

# THE ALABAMA MUNICIPAL JOURNAL

June 2003

Volume 60, Number 12



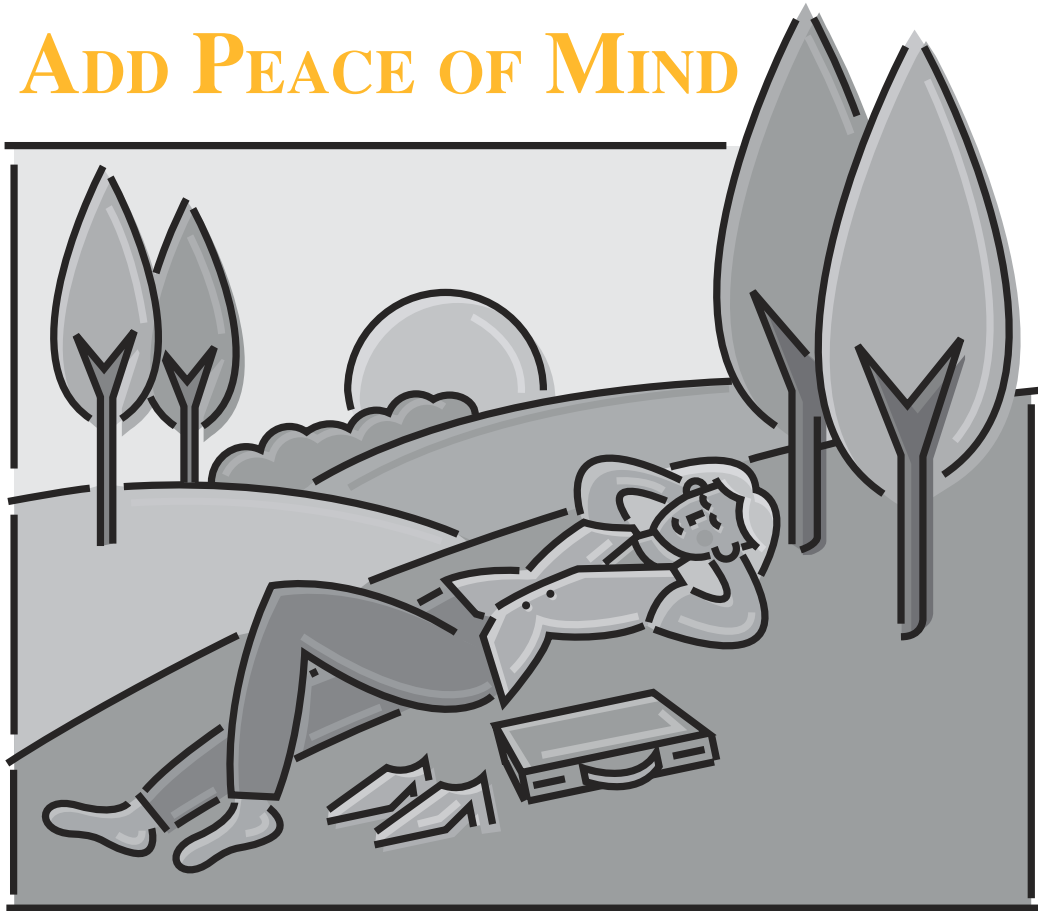
## Inside:

- **The League's Five Policy Committees**
- **League Sponsors New Cable Television Franchise Management Service**
- **Variations**

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# THE ALABAMA MUNICIPAL JOURNAL

Official Publication, Alabama League of Municipalities

June 2003 • Volume 60, Number 12

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Published monthly by The Alabama League of Municipalities, 535 Adams Avenue, Montgomery, Alabama 36104, telephone (334) 262-2566. Web address: www.alalm.org. Single copies, \$2.00. By subscription, \$24.00 per year. Advertising rates and circulation statement available at www.alalm.org or by calling the above number. Statements or expressions of opinions appearing within this publication are those of the authors and not necessarily those of the Alabama League of Municipalities. Publication of any advertisement should not be considered an endorsement of the product or service involved. Material from this publication may not be reprinted without permission.

## Contents

<i>Perspectives</i> .....	4
Municipal Clerks Receive Certification	
Grassroots Rural Entrepreneurship Award	
<i>President's Report</i> .....	5
The League's Five Policy Committees	
<i>Municipal Overview</i> .....	7
League Sponsors New Cable Television Franchise	
Management Service	
<i>Environmental Outlook</i> .....	13
Governor Riley Signs "Historic" Water Compact	
Agreement	
<i>The Legal Viewpoint</i> .....	15
Variances	
<i>Legal Notes</i> .....	23
<i>Speaking of Retirement</i> .....	25
<i>Obituaries</i> .....	26

## Municipal Clerks Receive Certification

In the First quarter of 2003, six municipal clerks in Alabama received the designation of Certified Municipal Clerk, three advanced in the Master Municipal Academy and one graduated from the Master Academy receiving the designation of Master Municipal Clerk.

Carolyn May, Town Clerk/Treasurer of Grant; Rosemary Nichols, Administrative Assistant of Northport; Geniece Johnson, City Clerk/Treasurer of Fairhope; Pamela Duke, City Clerk/Treasurer of Linden; Cheryl Acker, Town Clerk of Woodstock; and Michele Aycock, Deputy Clerk/Controller of Tusculumbia were awarded the prestigious designation of Certified Municipal Clerk. These ladies join 135 active Municipal Clerks from Alabama who currently hold the designation of CMC.

Robert Shuman, City Clerk/Treasurer of Opelika, has been accepted as a member in the Master Municipal Clerk Academy. This academy is the professional body of municipal clerks who have continued their level of educational achievement beyond the attainment of Certified Municipal Clerk.

The Master Municipal Clerk Academy was established to further the professional education of municipal clerks – to enhance their skills as needed to meet the challenge of the office of municipal clerk. Every two to four years, Academy members must demonstrate active educational and professional participation that keep them aware of changing events in the local government scene.

Glenda Morgan, City Clerk of Mobile, and Cathy Larrimore, City Clerk of Orange Beach, have been accepted into the second level membership of the Master Municipal Clerk Academy. Upon completion of three levels, the designation of Master Municipal Clerk is achieved.

In March 2003, Lynnette Ogden, Town Clerk/Treasurer of Millport joined three other municipal clerks in Alabama to receive the designation of Master Municipal Clerk. Ogden joins 260 other municipal clerks throughout the world who have received MMC designation.

Congratulations to these fine professionals. Each has demonstrated and obtained career development goals that will aid in maintaining the quality of excellence that is required of today's public officials. ■

## Grassroots Rural Entrepreneurship Award

The National Center for Small Communities (NCSC) announces the **Grassroots Rural Entrepreneurship Award**, supported by the Ewing Marion Kauffman Foundation. The Award recognizes and promotes achievement in entrepreneurial development resulting from the outstanding leadership of local government officials.

Elected officials who serve small communities (less than 10,000 population) and have a demonstrated record in promoting local entrepreneurship are encouraged to apply. Grassroots Rural Entrepreneurship Award applications must be received by NCSC by **June 30**.

A panel of expert judges will select one winner and two finalists. The achievements of all three will be celebrated during an awards luncheon at the National Center for Small Communities' annual conference in Washington, DC, Sept. 3-5. The winner will also receive a **\$5,000 grant** to further the community's entrepreneurial development efforts.

Grassroots Rural Entrepreneurship Award **information and application materials** are posted on the NCSC Web site at [www.natat.org/ncsc/Kauffman/entrepdefault.htm](http://www.natat.org/ncsc/Kauffman/entrepdefault.htm).



# The President's Report

Dan Williams  
Mayor of Athens

## The League's Five Policy Committees

The League has five policy committees: Finance, Administration and Intergovernmental Relations; Energy, Environment and Natural Resources; Community and Economic Development; Transportation, Public Safety and Communications; and Human Development. These five committees have been in existence for many years and are composed of members from all regions of the state.

The policy committees meet each year on Committee Day, which is usually held in early September. This year, Committee Day is scheduled for Thursday, September 4th at the Montgomery Civic Center. Members of each committee will gather at the Civic Center; listen to brief presentations from policy advisors; and then determine what, if any, changes should be made to the current Policies and Goals for that particular committee. A League staff member is assigned to each committee and is responsible for taking minutes and recording any changes and/or additions to the Policies and Goals during the Committee Day meeting.

If you are interested in serving on a particular committee, please send your written request to: Perry Roquemore, Alabama League of Municipalities, P.O. Box 1270, Montgomery, AL 36102. Every effort will be made to place you on the committee of your choice.

### Committee Composition

Each committee is composed of a chairperson and a vice chair elected at the annual convention, together with at least four members from each Congressional District appointed by the chair with the advice of the League Director and League President. The Executive Director of the League shall be an ex officio member.

### FAIR Committee

The Committee on Finance, Administration and Intergovernmental Relations is responsible for studying League policy in matters of municipal administration, revenues and finance and intergovernmental relations. Municipalities are being faced with increased functions and responsibilities

with diminishing revenues. The gap between revenues and expenditures needed to meet municipal responsibilities is increasing annually. The FAIR committee has the responsibility of recommending solutions in this area. There are more than 90,000 governmental units in the United States when one considers all of the states, counties, municipalities, school districts, and other units of government. Our municipalities are vitally interested in preserving their integrity. In order to do this, it is necessary to define functions which can best be performed by each level of government and to foster cooperation between all levels of government. There exists a strong movement toward regionalization. In this time there is a strong need for accurate communications between agencies and a full disclosure of facts when the state legislature and Congress is asked to adopt legislation relating to consolidation of jurisdictions and reshuffling of functions. It is vitally important that our cities and towns be thoroughly familiar with this trend and be alert for legislation involving their authority to deal with local problems.

Items considered by this committee include, but are not limited to: effect of area served on cost of providing services; extra territorial services; coordinating activities with separately incorporated boards; annexation; municipal employees – recruitment, selection, advancement, fringe benefits; retirement systems; personnel systems; employment discrimination; unemployment compensation; workmen's compensation; in-service training programs; federal and state assistance with public service education; labor problems; Social Security for municipal employees; Fair Labor Standards Act; municipal liability; contracts; personnel policies; destruction of public records; records retention; amusement taxes; audits; budgets; automobile tag tax; bank stock taxes; revenue, debt limits; improvement assessments; insurance; ABC revenues; financial institution taxes; licenses; taxes (occupational, sales, gasoline, tobacco, soft drink); Bid Law; purchasing procedures; garbage collection fees, etc.

### EENR Committee

The Committee on Energy, Environment and Natural Resources deals with some of the most important, expensive and crucial problems facing the cities and towns of our nation – the disposal of hazardous waste, solid waste and sewage and controlling air and water pollution. Because of the slowness of our states to act in their field, and because of the lack of funds at the state and local levels for undertaking the tremendously expensive pollution control projects, the Federal government initially took the lead in attempting to find the answer to these problems. Unfortunately, the Federal government has not found the answer. There are fragmentations of authority, differences in guidelines, and – at times – a definite lack of communication between levels of government in the environmental field. The Alabama Department of Environmental Management, established by legislation supported by this committee, appears to be

*continued page 10*





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# Municipal Overview

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

## League Sponsors New Cable Television Franchise Management Service

Cable television franchise agreements and the laws relating to such agreements are very complex. When a city or town council is considering the award of a cable television franchise or a renewal of an existing franchise, those officials charged with making the final decision need to be assured that the agreement they are adopting will adequately protect the interests of the municipality and its citizens. In order to gain this assurance, the advice of experts is often called for.

Earlier this year, the Alabama League of Municipalities entered into an agreement to sponsor a new technical services program designed to assist member municipalities with cable television franchise management. The goals of the program are to ensure that our city and town governments have access to the expertise required to negotiate for the benefits and services needed in our communities on reasonable terms and conditions. In return for a nominal fee, which is usually based on a city's population, our member municipalities can obtain the following services:

- Assistance in negotiating new terms and conditions for cable television franchise renewals including the preparation of the franchise document.
- Determining companies' compliance with existing franchise terms and conditions including franchise fee payment review.
- Developing and implementing a community needs assessment to determine the future cable-related needs and interest of cities.
- Assistance for electric cities in negotiating pole attachment agreements.
- Assistance in the development of public, educational and governmental channels (PEG).
- Assistance with processing requests from companies to transfer an existing cable franchise.

- Assistance with negotiating new cable franchises.
- Assistance with the development of institutional networks, if applicable.

The League has contracted with Local Government Services of Lilburn, Georgia, to assist League members in providing these services. Since 1993, Greg Fender, who serves as the program's principal consultant, has assisted over 200 municipalities nationwide in negotiating cable television franchise renewals, transfer requests and pole attachment agreements. He has also assisted numerous municipalities in responding to right-of-way issues related to cable and telecommunications franchises. Local Government Services will provide these services in conjunction with the law firm of Moss and Barnett and with the assistance of William F. Pohts, an engineer specializing in the emerging technologies in telecommunications and electronic systems.

We are excited about the benefits our cities and towns can realize by participating in this program which provides municipalities access to experts in the field at a very reasonable cost.

**If your city is interested in subscribing for this service or would like additional information, please call Greg Fender at 866-280-5030.**

### Survey Results

Recently, the League surveyed members regarding this new service to assist cities with cable television franchise management. As of early April, 74 cities and towns have responded. The initial results of the survey have produced some interesting facts that I would like to share with you, including the following:

- Forty-Three (43) municipalities, or 61%, reported receiving less than 5% of their cable company's gross revenues in exchange for the use of the public rights of way.
- Based on national averages involving population and cable industry averages, 43 cities collectively are losing \$614,277 annually in potential revenue – or well over \$6 million over a 10-year period.
- Twenty-two (22) municipalities, or 31%, reported being involved with a franchise renewal.
- Four towns reported not having a cable company operating in their towns.

The League would like to have a complete database that we can refer to regarding the use of public rights-of-way for cable television services. For this purpose, another survey has been sent to our members. We would appreciate your assistance in completing this survey questionnaire and returning it to the League by the date requested. This information is very important in helping us assess the needs of our members in this area. ■

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administering its delegated authority to enforce pollution control measures in a responsible and equitable manner.

This committee is responsible for making recommendations for additions and deletions. Even more importantly, the committee must concern itself with the facts and trends relating to hazardous and solid waste disposal, water pollution and air pollution in Alabama as they affect our cities and towns. Garbage disposal methods, regional disposal areas, incineration, land fill, rodent and vector control measures are all within the field of subjects that demand attention in this committee.

From the deliberations of this committee, it is hoped that definite recommendations will be made for the establishment of League Policy on Energy, Environment and Natural Resources. Items considered by this committee include, but are not limited to: planning for future control and disposal practices; research needed; air pollution; federal assistance for air pollution control; regional air pollution control measures; national standard on air pollution; model legislation on air pollution control; soil conservation; nuclear energy; energy conservation and alternative sources, etc.

#### **CED Committee**

The Committee on Community and Economic Development is responsible for studying all factors affecting the physical development of our cities and towns. This includes community development, industrial development, planning and zoning and recreation. The committee suggests State and Federal legislation needed to meet municipal problems connected with the physical development of our cities and towns, industrial development, recreation and planning and zoning. Items considered by this committee include, but are not limited to: reviewing programs of HUD, Department of Commerce, EDA, USDA Rural Development, Department of Interior, Heritage Conservation and Recreation Service, Delta Regional Authority; annexation problems; police jurisdiction problems; industrial and economic development; industrial park legislation; relations with regional planning commissions; housing assistance legislation; planning and zoning laws; suburban development; code enforcement program; recreation programs and training; county subdivision control; minimum public improvement standards for subdivisions; Appalachian program; municipal relations with housing authorities; federal criteria for grant programs; coordination of public utilities with urban planning; federal and state policies relating to balanced economic growth; tourist promotion; Small Business Administration; impact of export activities on local economic growth; enterprise zone legislation; small city CDBG; jobs program; industrial development regions, etc.

#### **TPSC Committee**

The work of the Committee on Transportation, Public Safety and Communication is directed toward methods whereby municipalities may improve transportation, public safety and communications services for their communities.

Items considered by this committee include, but are not limited to: comprehensive state and local transportation planning to meet requirements of the Federal law; establishment of overall national policy for integration of Federal programs involved with transportation; cooperation of all levels of government in arriving at coordinated solution of transportation problems; establishment of continuous comprehensive transportation planning and processes within state, region and municipality; planning highway and street improvements at least five years in advance; coordination of urban transportation with development of community; development of municipal arterial and collector streets for maximum capacity; reserving rights-of-way for implementation of future plans; distribution of Federal Highway revenues; need for increased aid for urban street purposes; inventory of municipal street needs; regulation of truck weights; parking; highway safety legislation and programs; street improvements for safety; uniform traffic ordinances and regulations; airport operating practices, etc.

#### **HD Committee**

The work of the Committee on Human Development is directed toward methods whereby municipalities may improve the local environment for individual development, expression and development of talents. In particular, this effort will be directed toward improving opportunities for education, training and employment.

Our cities and towns have long been responsible for the physical development of their jurisdictions. Now they are becoming involved with additional concern for the opportunities of their citizens to grow up and become productive members of the community. It has been said that if the average per capita income of a community or state is high enough, the tax base will provide revenues sufficient for the city or state to provide adequate services. Unfortunately, before industry can come to an area, there must be a labor force with sufficient training, education and background to fill industrial and technical positions. Also, it has been shown with little doubt that poverty begets poverty, and that environment in the early years of a child's life vitally affects his/her chances of becoming a productive law-abiding citizen. Municipalities are vitally interested in coordinating programs with the State and Federal government for this purpose – in soliciting the assistance of private industry and our institutions of higher learning – for the answer to human development problems.

Items considered by this committee include, but are not limited to: establishment of League Goals on Human Development Health Care for underprivileged children; Headstart programs; primary and secondary education facilities available; Federal assistance to education; municipal committees on youth problems; social disease education programs; school drop-outs; youth opportunity programs; Federal training and manpower programs; Kindergartens and day care facilities; mental health care; Hospitals and clinics; library services; etc.■

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# ENVIRONMENTAL OUTLOOK



By Gregory D. Cochran  
Director, State and Federal Relations

## Governor Riley Signs “Historic” Water Compact Agreement

Governor Bob Riley of Alabama and Governor Sonny Perdue of Georgia agreed in May on a plan to share water from the Alabama-Coosa-Tallapoosa River Basin (ACT). Gov. Riley hailed the agreement as “historic.”

According to Gov. Riley, the signed memorandum of understanding between the two states is a “first step” towards ending 13 years of multi-state water negotiations between Alabama, Georgia and Florida. The proposed 30-year agreement signed by the Alabama and Georgia governors set storage requirements for Lake Allatoona and Carters Lake in Northeast Georgia and minimum flow rates from those lakes and the Coosa River, near Rome, Georgia.

The two governors were joined by Florida Governor Jeb Bush in Dothan, Alabama. The governors also agreed to extend the water talks until July 31, 2004, giving federal regulators time to examine and sign off on the plan. Negotiations will continue on the Apalachicola-Chattahoochee-Flint River Basin (ACF). Gov. Perdue expressed hope for an agreement on the ACF River Basin by the next meeting.

### Birmingham’s First “Lead Free” Safe House

The Citizens’ Lead Education and Poison Prevention (CLEPP) program opened Birmingham’s first “safe house” for families whose houses are being cleaned of lead.

Named the “Maurci’s House” after a pioneer in childhood lead poisoning prevention, the house already has its first occupants, the Moore family of West End. Currently there is a waiting list of 35 families seeking temporary housing while their homes are cleaned of lead. Almost all of Birmingham’s houses were built before 1978, the year lead

was removed from paint. Jefferson County leads the state in lead poisoning cases.

Groups who contributed to “Maurci’s House” included the Jefferson County Commission; the City of Birmingham; the federal government; University of Alabama at Birmingham; Alabama Power; and Century Plaza. Baptist Medical Center-Princeton is providing the house for the next three years.

### Fish and Wildlife Service Calls For Critical Habitat Protections

The U. S. Fish and Wildlife Service is proposing that portions of rivers and streams – totaling some 1,093 miles in Alabama, Georgia, Mississippi and Tennessee – be designated as critical habitat for 11 federally listed freshwater mussels. All 11 mussels were listed in 1993 under the Endangered Species Act.

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Portions of Alabama rivers targeted for critical habitat include: the Tombigbee River in Lamar, Pickens, Greene, Sumter and Tuscaloosa counties, the Black Warrior River, Alabama River, Tallapoosa River and the Coosa River.

Critical habitat refers to specific geographic areas that are essential to the conservation of a threatened or endangered species and which may require special management considerations or protection. A complete description of the proposed critical habitat designation has been published in the Federal Register. Copies of the proposal and maps are available at <http://southeast.fws.gov/hotissues> or by contacting Connie Light Dickard, 601-321-1121.

### Huntsville Opens New Environmental Court

Litterbugs beware. You now can be taken to court in Huntsville. The city of Huntsville kicked off the city's first Environmental Court. The program places environmental cases on one docket each week instead of scattering them among other misdemeanor hearings throughout the week. The idea for the court came from Municipal Judge Sonny Rodenhauer after meetings with Huntsville Mayor Loretta Spencer about the rising number of neighborhood eyesores. According to Huntsville's department of Community Development, about 10,000 notices for violations – such as overgrown weeds, unlawful storage of junk and the keeping of inoperable vehicles in the streets and yards – were issued last year.

### Scrap Tire and Clean Water Enforcement Legislation Pass House

The Alabama House of Representatives made significant progress on environmental legislation when it passed without opposition, bills to cleanup and manage scrap tire disposal in Alabama (HB 186) and strengthen the Alabama's water pollution laws making them on par with the federal Clean Water Act (HB 434). Both bills are supported by business, governmental and environmental interests.

### Birmingham Area Ranks 18th In Ozone Report

In April, according to the American Lung Association's "State of the Air" report, the Birmingham area was ranked 18th in a listing of the most ozone-polluted cities in the nation. Two years ago, the two county metro area of Jefferson and Shelby was ranked 33rd in the nation and last year 21st.

Seven counties in Alabama received failing grades from the Lung Association for their ozone pollution problems. Those counties included: Clay, Jefferson, Lawrence, Madison, Mobile, Montgomery and Shelby. The report also gave Elmore County a C and Sumter County a B.

In May, the *Mobile Register* reported an outbreak of ozone air pollution violations in Alabama. Two ozone monitors in Mobile County have already turned in three violations of federal ozone standards. Monitors in Clay County, Lawrence County, Shelby County and in Muscle Shoals have also reported violations according to the *Register*.

Ground-level ozone air pollution is formed when nitrogen oxide pollutants, largely from coal-fired plants and automobiles combine with sunlight. Concentrations of ozone climbs when regional weather patterns are dry, warm and there is little wind. When ozone concentrations exceed EPA's violation level of 85 parts per billion, children and people with respiratory problems such as asthma are advised to limit their exposure to outside air during the day.

The Lung Association bases the rankings on the number of days the area violated ozone rules and on the severity of the pollution. More than 2.3 million Alabamians are at risk from ozone pollution, according to the report. To access a copy of the "State of the Air" report go to [www.lungusa.org](http://www.lungusa.org). The start of ozone season began in South Alabama on April 15th and in Birmingham/North Alabama on May 1st. The season lasts until October.

### Jefferson County's Household Hazardous Waste Day Numbers

The Jefferson County Commission held its first Household Hazardous Waste Collection Day. The preliminary collection numbers were quite impressive.

Here they are:

- Batteries - 31,000 pounds
- Motor Oil - 12,458 pounds
- Paint - 130,000 pounds
- Pesticides, antifreeze, aerosols, flammable liquids and other wastes - 1000's of pounds. ■

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# THE LEGAL VIEWPOINT

By Ken Smith  
Director, Legal Services & Computer Programs

## Variations

Zoning is one of the most pervasive and – some say – intrusive forms of municipal regulation. After all, one of the intrinsic aspects of zoning is prevention of certain uses of private property, sometimes against the wishes of the property owner. The goal is the protection of the public interest by controlling development of private property through the creation of districts within the municipality and regulating the kind, character and use of structures and improvements that may be made or erected within those districts.

Despite the restrictive nature of municipal zoning, many municipalities – and some urban counties – have adopted zoning ordinances, frequently at the request of the very individuals whose property is being regulated. Municipal authority to use zoning to manage property uses and plan for future growth is virtually universally recognized and upheld by courts in this country. Municipal zoning ordinances are presumed correct and courts generally afford great deference to municipal zoning ordinances, reviewing them only to determine if they are arbitrary or capricious. Municipalities cannot impose restrictions that arbitrarily and capriciously inhibit the use of private property or the pursuit of lawful activities.

No zoning ordinance, though, can cover all possible situations which might arise under it. Some method is necessary to ease strict application of the zoning ordinance and to still achieve the purpose of the land use plan on which the zoning ordinance should be established.

To avoid the practical difficulties and unnecessary hardships that necessarily arise from the narrow enforcement of a zoning ordinance, Alabama law permits municipalities to grant variances from the zoning ordinance, allowing some landowners to avoid total compliance. A variance, however, cannot be granted on a whim. Variances should be used sparingly, and only where unnecessary

hardship exists. “[T]he spirit of the zoning ordinance in harmony with the spirit of the law should be carefully preserved, to the end that the structure of a zoning ordinance would not disintegrate and fall apart by constant erosion at the hands of a board of zoning adjustment or the courts.” *Priest v. Griffin*, 284 Ala. 97, 222 So.2d 353 (Ala. 1969). This article discusses variances, explains what they are and when they are appropriate.

### Who Can Grant a Variance?

One of the most important aspects of variances is understanding which entity of municipal government has the power to authorize a variance. Under the Code of Alabama, this power is given to the zoning board of adjustment (or ZBA), pursuant to Section 11-52-80. As the Attorney General has pointed out in an Opinion to Hon. G. C. Donaldson, October 4, 1974, while the creation of a ZBA is not mandatory, no other municipal officer or agency has any power to perform the functions of the ZBA. Thus, the ZBA is the only entity in the municipality that can grant a variance from the zoning ordinance. Neither the council, the mayor nor the planning commission can perform this function. See, *Alabama Farm Bureau Mut. Cas. Ins. Co., Inc. v. Board of Adjustment of Town of Hanceville*, 470 So.2d 1234 (Ala. Civ. App. 1985), *Riverbend Partnership v. City of Mobile*, 457 So.2d 371 (Ala. 1984), and *Swann v. Board of Zoning Adjustment of Jefferson County, Ala.*, 459 So.2d 896 (Ala. Civ. App. 1984). Appeals from ZBA decisions do not go to the council. Instead, decisions are appealed to the circuit court. Section 11-52-81 Code of Alabama 1975. Thus, a board of adjustment is necessary to properly administer the zoning ordinance.

*continued next page*

## What is a Variance?

The Code of Alabama does not define the term variance. Instead, Section 11-52-80(d)(3), Code of Alabama, 1975, provides that the ZBA has the power:

“To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.” Section 11-52-80(d)(3), Code of Alabama, 1975.

In *Swann v. Board of Zoning Adjustment of Jefferson County, Ala.*, 459 So.2d 896 (Ala.Civ.App.1984), the Court of Civil Appeals explained that variances are necessary because in particularly harsh situations the zoning ordinances enacted by the municipality should not be applied literally. Variances allow boards of adjustment to make proper changes in the application of the zoning ordinance to prevent unnecessary hardship. Essentially, then, a variance excuses the land owner from the strict operation of the zoning ordinance. *Riverbend Partnership v. City of Mobile*, 457 So.2d 371 (Ala.1984).

The term “variance” can encompass anything from a slight modification in height, area, or distance of a building from boundaries to the authorization of a non-conforming use. See *Nelson v. Donaldson*, 255 Ala. 76, 50 So.2d 244 (1951).

In *Nelson v. Donaldson*, the question presented was how far can a variance go? In this case, Donaldson applied for a permit to build an apartment in an area zoned single family residential. The permit was denied and the denial was appealed to the ZBA, which granted a variance. The dominant question raised was whether the power to vary the effect of the zoning ordinance in specific cases includes the power to authorize a nonconforming use, that is, a use which is prohibited by the ordinance. Or, is the power restricted to minor modifications as to height, area, distance from boundaries, etc.

The Court held that the variance power should be read broadly, and:

“the board should make proper adjustment to prevent unnecessary hardship, even to the extent of authorizing nonconforming uses. In order to prevent injustice, oppression, arbitrary application, and to promote ‘the public interest,’ the board of adjustment has the power to find, under a certain set of facts, that the literal application of the ordinance would not be within the spirit of the ordinance. In other words, having in mind the public interest, and the interest of the people in a given use district, the legislature intended that so long as no oppression or unnecessarily great burden exists

and, therefore, no great individual injustice done, the ordinance should be applied strictly; but, on the other hand, if the situation is such as to indicate oppression and unnecessary individual burden, then the spirit of the zoning ordinance would not be in accordance with the spirit of the law, that it should not be applied strictly and literally.

Importantly, the Court held that the exercise of this power is not the delegation of a legislative power. Instead, this is a quasi-judicial function performed by a legislative body.

A variance, though, should not be used as merely another way to rezone property. As the Court noted in *Riverbend v. Mobile*, cited above, unlike a zoning amendment, which may reclassify a tract of land for multi-family dwelling use, a variance can allow multi-family dwellings on specific property without rezoning. This can only take place, though, under the proper set of circumstances. If a variance is improper under the facts, the only way to allow a new nonconforming use in a district is through rezoning, an action that can only be done by the municipal council. See, *McKay v. Strawbridge*, 656 So.2d 845 (Ala. Civ. App. 1995).

A variance is also not a special exception. Granting special exceptions is another power given to the board of adjustment under Section 11-52-80. The Court discussed the difference between the two in *Lindquist v. Board of Adjustment of Jefferson County*, 490 So.2d 16 (Ala. Civ. App. 1986).

In this case, the court noted that a variance generally provides relief from the literal impact of a zoning ordinance, allowing property to be used in a manner that is otherwise forbidden under the terms of the ordinance. A special exception, on the other hand, is the grant of administrative permission to use property in a manner allowed under the regulations, under conditions specified in the zoning ordinance itself. It is not actually an exception to the zoning ordinance at all – instead, a special exception is a use granted on terms spelled out in the ordinance. Distinguishing between the two can be very important because, as the court pointed out, “a special exception may not be used as a substitute for a variance in order to avoid the consequent burden of proving unnecessary hardship.”

As expressed by McQuillin, *Municipal Corporations*, § 25.160, “the purpose of a special use permit or exception is to provide a landowner relief in exceptional situations where the use desired would not change the essential character of the area nor be inconsistent with the area. A special use permit should not be granted where to do so would in effect constitute a rezoning of the area. A special-use permit has the legal effect of a variance where it allows a use of land not permitted by existing zoning restrictions.” And, in that case, unnecessary hardship must exist.

There are as many types of variances possible as there are design criteria incorporated into the zoning ordinance being considered. For example, variances are sought when any of the following criteria in a zoning ordinance create unnecessary hardship – set-back criteria; area criteria; height criteria; structure criteria; accessory structure criteria; fence, wall and screening criteria; and parking, storage and loading criteria.

A variance is granted to allow deviation from established design requirements. Appeal for a use variance occurs when an appeal is made to request allowance of a use within a zoning district which is prohibited by the ordinance in that district. According to courts in most jurisdictions, such an allowance negates the intent of the ordinance, constitutes rezoning, and is not within the power and authority of zoning boards of adjustment. A change of use should be undertaken by the municipal governing body. **Note:** Although the above statement is the general weight of authority, the *Nelson* case cited above ruled to the contrary in Alabama.

In *McKay v. Strawbridge*, 656 So. 2d 845 (Ala. Civ. App. 1995), for example, property owners purchased a parcel of land on which they planned to relocate their truck repair shop and to build a grocery store. At the time of the purchase, the property was zoned for residential use. They petitioned the Board of Adjustment for a variance in the zoning of the property from residential use (R-1) to general commercial use (B-2). After a hearing, the Board granted the variance. The Court of Civil Appeals held that a board of adjustment had no authority to grant the requested variance because the request should have been done as a rezoning.

When considering a request for a variance, each member of a zoning board of adjustment should decide whether the variance, if granted, would maintain adequate levels of health, safety and general public welfare for the community and the neighborhood involved.

Another aspect to be remembered is that the granting of the variance can be negotiated. Each side may have to give and take a little. For example, a variance might be granted with the stipulation that certain design features will be added.

### Elements of a Variance

Quoting many previous cases, the Alabama Supreme Court in *City of Russellville Zoning Bd. of Adjustment v. Vernon*, 2002 WL 1042474 (Ala., 2002), stated that in order to determine whether a variance should be granted:

“Variances should be sparingly granted, and only under ‘peculiar and exceptional circumstances’ of unnecessary hardship. The pivotal question is whether, due to special conditions, a literal enforcement of a zoning ordinance will result in ‘unnecessary hardship.’

”An ‘unnecessary hardship’ sufficient to support a variance exists where a zoning 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.’ *McQuillin*, supra, at § 25.167. This Court has approved the following definition of ‘unnecessary hardship’: ” ‘No one factor determines the question of what is practical difficulty or unnecessary hardship, but all relevant factors, when taken together, must indicate that the plight of the premises in question is unique in that they cannot be put reasonably to a conforming use because of the limitations imposed upon them by reason of their classification in a specified zone.’ ” A mere hardship or inconvenience is not enough to justify a variance. *McQuillin*, supra, at § 25.168. Moreover, the reasons for granting a variance must be ‘substantial, serious, and compelling.’ *McQuillin*, supra, at § 25.167. (Most citations omitted).

The term “variance” is misunderstood due to the number of varying interpretations of the term “hardship.” Exactly what constitutes an “unnecessary hardship” must be determined from the facts of the particular case. *City of Mobile v. Sorrell*, 271 Ala. 468, 470, 124 So.2d 463, 465 (1960).

A hardship exists when the conditions imposed by the zoning ordinance would deprive the property owner of certain development rights that are enjoyed by other property owners within the same zoning district. Regarding use variances, at least one court has stated, an unnecessary hardship sufficient to support a use variance exists where a zoning 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. *Brock v. Board of Zoning Adjustment of City of Huntsville*, 571 So.2d 1183 (Ala. Civ. App. 1990).

When examining the hardship claimed, it should be determined that:

- (1) The property owner did not bring this hardship upon himself. *Ex parte Chapman*, 485 So.2d 1161 (Ala. 1986)
- (2) The physical site conditions are such that a hardship does exist. *Board of Zoning Adjustment for City of Fulndale v. Summers*, 814 So.2d 851 (Ala. 2001).
- (3) The property owner would be deprived of rights which are normally afforded under the same regulations for the zone in which the property is located. *Behm v. Board of Zoning Adjustment of City of Mobile*, 571 So.2d 315 (Ala. Civ. App. 1990).

*continued page 19*



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about the future is that  
it only comes one day at a time.*  
— Abraham Lincoln

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(4) The unnecessary hardship must relate to the land itself, and must not be personal to the property owner. The age and health of the property owner will not justify finding unnecessary hardship. *Ex parte Chapman*, 485 So.2d 1161 (Ala. 1986); *Board of Adjustment of City of Gadsden v. VFW Post 8600*, 511 So.2d 216 (Ala. Civ. App. 1987).

The term “hardship” should never be interpreted as meaning personal or economic hardship to the property owner. These conditions are not grounds for granting variances. *Gadsden Board of Adjustment v. VFW Post 8600*, 511 So. 2d 216 (Ala. Civ. App. 1987).

In some cases, though, courts have used economic hardship to justify granting variances. In most of these cases, however, the property owner had expended funds in reliance on some previous grant of authority by the municipality. For instance, in *Board of Zoning Adjustment of the City of Huntsville v. Mill Bakery and Eatery, Inc.*, 587 So. 2d 390 (Ala. Civ. App. 1991), the Court of Civil Appeals held that a variance should have been granted to a property owner who would suffer financial hardship not common to that of other property owners in the district if the variance was refused. In this case, the property owner had made improvements to his property based upon a previously-issued variance and the Court held that the Board of Adjustment could not later refuse to issue them another variance.

Even reliance on representations from the municipality, though, will not in all cases justify granting a variance. In *Ex parte Chapman*, 485 So.2d 1161 (Ala.1986), for instance, the property owner began construction of a storage unit on his residential property. A neighbor complained, and an investigation showed that the property owner did not have a building permit. The ZBA granted a variance and the property owner finished construction. In the meantime, the neighbor appealed the variance to the circuit court, which found that unnecessary hardship existed. This decision was upheld by the Court of Civil Appeals. On a writ of certiorari, though, the Alabama Supreme Court reversed the decision, pointing out that a “self-inflicted or self-created hardship may not be the basis for a variance or for a claim thereof. When the owner himself by his own conduct creates the exact hardship which he alleges to exist, he certainly should not be permitted to take advantage of it. Clearly, the hardship is self-created where it stems from an improvement made without a building permit and in violation of law.” The Court also noted that in this case, the fact that the property owner had been granted a variance should not have even been an issue because the ZBA could not have considered this fact prior to granting its original variance. Only those factors could be used to determine whether there was unnecessary hardship.

Each case, then, must be considered on its own, specific

facts. No one factor is dispositive as to what constitutes undue hardship. *City of Mobile v. Sorrell*, 271 Ala. 468, 124 So. 2d 463 (1960). Instead, all relevant factors, when taken together, must indicate that the problems of the property are unique in that it cannot reasonably be used for a conforming use.

Although the element of unnecessary hardship is by far the primary consideration of whether to grant or deny a variance, other issues related to variances merit at least passing discussion. These include:

- The variance must be in the public interest. See, Section 11-52-80 (d)(3); *Priest v. Griffin*, 284 Ala. 97, 222 So.2d 353 (Ala. 1969).

- Section 11-52-80(d)(3) states that a ZBA may grant a variance in specific cases “upon appeal.” In order for the ZBA to be able to grant a variance, there must be some earlier administrative action that is being appealed, such as the denial of a building permit. In *McKay v. Strawbridge*, 656 So.2d 845 (Ala. Civ. App. 1995), the Court of Civil Appeals upheld the dismissal of a case on the grounds that the property owner “had no decision from which to appeal to the Board and that the Board was without authority to consider or grant a variance.” See also, *Riverbend Partnership v. City of Mobile*, 457 So.2d 371 (Ala. 1984); and *Fulmer v. Board of Zoning Adjustment of Hueytown*, 286 Ala. 667, 244 So.2d 797 (Ala. 1971).

- In order for a party to have standing to challenge the decision of a zoning board of adjustment he must be a “party aggrieved.” To establish himself as a “party aggrieved” he must present proof of the adverse effect the changed status of the rezoned property has, or could have, on the use, enjoyment and value of his own property. *Crowder v. Zoning Bd. of Adjustment*, 406 So.2d 917 (Ala. Civ. App.), cert. denied, 406 So.2d 919 (Ala.1981); *Gulf House Ass’n v. Town of Gulf Shores*, 484 So.2d 1061 (Ala.1985). A person with an equitable interest in property is a party aggrieved. *Board of Adjustment of City of Mobile v. Sigler*, 518 So.2d 725 (Ala.Civ.App.1987). At times, a municipality may appeal the decisions of its own ZBA. *Ex parte City of Huntsville*, 684 So.2d 123 (Ala.1996), on remand 684 So.2d 127.

- A variance may be the subject of conditions. The imposition of the conditions, however, does not cure the error of granting the variance. If the party seeking a variance does not satisfy the “unnecessary hardship” standard, no subsequent conditions can undo the error of granting the variance. *Board of Zoning*

*continued next page*

*Adjustment of the City of Mobile v. Dauphin Upham Joint Venture*, 688 So.2d 823 (Ala.Civ.App. 1996).

### Cases Considering “Unnecessary Hardship”

Because determining if unnecessary hardship exists depends so much on the facts of each case, below is a list of cases considering this element.

- No unnecessary hardship where a property owner was granted a variance for a mobile home after he removed the “tongue” and “underpinned” the mobile home, but later was denied a second mobile home variance after he did the same thing. The first mobile home was to be used as a residence on his daughter’s property and the second was for rental purposes. “Were we to adopt Vernon’s proposed rule, zoning boards of adjustment would be reluctant to grant a single variance out of concern that one such variance could precipitate the evisceration of their power to enforce use restrictions. Such a rule would tend to destroy or greatly impair the whole system of zoning.” *City of Russellville Zoning Bd. of Adjustment v. Vernon*, – So.2d —, 2002 WL 1042474 (Ala. 2002)
- No unnecessary hardship where (1) owner had expended a significant amount of money in anticipation of constructing mini-storage facility; (2) property was adjacent to a junkyard; and (3) owner failed to show that topography of his land created an unnecessary hardship. The court was persuaded by the fact that the property had been used as rental property, a permitted use, for 15 years before the owner sought a variance. *Board of Zoning Adjustment for City of Fultondale v. Summers*, 814 So.2d 851 (Ala. 2001).
- No unnecessary hardship entitling owner to build 214-foot pier rather than 150 existing pier because the water was too shallow to allow him to build a covered boathouse to raise the boat out of the water any closer. Court stated that the problem was not “unique to his property.” *Asmus v. Ono Island Bd. of Adjustment*, 716 So.2d 1242 (Ala. Civ. App. 1998).
- No unnecessary hardship – Owners sought a variance to use a residential home as an accounting office, arguing that the home was no longer desirable as residential property due to the character of the surrounding area. The court held that this alone did not establish unnecessary hardship. *Board of Zoning Adjustment of the City of Mobile v. Dauphin Upham Joint Venture*, 688 So.2d 823 (Ala. Civ. App. 1996).
- No unnecessary hardship where owner wanted to construct a billboard on his property. At the time, the

city had no sign ordinance. City withheld permission for the sign until its ordinance was in place, then denied the variance. Court said that any hardship was self-inflicted. *City of Trussville v. Simmons*, 675 So.2d 474 (Ala. Civ. App. 1996).

- No unnecessary hardship – Owner of a mobile home park wanted to use property for sell of mobile homes, arguing that without selling homes, he was headed for bankruptcy. Court held that loss of potential future economic gain was insufficient to establish “unnecessary hardship.” *Ex parte Board of Zoning Adjustment of City of Mobile*, 636 So.2d 415 (Ala. 1994).
- Unnecessary hardship found in case where restaurant owner renovated in reliance on a previously issued variance allowing the sale of alcoholic beverages. *Board of Zoning Adjustment of City of Huntsville v. Mill Bakery and Eatery, Inc.*, 587 So.2d 390 Ala. Civ. App. 1991).
- Unnecessary hardship found where attorneys purchased residential property for use as law office. Evidence showed that the home had been on the market for 30 years without any serious offers, an expert testified that there was no market value for the property as residential, the area was now largely commercial and the exterior of the home would be in character with other historic buildings in the area. *Board of Adjustment of City of Mobile v. Murphy*, 591 So.2d 505 (Ala. Civ. App. 1991).
- No unnecessary hardship to construct a convenience store where only allegation was of economic loss suffered by other owners in the area. *Brock v. Board of Zoning Adjustment of City of Huntsville*, 571 So.2d 1183 (Ala. Civ. App. 1990).
- No unnecessary hardship as result of zoning ordinance limiting use to single family dwelling where hardship suffered was self-inflicted by landowner’s purchase and renovation without investigation into zoning restrictions. *Behm v. Board of Zoning Adjustment of City of Mobile*, 571 So.2d 315 (Ala. Civ. App. 1990).
- Unnecessary hardship exists to permit use of home as office where evidence shows that the best use of the property is for business offices, the record also demonstrates that the desirability of the area for a family home has greatly waned and the fact that the house has failed to sell as a residence after four years on the market. *Board of Adjustment of City of Mobile v. Sigler*, 518 So.2d 725 (Ala. Civ. App. 1987). See, also *Pipes v. Adams*, 381 So.2d 86 (Ala. Civ. App. 1980).

- No unnecessary hardship because the only hardship imposed is on elderly members of social club, who would have to negotiate 40-foot ramp if club were not granted a variance from local flood control ordinance and allowed to build additional facility at same level as previous facility. This is not a hardship which runs with land and would warrant granting of a variance. *Board of Adjustment of City of Gadsden v. VFW Post 8600*, 511 So.2d 216 (Ala. Civ. App. 1987).
- Unnecessary hardship found where church obtained variance, but did not start construction for several years, when a new variance was needed. This variance was denied. The court found that the "considerable financial loss which the Church will suffer if the variance is not granted to be unique. No other property owners in the area could suffer a similar loss because no others had taken steps for construction of a building in reliance on the 1979 variance." *Board of Zoning Adjustment of City of Muscle Shoals v. LaGrange Church of the Nazarene, Inc.*, 507 So.2d 538 (Ala. Civ. App. 1987).
- Unnecessary hardship found where business was located partially in one zoning district and partially in

another. Owner wanted to construct sign that complied with zoning regulations in one district, but would be prohibited in the other. Evidence showed that competing businesses nearby had signs as large or larger. Court stated that owner would suffer unique financial losses. *Johnson v. Board of Adjustment of City of Huntsville*, 496 So.2d 86 (Ala. Civ. App. 1986).

- No unnecessary hardship justifying variance where property owner was aware when it purchased property in area zoned for general business that use of mobile trailer as office would constitute nonconforming use. *Alabama Farm Bureau Mut. Cas. Ins. Co., Inc. v. Board of Adjustment of Town of Hanceville*, 470 So.2d 1234 (Ala. Civ. App. 1985).
- Unnecessary hardship exists where owner purchased dilapidated home and cost of making it conform would be prohibitive and conditions placed on use kept property in character with surrounding property. The court was also persuaded by the fact that the public interest was served by the removal of a dangerous, abandoned structure. *Board of Zoning Adjustment for City of Dothan v. Britt*, 456 So.2d 1104 (Ala. Civ. App. 1984). ■

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# Legal Notes

By Lori Lein  
Staff Attorney

## COURT DECISIONS

**Zoning:** A zoning ordinance that is amended after a public hearing is invalid when a municipality fails to post or publish the final amended ordinance even when the proposed ordinance was published in full prior to the public hearing. *Town of Stevenson v. Selby*, 839 So.2d 647 (Ala.Civ.App. 2001). **NOTE:** The League recommends reading this opinion in its entirety.

### Decisions from Other Jurisdictions

**Employment:** Section 207(o)(5) of the Fair Labor Standards Act, which provides that state and local government employees who request to use accrued compensatory time off “shall be permitted ... to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency,” does not require an employer to grant specific time requested by an employee, but instead requires that compensatory time be permitted within a reasonable period after the employee requests its use unless it causes undue disruption. *Houston Police Officers’ Union v. Houston*, F.3d (5<sup>th</sup> Cir. 2003).

**Environment:** Clean Water Act storm water permits requiring cities to develop programs to prevent discharges into their municipal separate storm sewer systems of various pollutants from specified sources and to educate the public concerning proper disposal of pollutants do not violate the 10<sup>th</sup> Amendment. *Abilene, Texas v. Environmental Protection Agency*, F.3d (5<sup>th</sup> Cir. 2003).

## ATTORNEY GENERAL’S OPINIONS

**Planning Commission:** The planning jurisdiction of a municipal planning commission may be reduced by the

municipal governing body from the five mile radius set by statute to a three mile radius to coincide with the boundaries of the municipal police jurisdiction. 2003-126.

**Planning Commission:** A part-time park employee and the mayor’s secretary are not municipal officers and therefore they are not prohibited from serving on the municipal planning commission. 2003-127.

**Abandoned Vehicles:** Municipal police officers have the authority pursuant to Section 32-13-2 of the Code of Alabama, to remove a motor vehicle to a commercial garage or lot that has been on private property within a residential or business district for a period of seven days after the officer has posted a notice of removal on the vehicle. 2003-134.

**Licenses:** A city may impose a privilege license tax on another municipality’s utility board doing business within the city and whether the board passes the tax on to the customer is within the board’s discretion. 2003-138. **NOTE:** This opinion applies to utility boards established pursuant to Section 11-50-310 et. seq, of the Code of Alabama 1975.

**Courts:** The district attorney’s restitution recovery division has the authority to collect court costs, fines, and other enumerated sums on behalf of municipal courts that wish to contract with the district attorney’s office for such collection. 2003-139.

**Subdivisions:** The giving of a mortgage on only a portion of a person’s overall parcel of property, coupled with the possibility that such mortgage could be foreclosed, does not constitute a subdivision under applicable law. 2003-140.



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# Speaking of Retirement

## Protect Yourself From Fraud

According to the Federal Trade Commission ([www.ftc.org](http://www.ftc.org)), Americans lose over \$1 billion to investment fraud each year. As investors have become more savvy, scams to trick them have consequently become more subtle and innovative. These seemingly legitimate deals can be presented via telephone, mail, advertisements, and increasingly through the Internet.

Alabama Securities Commissioner Joe Borg, through the North American Securities Administrators Association ([www.nasaa.org](http://www.nasaa.org)), offers these tips to avoid falling victim to investment fraud:

1. Check out the person touting the investment. Alabama law requires most securities and the people selling them to be registered with the state. Before investing, call the Alabama Securities Commission at 800-222-1253. Learn about any disciplinary history of the investment's promoter through the National Association of Securities Dealers at 800-289-9999 or at [www.nasdr.com](http://www.nasdr.com).
2. Beware of high-pressure tactics. Say **no** to any person who pressures you to make an immediate investment decision.
3. Exercise particular caution if you lack financial experience. Ask lots of questions and insist that the sales person explain the investment until you understand it.
4. Remember that good manners do not indicate personal integrity. Con artists are generally very polite, knowing that most people, especially senior citizens, equate honesty with integrity.
5. Watch out for sales people who prey on your fears. Swindlers commonly pitch their schemes as a way to eliminate your financial fears for the future.
6. Exercise particular caution if you are an older investor. The elderly, particularly older women, are a frequent target of scam artists.
7. Monitor your investments. Insist on regular written reports and look for signs of excessive or unauthorized trading of your account.
8. Look out for trouble when retrieving your principal or cashing out profits. If any person with whom you have invested stalls when you want to withdraw your money, you may have uncovered someone who is cheating you.
9. Report investment fraud immediately, despite any embarrassment or fear you may feel. If you suspect you have been victimized, report it to state regulators at once. The Alabama Securities Commission has information on how to report fraud and helpful links on its Web site at [www.asc.state.al.us](http://www.asc.state.al.us).
10. Beware of reload scams. To recoup their losses, victims sometimes invest in another scheme, or reload, in which the con artist promises to make good the original loss and offer new, higher returns. Often the result is only more losses.

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.

## Arthur Baugh

**Arthur Baugh**, former mayor of Albertville died March 5, 2003. He was 78.

Baugh was mayor of Albertville from 1988 until 1992. As mayor, he extended the city's sewer service and began using automatic garbage trucks. He was the principal of the Albertville High School, where he retired in 1985. ■

## John G. Aiken

**John G. Aiken**, former mayor and councilmember of Faunsdale, died March 24, 2003. He was 68.

Aiken was a native of Gainesville and a resident of Faunsdale for many years. He retired from the U.S. Postal Service after 25 years. ■

## Emmett R. Middleton

**Emmett R. Middleton**, former Loxley councilmember and mayor, died March 27, 2003. He was 80.

A lifelong resident of Loxley, Middleton served 12 years as a councilmember and four years as mayor. He is survived by his wife, two daughters, one son, eight grandchildren and 15 great-grandchildren. ■

## James "Hugh" Summerlin

**James "Hugh" Summerlin**, former Ashford mayor, died April 7, 2003. He was 88.

Summerlin retired from Retail Credit Company, now Equifax, after 30 years of service. Following his retirement, he served an eight-year tenure as mayor of Ashford. He served on the board of trustees for Ashford High School and was president of the first quarterback club at the school. He was a member of Enon Church of Christ.

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

## Thomas E. Kelley

**Thomas E. Kelley**, former Millbrook mayor pro-tem and councilmember, died April 8, 2003. He was 77.

Kelley, who is the father of current mayor Al Kelley, served as mayor pro-tem and as a councilmember for eight years. He was a retired owner and accountant for Kelley Accounting Service of Millbrook. ■

## Dan Rutledge, Sr.

**Dan Rutledge, Sr.**, former councilmember of Selma, died April 11, 2003. He was 77.

Rutledge served for more than 23 years with the military, becoming a Non Commission Officer. He worked with the Sickle Cell Program and was Treasurer and President of the local clinic as well as Treasurer for the State Sickle Cell Program. He was a member of the Community Action Agency Board as well as the Selma City Council. In addition, he was a member of the Uniontown District Association. ■

## Edward Samuel Gray, Sr.

**Edward Samuel Gray, Sr.**, former councilmember of Prattville, died April 13, 2003, at the age of 91.

A businessman, Gray served on the Prattville City Council for 15 years during the 1960s and 1970s. He was an active member of Gideons, the First United Methodist Church of Prattville and several civic and religious organization. He is survived by his wife of 67 years, three sons, three daughters and numbers grand children and great grandchildren. ■

## Charles Lockridge

**Charles Lockridge**, former councilmember of Pell City, died May 2, 2003, at the age of 66.

Lockridge was elected to his first tern on the City Council in 1972. He served three more terms. At the time of his death, he was serving on the Pell City Industrial Development Board and in the past he'd served on the Commercial Development Board.

He is survived by his wife, daughter and several grandchildren and great grandchildren. ■

## Rev. J.D. Hunter

**Rev. J.D. Hunter**, former two-term councilmember of Selma, died May 15, 2003, at the age of 86.

Rev. Hunter was one of the "Courageous Eight" who helped propel Selma into the forefront of the civil rights movement. He was a minister of Rocky Branch Baptist Church in Orrville, Rayman Church in Lowndes County and Mt. Carmel Baptist Church in Selma.

He is survived by his wife, two daughters, three sons, 11 grandchildren and nine great-grandchildren. ■

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