of the employee's salary. Once the MSPB has ordered the employee's removal, the employee is barred from accepting employment in any other state or local agency within the same state, whether or not the agency receives federal funding, for a period of 18 months after his removal.

### **Where can employees get more information on the Hatch Act?**

Employees can get additional information from the OSC website, [www.osc.gov](http://www.osc.gov). Copies of previously issued advisory opinions are available on the site. A one page fact sheet and copies of the booklet, Political Activity and the State and Local Employee can be downloaded from the site. Additionally, individuals may request advisory opinions from OSC. Hatch Act Unit U.S. Office of Special Counsel 1730 M Street, NW, Suite 300 Washington, D.C. 20036 800-854-2824 [hatchact@osc.gov](mailto:hatchact@osc.gov). ■

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# Intern Preserves League Files on CD

Launa Sims joined the League staff in May as a summer intern responsible for scanning various League documents and preserving them on CDs. This is an important and time-consuming task, as the League has many aging documents – some dating back to the early 1940s – that would be otherwise lost if they were not digitally preserved.

Launa graduated from the University of Florida in December 2001 with a major in East Asian Languages and Literature and a minor in Business Administration. She is fluent in Japanese, which was her language concentration throughout her college career. Her course work afforded her the opportunity to study abroad, and in the fall of her senior year, Launa traveled to the port city of Yokohama, Japan, to further develop her skills. In 1999, Launa was selected as one of two Goodwill Ambassadors to the



National Cherry Blossom Festival in Washington, D.C. where she was awarded a scholarship that covered the cost of her study abroad program.

Launa, whose father is stationed at Maxwell Air Force base and whose mother is an educator in Montgomery, has enjoyed working with the League. She said her internship has allowed her to meet a variety of people and has "afforded her the opportunity to get a rare glimpse inside Alabama's cities and towns."

After completing her internship with the League, Launa will return to Japan in September to study for 10 months at Yokohama's prestigious Inter-University Center for Japanese Language. Her ultimate goal is a career in translating and interpreting. ■

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# Funding Update

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the NLC said. Officials of the NLC worry that the so-called 25 percent "soft match" for all federal homeland security funds could prove to be an obstacle for communities that have the greatest need for federal support to enhance local efforts.

## Federal Framework

Despite the lobbying efforts of local government organizations, the federal government may have no choice but to disburse the funds in the normal manner, according to senior administration officials. At a background briefing held in mid-February, federal officials outlined their proposal for disbursing funds to state and local governments.

"Our proposal is that the program for providing assistance, training and equipment to first responders be consolidated within FEMA first," said a senior administration official. "FEMA will provide the money, as a first step, to the 50 states with which they have established relationships, and then provide a set percentage of it — we're proposing 75 percent — to local and county authorities."

Federal officials said they're aware of the wishes of local government organizations with respect to homeland security funding, but logistical problems stand in the way of distributing the funding directly to local governments.

"It is simply unworkable for the federal government to have a relationship with the literally thousands of local jurisdictions and authorities that are out there," said one senior official. "Each state is a patchwork of different counties, special districts and cities, and there's way too many for any federal government [agency] to manage equitably and efficiently the transfer of a large amount of training and equipment assistance to all those local governments."

"We really need to rely on the states to work with their localities and to be partners in that effort," he continued. "We are in no way cutting out the local and county officials. We've met with them a lot in developing this initiative, and we understand that many of them would have a preference to get the funding directly."

FEMA itself won't decide directly how the funding is allocated, the official said, noting that funding will differ dramatically among states and among regions within states.

"How the dollars will be allocated among the various local, county and state jurisdictions will be on a case-by-case basis," he said. "There is no formulaic answer to this, and each state will be responsible for developing a plan — in fact, most of

them already have done so — for how they're going to do this.

"As part of that plan, we're going to be looking for certain things," he continued. "We're going to be looking for cost sharing. We're going to be looking for mutual aid to ensure that they have arrangements with neighboring jurisdictions to provide assistance in times of crisis. We're going to be looking for some analysis of the needs."

## New Ground for Governments

September 11 has created another set of challenges for governments, and officials at all levels now find themselves working together in new ways.

"No one ever expected anything like the horrific tragedy of Sept. 11," Poss said. "Many communities across the country would not be prepared if it were to happen in their home town. We don't really have a system yet for the homeland security funds, but remember, all politics are local. No one is going to want the responsibility for having kept a community from becoming as prepared as it possibly could be."

"I really think that once everything is sorted out, everybody is going to move rapidly to make sure funding is allocated to the local communities as quickly as possible," she said. "There's too much work to be done. The president's recommendation is really strong. We're waiting on congressional approval of the budget and then, hopefully, we can move forward quickly."

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services director noticed a sudden increase in the number of requests for this service. A total of 133 requests for cart service came in during July, compared with 55 during June. "Most of the citizens said they had read about the carts in *Open Line*," said Environmental Services Director Al Davis.

**Increases organizational efficiency and effectiveness.** Before the newsletter, city departments relied almost exclusively on press releases sent to the media in an effort to get publicity for their programs or projects. Newspapers and radio often could not give coverage because of time and space restrictions. And if the newspaper did not publish the information or published it incorrectly, all efforts were in vain. It is not, however, the newspaper's job to make sure that citizens have all the information they need about services and municipal projects. Newspapers exist to sell their papers and make a profit. It is up to the city to disseminate information on its own events and services.

**Reaches the unreachable.** In spite of the most aggressive publicity campaigns, too often staff members have heard that the city's message has not been getting to the audience it was trying to reach. What's more, a large percentage of residents do not subscribe to the local paper or listen to local news stations. *Open Line* is offering another way of communicating with these citizens.

City administration now can submit ideas for news stories with the assurance that the stories will arrive at each Auburn household with accurate and timely information. The newspaper and radio still are used; however, they now serve as secondary or supplemental resources instead of the primary ones.

**Improves news coverage.** Local newspaper reporters have told city staff that they use the newsletter for story ideas. This tool has effectively assisted in moving issues of city concern onto the public agenda.

**Communicates the "real story."** The rumor mill is alive in all localities. Regardless of the city's best efforts to publicize the rationale behind administrative or policy decisions, there seems to be a segment of the community that prefers to believe in and propagate the inept or conspiracy theories that circulate. *Open Line* enables the manager to go "head to head" with the rumor mill in Auburn and to get out the truth behind the story.

Traffic congestion caused by a narrow overpass over the interstate, for instance, raised a question as to why nothing was being done to widen the overpass. In reality, the city had been quite active in urging the state to make the necessary improvements, which had been committed to by the state department of transportation and the former governor on several occasions.

Years passed, and still no work had begun. The manager and mayor made numerous phone calls, wrote many letters, and went on several visits to the capital to speed along the progress of this commitment. In the meantime, citizens were becoming increasingly weary of the traffic congestion at this location and had begun to complain. One by one, they were told that the project was in the hands of the state and not the city, and they were urged to contact state representatives.

Although effective, this communication process was slow. To set the record straight on a larger scale, this story was chosen as the cover article in the newsletter, complete with a picture of the traffic congestion that was all too familiar both to the citizens and to city government.

## Advice on Potential Pitfalls

**Keep it short. Keep it fresh.** As a society, we are bombarded with information, most of which we filter out. To encourage citizens to take the time to read a newsletter, articles must be kept short, to-the-point, and interesting. The newsletter also must have an appealing design and layout, using graphs and pictures when possible. Varying the layout with new column breaks, content, and color also will help to keep the reader's attention.

**Ask yourself: Whose newsletter is it?** Any locality undertaking the production and distribution of a newsletter should keep in mind that this is a publication of the local government and not of the garden club, the United Way, or the county commission. Inevitably, clubs and nonprofit organizations will ask to advertise their events or fundraisers. A strict policy on what is and is not a city-related program is important to protect the limited space available to publicize the local government's news.

**Consider distribution.** Depending on the method of distribution used, as mentioned, some citizens may not receive the newsletter. If possible, it should be made available to them through other means. Residents of assisted-living facilities and nursing homes, as well as university students living on campus, do not receive water bills. Therefore, issues of *Open Line* are mailed directly to these locations for internal distribution. Additional copies are made available at the city hall and library. Posting and archiving the newsletter on the city's Web site ([www.auburnalabama.org](http://www.auburnalabama.org)) allows interested parties worldwide to access the newsletter without costing the city additional postage and staff time to prepare special mailings.

**Achieve credibility.** Getting the newsletter out on time, with accurate information, is important. Articles that contain *continued next page*

# Newsletters

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mistakes, grammatical errors, or omissions will hamper the credibility of the newsletter and the city. On the other hand, if the newsletter is high-quality and accurate, it will enhance the community's image. Thus, every effort must be made to get the newsletter out on schedule while being as accurate as possible.

**Avoid political uses.** It is especially important for managers and administrators to make sure that a newsletter is not used to support or denounce the actions of specific councilmembers or to serve as the mouthpiece for an elected official. Contact information for elected officials can and should be included in the publication to facilitate open channels of communication with the citizenry, but the newsletter's purpose and political boundaries should be made clear at the inception.

## Positive Image

In Auburn, the newsletter has elicited strong positive feedback from citizens and city management. As exemplified by *Open Line*, a citizen newsletter can be an effective, long-term tool with which to communicate directly with citizens.

It is part of a local government's obligation in our democratic system to keep the public well informed. And, for the locality to be effective, it must maintain a positive public image, which can be a constant challenge. A citizen newsletter allows a locality to address these concerns.

## Callouts:

Any locality undertaking the production and distribution of a newsletter should keep in mind that this is a publication of the local government and not of the garden club, the United Way, or the county commission.

There is no question that negative stories involving a city or county make the news. Too often, it is the more positive, image-building stories that are ignored by the press.

Auburn city administrators have found that a newsletter is a potent tool they can use to communicate directly to the citizenry without having to rely on the local newspapers to filter (or, worse, ignore) stories or pertinent information that managers want to get "out there." ■

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*Wendy Hassett is the assistant city manager for Auburn, Alabama. Reprinted with permission from the April 2002 issue of Public Management (PM) magazine published by the International City/County Management Association (ICMA), Washington, D.C.*

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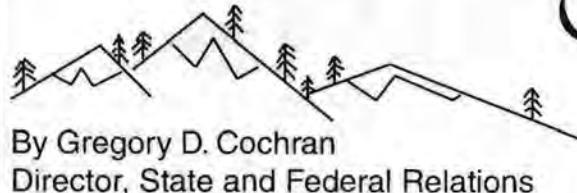
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# ENVIRONMENTAL OUTLOOK



By Gregory D. Cochran  
Director, State and Federal Relations

## Congress Considers Additional Funding for State Revolving Funds

Congress is considering \$20 billion in additional funding for the State Revolving Funds over the next five years as part of the "Water Quality Financing Act," H.R. 3930. Clean water is a national issue. Sewerage outflow and storm water overflow from small communities in places as far reaching as North Dakota and New York flow through river systems to reach communities in Alabama, Mississippi and Louisiana. The Environmental Protection Agency estimates that the clean water infrastructure deficit – the investment needed to bring water treatment up to standards – is in the neighborhood of \$650 billion.

In the 1987 Clean Water Act, Congress established State Revolving Funds to provide low cost loans to help communities finance water quality improvement projects. As part of a compromise for passage of the 1987 Clean Water Act it was agreed that projects funded by initial federal funding would be subject to the Davis-Bacon Act but that subsequent projects would not be covered and that the Davis-Bacon requirement would sunset completely in 1995.

Over the years Congress has appropriated more than \$20 billion for the Clean Water State Revolving Funds. A combination of interest on the loans and state contributions has increased the amount presently in these funds to approximately \$35 billion.

Congress is considering \$20 billion in additional funding for the State Revolving Funds over the next five years as part of the "Water Quality Financing Act," H.R. 3930. The bill, as introduced, contained no expansion of Davis-Bacon Act coverage but it was amended in the Transportation and Infrastructure Committee to apply Davis-Bacon to all projects funded by State Revolving Funds.

This is no small matter for the nation's taxpayers or for the cause of clean water. Even at a very conservative estimate, application of Davis-Bacon to all the expenditures of these funds would result in the waste of billions of dollars

and, consequently, funding would be available for far fewer projects to protect the quality of our nation's water resources.

Many states have laws comparable to the Davis-Bacon Act that already cover State Revolving Fund projects in those states. Eighteen states, however, do not have such laws. The impact of applying Davis-Bacon to projects in those states would be particularly damaging.

### Davis-Bacon Act

The Davis-Bacon Act is a depression era law under which the U.S. Department of Labor sets the wages to be paid on federally financed public works construction projects. Since its enactment the Davis-Bacon Act has been controversial. In recent years those controversies have been at the heart of many debates in Congress about construction spending.

In theory the wages set are those prevailing in the community but numerous studies have found that the Department of Labor consistently makes wage determinations that exceed those that truly prevail. As a consequence, application of the Davis-Bacon Act to a construction project results in the waste of tax dollars. Waste attributable to Davis-Bacon is difficult to determine and varies from project to project. A scholarly consensus would put the average amount of additional labor costs caused by Davis-Bacon at about 15 percent.

The Davis-Bacon Act is supported by organized labor and by a few construction trade associations comprised of unionized contractors because it protects them from competition. Over the years, due largely to union political influence, coverage of the Davis-Bacon Act has been expanded to many construction programs that don't directly involve federal spending.

*continued next page*

To receive information on Alabama's Clean Water and Wastewater SRF programs contact, Mr. Aubry White at the Alabama Department of Environmental Management at **334-271-7805**.

### Fairhope Honored for City Planning

Recognized for its planning efforts, the city of Fairhope was this year's winner of the Norman J. Walton Sr. Regional Award from the South Alabama Regional Planning Commission.

The award acknowledges city governments that best exemplify cooperation and regionalism in planning decisions.

"The city demonstrated how a variety of different current projects meet the award criteria, including problem-solving, inter-governmental cooperation, innovation, cost effectiveness and overall benefit to the regional quality of life," said Christopher Baker, Fairhope's director of planning and building.

Some of the projects highlighted in the award's application include the city's aggressive recycling and yard-waste mulching programs; work with the state and county to build new sewer lines south of Fairhope; a partnership with Mobile Bay National Estuary Program to construct a wetland pond to filter water entering Mobile Bay at the Fairhope Duck Pond.

Also, establishment of the Support Our Community Committee that works to provide a quality environment for all Fairhope residents; Capital Improvement planning process that seeks to discourage "leap-frog" growth; and pre-engineering class at Fairhope High School secured through the cooperation of the city, the school, and the Fairhope Educational Enrichment Foundation.

### Preservation Friendly Legislation Passes

During the 2002 regular legislative session, landmark legislation passed that will bolster efforts by municipalities to preserve existing neighborhoods and historic buildings. The two-bill package sponsored by House Speaker Pro-Tempore Demetrius Newton and Senator Rodger Smitherman (both of Birmingham). The bills were supported by the Alabama League of Municipalities, Birmingham Chamber of Commerce, Operation New Birmingham, the City of Huntsville, Historic Huntsville Foundation, the Alabama Preservation Alliance and the Alabama Historical Commission.

Act 2002-522, allows a municipality, after it has satisfied certain notice requirements, to demolish or repair the unsafe structure or building and provide an effective means of collecting an assessment lien on the property for the cost of the work involved in abating the nuisance. Heretofore,

municipalities have only been able to condemn and demolish dilapidated property – the new law expands this power to repair. As one analyst put it: "Using municipal funds to demolish the basis of municipal property taxes is like cutting off one's nose to spite one's face. It makes no sense." The preservation community agrees and is glad there is now another option.

This law creates a "win/win" situation for the municipality because it allows municipalities to make improvements upon the dilapidated property rather than condemning and demolishing it and removing it from the tax rolls. This law insures the municipality does not delete its treasury and it provides a means for the municipality to recover its expenses. In essence, this bill provides one more tool to preserve our neighborhoods, one more tool at the municipality's disposal to help aid redevelopment and remove blight.

According to the Birmingham Chamber of Commerce's Paul Vercher: "The City of Birmingham will save an estimated one million dollars per year in weed abatement costs alone. Birmingham will also benefit because there will be less vacant lots blighting our neighborhoods. Current estimates are 6000 vacant lots in our city."

Preservationist should cheer, as this law is also a tool to curb demolition by neglect across the state.

### Lien Redemption Legislation Enacted

Act 2002-426 pertains to properties sold at tax sales. It expands existing law to include the value of insurance premiums paid and any preservation improvements made by the purchaser. Further, it provides for payment to the purchaser and a method to resolve a dispute regarding the amount and provides further for the sale of lands that have not been timely redeemed.

Under current law, taxes and attorneys fees are ascertained in the redemption process at an interest rate of 12 percent. This law expands this provision to include insurance premiums on property and preservation improvements on properties. This bill will provide investors an incentive to perform minimum maintenance on property they purchase at tax sales because now they are guaranteed a return on that investment if the property is redeemed. At present, there are thousands of structures across the state that are dilapidated that have been sold for taxes. This law provides incentives to purchase properties at tax sales and make needed repairs.

Make sure your chief building official or code enforcement officer knows of these new changes before another house is demolished. For a copy of the new acts, or for further assistance, contact the Alabama Historical Commission at **334-242-3184**. ■



# THE LEGAL VIEWPOINT

By Ken Smith

Director, Legal Services & Computer Programs

## Court Requires Indigent Defense

The United States Supreme Court has released a new case that will have significant financial repercussions for municipal courts in Alabama as well as other states. The case, *Alabama v. Shelton*, \_\_\_ U.S. \_\_\_, 2002 WL 1008481 (2002), holds that if a defendant violates the terms of probation, a court may not activate the defendant's sentence if he or she was not offered counsel during the prosecution of the underlying offense. As the dissent notes, "Today's decision ignores ... long and consistent jurisprudence, extending the misdemeanor right to counsel to cases bearing the mere threat of imprisonment" and deprives states of the right to attempt to resolve legislatively any constitutional problems that the Court found in this case.

This article examines this important decision.

### Facts

The defendant represented himself during a district court trial in Etowah County, Alabama. He was convicted of third-degree assault, which carries a maximum sentence of one year and a \$2,000 fine. He requested a jury trial in circuit court pursuant to Section 12-12-71, Code of Alabama, 1975, where he again represented himself, despite repeated warnings by the court of the dangers of representing himself. The court did not, though, offer him assistance of an attorney at state expense.<sup>1</sup> Following his conviction, the court sentenced him to 30 days in the county jail, but suspended the sentence and placed him on two years' unsupervised probation, conditioned on payment of court costs, a \$500 fine, reparations of \$25 and restitution of \$516.69.

He appealed his conviction. The Court of Criminal Appeals initially held that the Sixth Amendment to the United States Constitution prohibited his conviction without a knowing waiver of his right to counsel. After remand though, the Court of Criminal Appeals upheld the conviction. On appeal, the Alabama Supreme Court reversed, finding "that the defendant in this case was entitled to representation by

counsel because he was sentenced to a term of imprisonment, albeit suspended."

### The Rule of Law

Among other things, the Sixth Amendment to the United States Constitution guarantees that "In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defence [sic]."

In *Johnson v. Zerbst*, 304 U.S. 458 (1938) the U.S. Supreme Court explained that:

"(The Sixth Amendment) embodies a realistic recognition of the obvious truth that the average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty, wherein the prosecution is (re)presented by experienced and learned counsel. That which is simple, orderly and necessary to the lawyer – to the untrained layman – may appear intricate, complex, and mysterious."

The right to be represented, though, can be waived, provided the waiver is "competent, intelligent and voluntary." In *Strickland v. State*, 189 So.2d 771 (Ala. 1965), the Alabama Supreme Court, quoting *Carnley v. Cochran*, 369 U.S. 506 (1962), said that: "The record must show, or there must be an allegation and evidence which shows, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not a waiver."

In *Alabama v. Shelton*, the U.S. Supreme Court expounded on this history as follows:

"In *Gideon v. Wainwright*, 372 U.S. 335 (1963), we held that the Sixth Amendment's guarantee of the right to state-appointed counsel, firmly established in federal-court proceedings in *Johnson v. Zerbst*, 304 U.S.

*continued next page*

458 (1938), applies to state criminal prosecutions through the Fourteenth Amendment. We clarified the scope of that right in *Argersinger v. Hamlin*, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972), holding that an indigent defendant must be offered counsel in any misdemeanor case ‘that actually leads to imprisonment’ Subsequent decisions have reiterated the ... ‘actual imprisonment’ standard ... It is thus the controlling rule that ‘absent a knowing and intelligent waiver, no person may be imprisoned for any offense ... unless he was represented by counsel at his trial.’” (Citations omitted.)

#### ***Alabama v. Shelton***

The issue in *Shelton*, as voiced by the Court, was “Where the State provides no counsel to an indigent defendant, does the Sixth Amendment permit activation of a suspended sentence upon the defendant’s violation of the terms of probation?” The Court answered this question in the negative.

The problem, according to the Court, was that “Once the prison term is triggered, the defendant is incarcerated not for the probation violation, but for the underlying offense. The uncounseled conviction at that point ‘result[s] in imprisonment,’ it ‘end[s] up in the actual deprivation of a person’s liberty.’ This is precisely what the Sixth Amendment ... does not allow.”

Although a defendant who is alleged to have violated probation is provided a revocation hearing, the Court said, even representation by counsel at this hearing cannot cure the defect. Instead, at this point, “the sole issue ... is whether the defendant breached the terms of probation.” The validity of the underlying conviction cannot be attacked.

“Deprived of counsel when tried, convicted, and sentenced, and unable to challenge the original judgment at a subsequent probation revocation hearing, a defendant in (the defendant’s) circumstances faces incarceration on a conviction that has never been subjected to ‘the crucible of meaningful adversarial testing.’”

In other words, in this case, the defendant was convicted without being informed that he had the right to have an attorney appointed to him at state expense. His 30-day sentence was suspended and he was placed on probation, resulting in no jail time. If he failed to comply with the terms of probation, though, probation would be revoked and he could then be forced to serve his original sentence. Under the rule that a person must be afforded a right to counsel in any case where a conviction results in “actual imprisonment,” the failure at the initial trial to provide the defendant with a right to have, or to knowingly waive, free legal service violated the Sixth Amendment. At a subsequent probation revocation hearing, the defendant would only be permitted to contest whether he had violated probation. Thus, even if

he were appointed an attorney at this stage, it would not correct the failure to offer him an attorney at his initial trial.

*Amicus curiae* and the dissenting justices argued that the majority ruling substantially limits the states’ ability to impose probation. According to the dissent, “Our prior opinions placed considerable weight on the practical consequences of expanding the right to appointed counsel beyond cases of actual imprisonment ... [The majority opinion in this case means that] appointed counsel must henceforth be offered before any defendant can be awarded a suspended sentence, no matter how short.”

The means that *Alabama v. Shelton* probably will have a large impact on municipal courts as well. The practical effect of majority opinion seems to be that in any case where jail time is possible – and most municipal offenses carry with them the weight of potential imprisonment – even where a suspended sentence is the result the defendant must be offered legal assistance, and be willing to pay for it if the defendant wishes.

The majority, though, was unpersuaded by arguments against the cost burdens imposed by this rule, stating:

“Most jurisdictions already provide a state-law right to appointed counsel more generous than that afforded by the Federal Constitution ... There is thus scant reason to believe that a rule conditioning imposition of a suspended sentence on provision of appointed counsel would affect existing practice in the large majority of the States. And given the current commitment of most jurisdictions to affording court-appointed counsel to indigent misdemeanants while simultaneously preserving the option of probationary punishment, we do not share *amicus*’ concern that other States may lack the capacity and resources to do the same.”

Even if the cost proves prohibitive, the majority said, these states do not have to abandon probation as a viable form of punishment. Instead, they can use what the Court called “pretrial probation,” which the Court noted is used in some form by at least 23 states. This alternative, though, may not be available under present law in Alabama.

According to the Court, under pretrial probation:

“[T]he prosecutor and defendant agree to the defendant’s participation in a pretrial rehabilitation program, which includes conditions typical of post-trial probation. The adjudication of guilt and imposition of sentence for the underlying offense then occur only if and when the defendant breaches those conditions.”

In a footnote, the Court pointed out that “[b]ecause this device is conditioned on the defendant’s consent, it does not raise the question whether imposition of probation alone so restrains a defendant’s liberty as to require provision of appointed counsel.” The Court stated that “this system reserves the appointed-counsel requirement for the ‘small

percentage' of cases in which incarceration proves necessary, thus allowing a State to 'supervise a course of rehabilitation' without providing a lawyer every time it wishes to pursue such a course."

In Alabama, though, at least in municipal courts, this alternative may require legislative authority. Additionally, there are other questions that would have to be resolved. For instance, does this agreement toll the statute of limitations. Does it affect the defendant's right to a speedy trial? Can these rights be waived?

The Court rejected an alternative proposal made by the dissenting justices. That proposal was "complete retrial of the misdemeanor violation with assistance of counsel" upon a defendant's violation of probation terms. The majority rejected this proposal in favor of pretrial probation on the grounds that pretrial probation "is substantially less expensive."

The dissenting justices, though, indicated that the majority was overstepping the Court's authority, pointing out that this decision would be best left to legislative discretion:

"By what right does the Court deprive the State of that option? It may well be a sensible option, since most defendants will be induced to comply with the terms of their probation by the mere threat of a retrial that could send them to jail, and since the expense of those rare, counseled retrials may be much less than the expense of providing counsel initially in all misdemeanor cases that bear a possible sentence of imprisonment. And it may well be that, in some cases, even procedures short of complete retrial will suffice."

### The Impact on Municipal Courts

Section 12-14-9 states that: "A municipality which retains its court shall provide indigent defense services as otherwise provided by law."

Rule 6.1(b), Alabama Rules of Criminal Procedure, sets out the rules governing appointment of attorneys in criminal cases in Alabama:

"(a) Right to Counsel. A defendant shall be entitled to be represented by counsel in any criminal proceedings held pursuant to these rules and, if indigent, shall be entitled to have an attorney appointed to represent the defendant in all criminal proceedings in which representation by counsel is constitutionally required. The right to be represented shall include the right to consult in private with an attorney or the attorney's agent, as soon as feasible after a defendant is taken into custody, at reasonable times thereafter, and sufficiently in advance of a proceeding to allow adequate preparation therefor.

"(b) Waiver of Right to Counsel. A defendant may waive his or her right to counsel in writing or on the

record, after the court has ascertained that the defendant knowingly, intelligently, and voluntarily desires to forgo that right. At the time of accepting a defendant's waiver of the right to counsel, the court shall inform the defendant that the waiver may be withdrawn and counsel appointed or retained at any stage of the proceedings. When a defendant waives the right to counsel, the court may appoint an attorney to advise the defendant during any stage of the proceedings. Such advisory counsel shall be given notice of all matters of which the defendant is notified.

"If a nonindigent defendant appears without counsel at any proceeding after having been given a reasonable time to retain counsel, the cause shall proceed. If an indigent defendant who has refused appointed counsel in order to obtain private counsel appears without counsel at any proceeding after having been given a reasonable time to retain counsel, the court shall appoint counsel unless the indigent defendant waives his right under this rule. If the indigent defendant continues to refuse appointed counsel, the cause shall proceed.

"(c) Withdrawal of Waiver. A defendant may withdraw a waiver of the right to counsel at any time but will not be entitled to repeat any proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel."

Thus, it is clear that municipal courts must, consistent with state and federal law, afford indigent defendants with a right to counsel in any case where that will result in jail time.

For instance, in *Williams v. City of Phenix City*, 659 So.2d 1004 (Ala.Cr.App.,1995), the trial court conditioned the appellant's release on the payment of fines and costs. The appellant's inability to pay these sums resulted in his being sentenced to jail "for a sufficient period of time to serve his fine and cost." The Court stated that "if a defendant cannot be ordered to serve a sentence of imprisonment, it seems obvious that a conditional sentence of imprisonment is equally invalid."

*Alabama v. Shelton* may force some municipalities to reconsider whether they can even afford to operate a court in the future. Municipal officials should discuss with their judges and prosecutors and with the Administrative Office of Courts how best to comply with the requirements of this case. ■

<sup>1</sup> In its decision, *Ex parte Shelton*, 2000 WL 1603806 (Ala.,2000) the Alabama Supreme Court noted that "The trial judge's admonitions to Shelton to the effect that he *needed* a lawyer are a far cry from explanations of the right to counsel or offers of appointed counsel if Shelton could not afford to retain counsel. Therefore, we cannot say that Shelton intelligently and understandingly waived his right to counsel."

## Audits to the Department of Examiners of Public Accounts

Act No. 94-414 is a joint resolution of both houses of the Alabama Legislature. This resolution requests that any entity receiving or disbursing public funds forward a copy of their audit reports to the Department of Examiners of Public Accounts. The Department maintains a repository of these audits and has them available for public inspection. The mailing address of the Department is: P.O. Box 302251 Montgomery, AL 36130-2251

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# Legal Notes

By Lori Lein  
Staff Attorney

## COURT DECISIONS

**Attorney Fees:** Method of calculating the award of attorney fees in a class action against a municipality, which resulted in a new ordinance regulating solid waste facilities, discussed. *City of Birmingham v. Horn*, 810 So.2d 667 (Ala. 2001).

## US SUPREME COURT DECISIONS

**Zoning:** A lower court decision invalidated, at the summary judgment stage, a municipal ordinance that prohibits more than one adult entertainment business in the same building or structure, on the grounds that the city failed to present evidence upon which it could reasonably rely to demonstrate a link between multiple-use adult establishments and negative secondary effects, is reversed and remanded for further findings. *Los Angeles v. Alameda Books Inc.*, – U.S. – (2002); 70 L.W. 43 (May 14, 2002).

## ATTORNEY GENERAL OPINIONS

**Conflicts of Interest:** A member of a city civil service board is not prohibited from serving as a consultant on a fee-for-service basis for a city's public works department. However, such consultant services may be subject to the state competitive bid law. 2002-209. **NOTE:** See also Advisory Opinion of the Ethics Commission AO NO 2002-15.

**Appropriations:** If a city determines that cooperation with a private subdivision and any third party contractors in an effort to remove siltation from a private lake would serve a "public purpose," a city may contribute funds or in-kind services to the siltation removal effort without violating section 94 of the Constitution of Alabama of 1901. 2002-211.

**Property:** A city is authorized to purchase property located in an adjoining municipality to be used for municipal purposes and is authorized to lease any of the property that is declared surplus and hire a property manager to manage the property. 2002-214.

**Retirement:** A city may establish a written retirement policy that allows city employees, upon retirement, to receive their city vehicle as a part of their retirement benefits or a policy that allows city employees, upon retirement, to purchase their city vehicle for fair market value. The city must make a determination that these vehicles are surplus property before disposing of them. Additionally, a city, by written policy, may make a retiring officer's pistol and badge a part of his or her retirement benefits. 2002-218. **NOTE:** Any such policies need to be adopted prior to an employee retiring.

**Public Works Bid Law:** The construction and lease of a fire station would be a public work and would have to be competitively bid by a city pursuant to the Public Works Bid Law. 2002-223.

## ETHICS COMMISSION ADVISORY OPINIONS

A supervisor with a city owned and operated cable television company, who is also part owner of a private cable company, may not disclose confidential information obtained in the course of his employment with the city, including but not limited to, client lists, to the private company that in any way may provide a benefit to the private company. Further, he should not participate in any aspect of the negotiations or business dealings between the private cable company and the city. AO NO. 2002-23.



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# GROUPS FILE SUITE AGAINST FCC'S CABLE MODEM RULING

By: Shane Walter, National League of Cities, May 20, 2002

The National League of Cities, along with the other members of the newly formed Alliance of Local Organizations Against Preemption (ALOAP), is taking its fight against the Federal Communication Commission's (FCC) ruling on cable modem services to the federal courts.

The alliance filed a petition last week at the U.S. District Court of Appeals in Washington, D.C., asking for a review of the FCC ruling. The ruling states that the cable-modem service is an interstate information service as opposed to a cable service. “[The ruling] clearly violates the 1996 Telecommunications Act,” said Larry Naake, executive director of the National Association of Counties, at a press conference last week. “It will have a lasting and detrimental impact on local governments and their residents across the country. We are calling on the court to right the FCC’s wrong by tossing out that declaratory ruling.”

Joining Naake at the press conference was Donald Borut, executive director of NLC, J. Thomas Cochran, executive director of the U.S. Conference of Mayors and Libby Beaty, executive director of the National Association of Telecommunications Officer and Advisors. Also involved in ALOAP is the International Municipal Lawyers Association. In addition to the petition announcement, the alliance presented some initial results from a nationwide survey concerning revenue losses expected by the FCC ruling (see chart). National revenue loss for 2002 is estimated at around \$300 million.

“NLC is committed to contesting this detrimental FCC ruling in the courts and in Congress,” Borut said. “The FCC must recognize the key role local governments play in our system of federalism and should not be able to direct local governments to relinquish control over their city’s streets to private entities, for example the cable modem providers.” Naake added that the revenue loss couldn’t come at a worse time, considering the state of the nation’s economy.

“This loss is coming at a time when [local governments] are being asked to dramatically increase spending on homeland security and public health programs in wake of September 11,” Naake said, “as well as facing significant revenue losses because of downturn in the economy.”

In the wake of the FCC decision, the six largest cable companies (Time Warner, AT&T, Comcast, Charter, Adelphia and Cox) have sent letters to local franchise authorities advising that they are immediately halting payment of cable franchise fees on cable modem revenues. The local

government associations expect battles both in the courts and before the FCC.

The FCC’s characterization of cable modem service as an interstate information service has a number of consequences. Local governments are particularly concerned because the decision sets up challenges to local government authority to recover franchise fees and provide consumer protection and rights-of-way management with respect to cable modem service.

“Metropolitan areas and local communities are vital to the nation’s economic development,” Cochran said. “Giving breaks to the cable monopolies on the backs of millions of citizens across our nation is not only constitutionally wrong, but removing this important local government revenue tool will jeopardize emergency response service and reduce basic city services, including street maintenance and public works.”

Beaty noted that the long-term negative effects could seriously hurt cable modem users. “More and more people are signing up for cable modem services each day, and consumers of those services are experiencing increased problems,” Beaty said. “To whom are they to turn? The FCC? Try calling the FCC with a cable modem complaint. They’ll be happy to add you to their statistics. But that’s all you’ll be and that’s all you’ll get.”

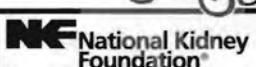
“The consumer is surely the one who suffers at the hands of this FCC decision,” Beaty said. “As rollout slows due to the regulatory uncertainty, as complaints go unanswered, as concerns go unheeded. The cable modem subscriber will be out in the cold.”

## Projected 2002 Lost Revenue From FCC Cable Modem Ruling

Las Vegas, Nev.	1,000,000
Houston, Texas	624,000
Charlotte, N.C.	600,000
Albuquerque, N.M.	400,000
Chandler, Ariz.	300,000
Lincoln, Neb.	250,000
Minneapolis, Minn.	200,000
Livonia, Mich.	200,000
Fort Worth Tex.	133,000
Springfield, Missouri	100,000
South Portland, Maine	90,000
Mecklenburg County, N.C.	52,500

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# Speaking of Retirement

*Prepared by the staff of the Retirement Systems of Alabama and edited by  
Mike Pegues, Director of Communications.*

## Legislative Update

### **Act 2002-23 Deferred Retirement Option Plan (DROP)**

Effective June 1, 2002, a member of the ERS who is at least 55 years of age, has 25 years of creditable service, and is eligible for service retirement may continue full-time public employment while concurrently having his or her monthly retirement allowance and the five percent retirement contribution deposited into a DROP account that accrues interest at four percent. Upon termination of employment, the member begins receiving the monthly retirement allowance plus the amount accumulated in the DROP account. Brochures detailing the DROP program and application forms have already been provided to all ERS units. Members may elect to participate in DROP on the first day of any month beginning with June 1.

### **Act 2002-393 Retiree COLA**

A Cost-of-Living Adjustment (COLA) for retired members of the ERS will be effective October 1, 2002. The COLA will be three (3) percent of the retiree or beneficiary current benefit payment with a minimum COLA of fifteen (\$15.00) dollars per month. In order to receive this COLA, the member must have retired prior to October 1, 2001. Both retirees and beneficiaries of deceased retirees will be eligible. Future beneficiary allowances for those retirees who elected a joint survivor option will also be adjusted. Retirees will not be entitled to receive this COLA if it would impair their Medicaid benefits.

### **Act 2002-430: Active Duty Military Protections And Rights**

Effective June 1, 2002, certain protections and rights were extended to members of military reserve components and the Alabama National Guard called to active duty in an operational role for Homeland Security. One provision of this act deals with benefits administered by the RSA.

For retirement purposes, an ERS member who is a state employee and is on active duty shall be deemed an active and contributing member of the ERS with costs to be paid in the same manner and from the same sources as costs for

active and contributing members. All state employees called to military service and members employed by local agencies that elect to pay them the difference between their regular pay and their military pay would contribute the appropriate member contribution rate (5%, 6%, or 10%) of their compensation from their employer. The employer would contribute the employer-matching rate. The member would then receive the proportional retirement credit. Once the member returns from military service, he or she would be allowed to purchase credit under federal law for the remaining amount of service that would result in full credit for the period of military service. If you have any questions, please contact the ERS at 1-800-214-2158, extension 399.

Other provisions of Act 2002-430 deal with educational entitlement, health insurance, compensation, and restoration of annual or sick leave. These areas do not impact RSA administered programs.

**Act 2001-1101 Previous Service with a City, County, Town, or Public or Quasi-Public Organization or Political Subdivision of the State of Alabama**

The amount a member must pay to purchase this service is now the full actuarial cost. The full actuarial cost is based on a number of factors including the member's life expectancy, salary, and retirement eligibility.

*Prepared by the Communications staff of the Retirement Systems of Alabama. To have your questions answered in "Speaking of Retirement," please address them to:*

*Mike Pegues, Communications  
Retirement Systems of Alabama  
135 South Union St., P. O. Box 302150  
Montgomery, Alabama 36130-2150.*

# Obituaries —

## Jack Guyton

**Jack Guyton**, former councilmember of Bessemer City, died April 1, 2002. He was 73.

Guyton was elected to the council in 1994 and resigned his position in 1998 after moving to another district. He was an active member of First United Methodist Church and served on the library board.

He is survived by his wife, son, daughter and four grandchildren. ■

## Henry Orval Hansard

**Henry Orval Hansard**, former councilmember of Fort Payne, died April 9, 2002. He was 97.

Hansard served two terms on the council, was president of the Chamber of Commerce, director of the Chamber and a charter member of the Fort Payne Lion's Club. ■

## Edith Hallmark

**Edith Hallmark**, town clerk for Wilsonville, died April 24, 2002, at age 62.

Hallmark was a member of Wilsonville United Methodist Church and is survived by her husband, a daughter and a grandson. ■

## Curtis Wayne Wolfe

**Curtis Wayne Wolfe**, mayor of Castleberry, died May 3, 2002. He was 63.

Wolfe had served as mayor for the past six years. He was a crane operator with the railroad and served in the Army Reserves.

He is survived by his wife, two daughters and four grandchildren. ■

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## Louise Reeder

**Louise Reeder**, former town clerk of Wilton, died May 19, 2002. She was 73.

Reeder was Wilton's town clerk for 37 years in what started as a part-time job. She eventually became magistrate, municipal clerk and utilities clerk for the town. In addition, she was a Shelby County poll worker for many years. ■

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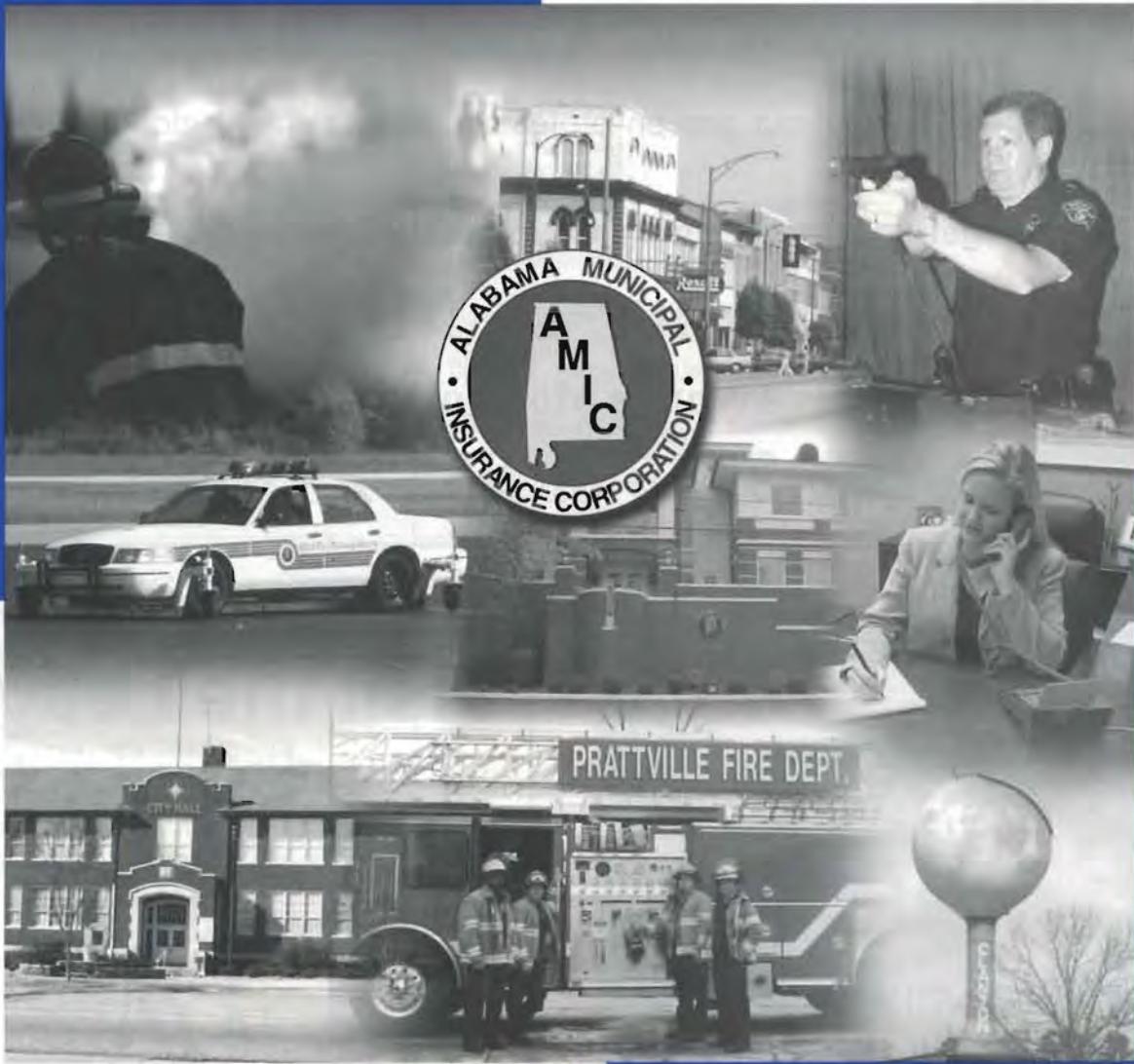
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