

THE ALABAMA MUNICIPAL JOURNAL

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Congratulations Carol Jean Smith!



League Deputy Director/Chief Counsel Ken Smith (left) and League Executive Director Perry C. Roquemore, Jr. (right) congratulate Assistant Attorney General Carol Jean Smith on her retirement at a reception held in her honor on August 16, 2004. (See story, page 4.)

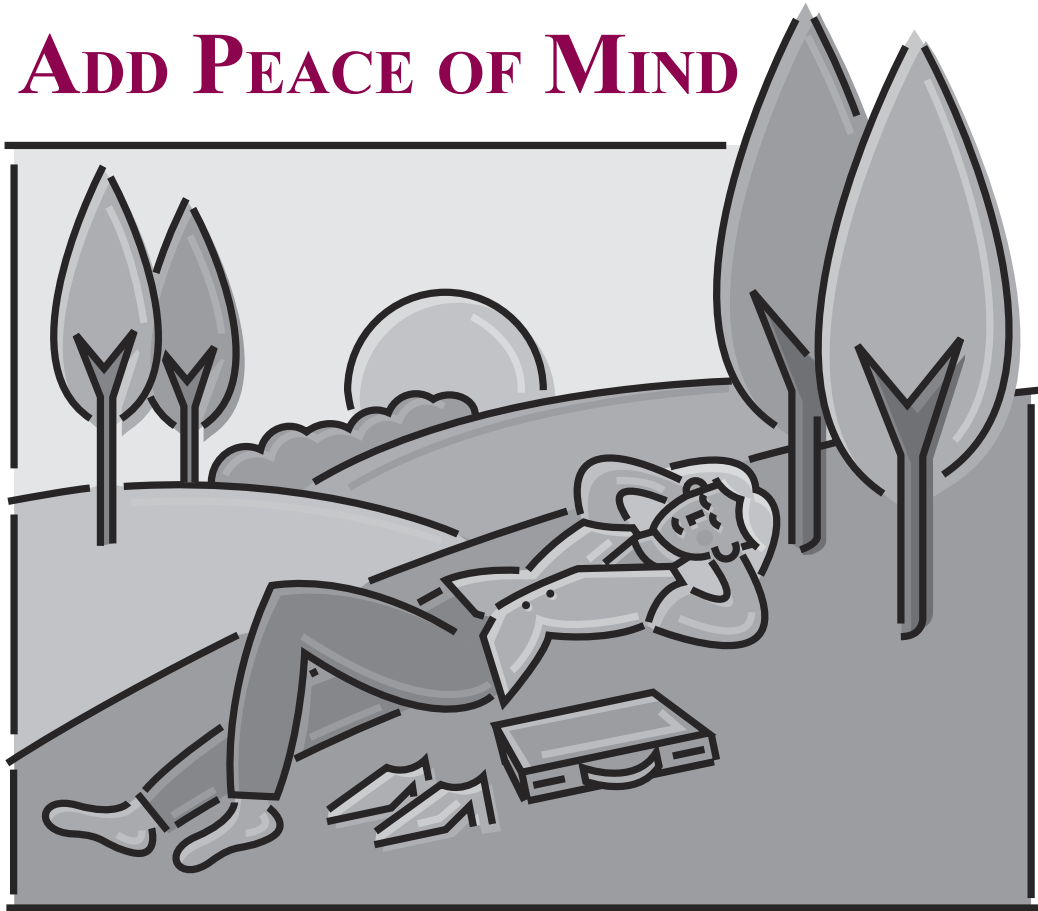
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League Honors Assistant Attorney General Carol Jean Smith

Assistant Attorney General and long-time chief of the Opinions Division, Carol Jean Smith, retired July 31, 2004 after 30 years of service. During her retirement reception on August 16th, the League presented Carol Jean with a resolution honoring her invaluable assistance to Alabama's municipal officials. She will be greatly missed by the League and its members. The text of the resolution is printed below:

WHEREAS, Carol Jean Smith is retiring after 30 years as an Assistant Attorney General, serving most recently as Chief of the Opinions Division; and

WHEREAS, Ms. Smith has provided invaluable assistance to municipal officials and employees throughout her tenure with the Attorney General's Office; and

WHEREAS, Ms. Smith is recognized as one of Alabama's leading experts in the field of municipal law; and

WHEREAS, Ms. Smith has worked closely with the Alabama League of Municipalities to educate municipal elected officials, employees and attorneys through her contributions as a speaker at many League functions; and

WHEREAS, Ms. Smith's contributions to the knowledge and understanding of municipal law through the drafting of innumerable Attorney General's Opinions cannot be overestimated; and

WHEREAS, the League wishes to acknowledge Ms. Smith's friendship, assistance and many contributions over the years

NOW, THEREFORE, BE IT RESOLVED, that the Alabama League of Municipalities Executive Committee does hereby congratulate Ms. Smith on her retirement and wish her the best of luck in her future endeavors. ■

AG Appoints Brenda Smith to Head Opinions Division

(MONTGOMERY) – Attorney General Troy King recently announced the appointment of long-time Assistant Attorney General Brenda Flowers Smith to be chief of his Opinions Division. Since coming to the Attorney General's Office in 1987, Smith has served as an attorney in the Opinions Division through the administrations of five Attorneys General.

“It was my distinct pleasure to work alongside Brenda Smith when I first came to work in this office several years ago, and I developed a great respect and admiration for her outstanding character and hard work,” said Attorney General King. “She is a diligent and thorough legal scholar, and she has a keen mind and a deep devotion to this office and to the people of Alabama. I am delighted that she has agreed to serve this State as chief of the Attorney General's Opinions Division.”

A veteran employee of the Attorney General's Office, Smith began her career at the Alabama Supreme Court, first as a law clerk for Justice James H. Faulkner and then as a staff attorney for Justice Henry B. Steagall II. She graduated from the University of Alabama School of Law in 1985, and received an accounting degree from the University of Alabama in 1982. She is an active member of

the Zonta Club of Montgomery, a service organization of which she is a past president.

Like Attorney General King, Smith is a native of Coffee County and grew up near Elba. She attended Zion Chapel Elementary School in Coffee County and graduated from Wicksburg High School in Houston County. She now lives in Montgomery with her husband Ken Smith, who is the deputy director and chief counsel for the Alabama League of Municipalities. They are members of the First United Methodist Church of Montgomery. Smith is the daughter of Juanita Flowers and the late James H. Flowers, and the granddaughter of Noni Marx and the late Harold Fuller, and the late Mr. and Mrs. Freeman Flowers, all of Coffee County.

Smith was chosen to head the Attorney General's Opinions Division upon the retirement of Assistant Attorney General Carol Jean Smith. Brenda Smith praised her predecessor as “a friend and advisor to almost every probate judge, mayor, city councilmember, city clerk and city attorney in Alabama for the past 30 years. Her contributions to this office and the State have been immeasurable. I am proud to follow in her footsteps. I thank Attorney General King for his faith in me, and I commit to him and the people of Alabama that I will serve with loyalty and dedication.” ■



The President's Report

Jim Byard, Jr.
Mayor of Prattville

Streamlined Sales Tax Agreement: Potential Pitfalls in Federal Legislation for Local Governments

Summary and Status

The Streamlined Sales Tax Project (SSTP) was formed in the spring of 2000 as an effort by state governments to formulate and implement a simple and uniform sales and use collection system. Local governments and the business community were also invited to actively participate in the Project's work. The SSTP was initiated due to the continued growth of interstate and electronic commerce, the loss of billions of dollars of uncollected sales tax revenue on those sales, increased complaints from the business community regarding the complexity of current sales and use tax laws, and the 1992 Supreme Court decision that sellers could not be required to collect and remit sales and use taxes on interstate commerce unless states simplified their laws and relieved sellers of the burden associated with collecting taxes on behalf of the state.

The Streamlined Sales Tax Implementing States Agreement ("Agreement") was approved by 34 states in November 2002. By approving the Agreement, states commit to revising their sales and use tax statutes to bring them into compliance with the Agreement. As of July 2004, 21 state legislatures have taken action to make the required changes. The Agreement sets forth seven major requirements for a simplified system, specifically:

- Uniform definitions for items in the tax base
- Rate simplification
- Single point of administration within the state
- Uniform sourcing rules
- Simplified exemption administration procedures
- Uniform audit procedures
- State funding of the new system

The Agreement is voluntary on the part of both sellers and states. (Only affirmative action by Congress or the Supreme Court can provide states with the authority to require collection of taxes on remote commerce.) A threshold level of 10 states comprising of at least 20 percent of the population of states that levy a sales tax must be met before states can organize into a governing authority, implement operational

elements of the system, and begin collecting taxes under the new system. As of July 2004, 21 states (not Alabama) comprising approximately 22% of the population of states having a sales tax have joined the Agreement.

Federal Legislative Effort

In 2003, legislation was introduced in the United States House and Senate to put Congress' stamp of approval on the Agreement and provide collection authority to state and local jurisdictions. H.R. 3184 and S. 1736 are currently pending in Congress.

The set of simplification requirements contained in the federal legislation, which would be mandated on states and localities in order for them to receive collection authority, imposes additional requirements beyond those contained in the Agreement. Specifically, of concern to local jurisdictions, the federal legislation would require:

- Simplification of telecommunications tax laws (by July 1, 2007);
- Compensation to be paid to all sellers by states that are members of the Agreement;
- States to exempt small sellers from the collection requirement;
- State level audits.

Disagreements between state and local government organizations and the business community have led to a series of meetings to propose changes to the federal legislation. While some minor issues have been resolved the issues highlighted above are still pending and pose significant concerns for local jurisdictions.

Focus on Telecommunications Tax Simplification

Provisions in the federal legislation to require states/local jurisdictions to simplify their telecommunications taxes in order to receive the collection mandate have generated the most debate. State and local government organizations continue to discuss the scope of these provisions but at the present time the federal legislation would require the following simplifications:

- State and local telecommunications tax laws must be simplified by July 1, 2007 for Member States in the Agreement to receive the mandate for collection authority of sales and use taxes on remote commerce;
 - One uniform return must be provided for each type of tax in a state;
 - Each taxing jurisdiction shall have only one rates for each type of tax on telecommunications services;
 - Uniformity will be imposed on the telecommunications tax base with a state; however, the tax base for telecommunications services may vary from the uniform tax base for sales and use taxes within a state.

Thus, states and local jurisdictions would be required to enact significant simplification of their telecommunications

continued next page

tax laws to receive the sales tax collection mandate and the resulting new revenues. However, the vagueness of the legislative language as well as the political considerations of enacting this type of simplification raises several questions that local jurisdictions must consider, including:

- What types of telecommunications taxes are included in the simplification requirement – sales/use taxes, state gross receipts taxes, local gross receipts taxes, franchise and rights-of-way fees?
- What are the simplification requirements? Conversion to state-level administration for telecommunication taxes? One return/remittance? Uniformity of telecommunications tax bases?
- Which states/local jurisdictions have locally collected and administered telecommunication taxes?
- What are the technical/ political barriers to telecommunications simplification in each jurisdiction in which simplification must occur?
- What is the cost/benefit to local jurisdictions from forced simplification in this area?
- Are state legislatures that have already amended their sales and use tax laws to conform to the simplification requirements in the SSTIS Agreement aware of the additional telecommunications tax simplification requirements in the federal bill? What is their response? Will these additional simplification requirements impede progress toward implementation of the SSTIS Agreement and the ultimate goal of collection authority? ■

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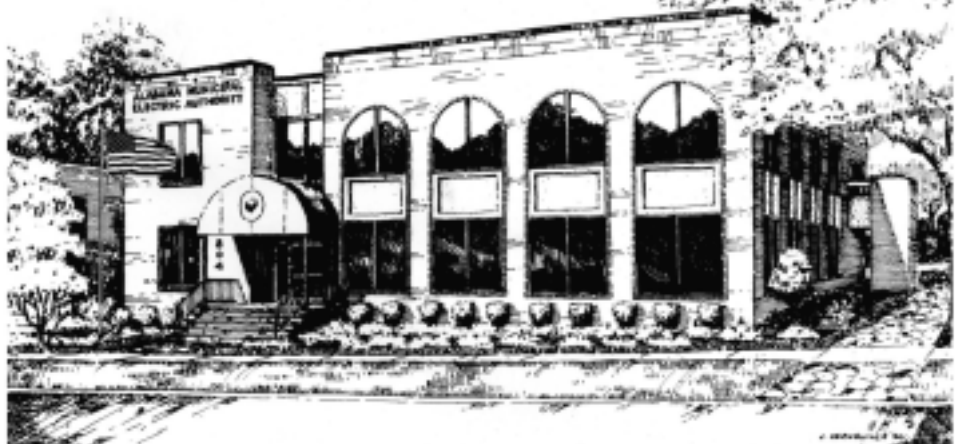


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Municipal Overview

By
PERRY C. ROQUEMORE, JR.
Executive Director

League Policy Committees Composed of Municipal Officials Throughout the State

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.

On August 9, 2004, – Committee Day – members of the five committees met at the Montgomery Civic Center with numerous state and federal resource advisors to study the League’s Policies and Goals and to recommend new or amended policy statements. After lunch, and once the resource advisors completed their presentations, the committees reconvened to amend and adopt their policy statements. The revised policy statement developed by the committees on Committee Day are then sent to the Committee on State and Federal Legislation for use in adopting the League Legislative Package for the Regular Session.

Five credit hours for the League’s CMO Program (which could be applied to the Basic, Advanced or Continuing Education requirement) were awarded to attendees who stayed for the entire meeting on Committee Day. The Proposed Policies and Goals for 2005 – which are used by the League’s staff to lobby issues affecting municipalities in Congress and the State Legislature – will appear in the October issue of the *Journal*.

The League wishes to thank the following persons who were appointed to the League’s five policy committees for 2004-2005:

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ENVIRONMENTAL OUTLOOK

By Gregory D. Cochran
Director, Intergovernmental Relations

New EPA Regulations Will Cost Billions to Implement

The head of the U.S. Environmental Protection Agency predicts that two pending regulations will cost power-plant owners more than \$50 billion in equipment and new facilities to reduce interstate air pollution and to curb toxic emissions of mercury.

In a briefing last month, EPA set a timetable to make the two final decisions and said they would seek more public comment on the mercury rule, which they called one of the most complex decisions the EPA has faced. The burden of both rules will fall on the nation's coal-fired power plants. EPA officials stated that by the end of the year, it will issue its final ruling to curb the interstate transportation of two smog-causing ingredients, sulfur dioxide and nitrogen oxides. These regulations will cost utilities about \$50 billion to comply with the measure, which will contribute toward the partial reduction of mercury.

By March 2005, EPA officials promised, it will publish its first rule to limit power-plant emissions of mercury, a step it has been studying for 14 years. EPA officials have estimated that further reducing limits on mercury emissions by power plants will cost several billions more, but exact estimates of the cost or the technologies that will be needed remain uncertain. EPA officials noted that mercury moves through air and water in different forms and that its effect on health isn't completely understood. The overriding goal of the EPA will be to protect pregnant women and children who are exposed to mercury that is accumulated in fish they eat. The EPA has received more than 540,000 letters on mercury removal, more than the agency has received on any other pollution issue. The period for public hearings is closed, but officials said the agency would seek further input from industry and environmental groups on technical conclusions reached by agency staff.

Both rules are under preparation amid the charged atmosphere of the presidential campaign where President

Bush and Sen. John Kerry are both trying to build support in coal-producing states, where substantial numbers of voters remain undecided. Mr. Leavitt promised to be "rigorous" in his rule-making, but he also said he wanted to keep coal as an option for electricity production and not drive utilities toward higher use of increasingly expensive natural gas.

The EPA's settlement of a lawsuit brought by the Natural Resources Defense Council, an environmental group in New York, requires the agency to issue the mercury rule by March 2005. A lawyer for the environmental group, said he expects the EPA to stretch out the deadline for full compliance with the mercury rule to 2018, the limit called for in the Bush administration's "Clear Skies" legislation pending before Congress. The NRDC and other environmental groups have been pushing for tight controls on mercury by 2008. While utilities have complained that commercial technology to trap mercury currently is unavailable, EPA officials were impressed by emerging antipollution technologies. The EPA's approach, officials said, will allow utilities to engage in emissions trading, which will reward companies that install pollution-removal equipment before EPA deadlines, a move that would allow them to sell emissions credits to utilities that can't meet EPA emissions restrictions.

Tough to Hook Federal Fisheries Money Off Gulf of Mexico

U.S. Sen. Trent Lott, R-Miss., stated he and other Gulf of Mexico lawmakers are trying to secure more federal money for fisheries programs but it has been an uphill battle. Senator Lott was in Pascagoula to take part in the dedication of a new support facility for the National Oceanic and Atmospheric Administration's National Fisheries Laboratory. Lott said the Gulf of Mexico is on par with the New England coast and the Pacific Northwest as far as the commercial fishing industry goes.

continued next page

“I’ve found this out along time ago: When you’re from the Gulf of Mexico, you have to fight for every dollar you get,” Lott said. “We get shortchanged by the Northeast and the Northwest over and over and over again. The reason why I always have to get involved in the battle for the National Marine Fisheries lab in Pascagoula is because we don’t get what we’re entitled to. NOAA needs to do more for us.”

Regardless of whether there is a Republican or Democratic administration, Lott said, “the people they put in charge of the National Marine Fisheries always amazes me. The administration, no matter which party, doesn’t pay sufficient attention to fisheries. Commerce secretaries tend to think about commerce, trade, atmospheric; everything but one of the things that actually produces products and produces jobs and puts money in people’s pockets – fisheries,” he said.

Lott said the Gulf of Mexico is an also-ran in the battle for federal research dollars. “Over the years, the Northeast has a lot of problems like the Chesapeake Bay and Boston Harbor,” he said. “Those things tend to get high profile, national publicity, making it easier for them to get people to help them.”

The Northwest, he said, has always done well because of the region’s big fishing industry and because they have had a very aggressive group of senators, like Sen. Ted Stevens, R-Alaska, who is chairman of the Senate Appropriations Committee. The Atlantic Coast has had senators like Sen. Fritz Hollings, D-S.C., who has been chairman of the Commerce Committee, Lott said. He said lawmakers from those areas had “made more noise than we did.”

“These people (fisheries officials) need to be more aggressive in speaking up and pushing for what they need, and pushing the regular NOAA budget,” the senator said. “The National Marine Fisheries budget should be more evenly distributed between the three regions. We just have to keep working at it.”

National Marine Fisheries Laboratory and National Oceanic and Atmospheric Administration officials on Tuesday dedicated a new multipurpose support facility on its pier on the east bank of the Pascagoula River. “This is more than just a warehouse,” said Terry Henwood, resource surveys branch chief for the laboratory. “This is a modern, new facility for each of the (research) teams to store their equipment and a wet lab where we can take fish off the boat and do research and biology work right on the dock.”

Built on a site once occupied by an old warehouse, the 8,236 square-foot facility sits on the Marine Fisheries wharf alongside the moorings for the vessels Oregon II and the Gordon Gunter. It provides 2,000 square feet of warehouse space the ships’ extra research equipment, a separate storage area for the five different surveys areas studied by the ships and a wet lab for specimen studies. The support facility also provides office space for the fisheries’ port captain and port engineer.

Deadline Passes With No Deal in Interstate Water Dispute

July’s deadline passed with no water-sharing agreement between Georgia and Alabama, and talk of good-faith negotiations from Georgia officials was met with skepticism from counterparts in Alabama. A provision that would allow metro Atlanta to triple its consumption of water from Lake Allatoona in northwest Georgia is the major stumbling block in a dispute apparently bound for a return to federal court. A tentative agreement over the Alabama-Coosa-Tallapoosa River Basin, which includes Allatoona Lake and is the drinking water source for Cartersville and Rome, was signed in April 2003.

But the two states reactivated lawsuits over sharing water from the Chattahoochee River after a similar agreement among Georgia, Alabama and Florida expired last August. The Alabama-Coosa-Tallapoosa agreement would allow metro Atlanta to draw three times more water out of Allatoona over the next 30 years, and send nearly half – about 100 million gallons a day – down the Chattahoochee River rather than keeping it in the Coosa River Basin. That would mean a net loss of water flowing past Rome and on into Weiss Lake in Alabama. Alabama officials were willing to accept that in return for a guaranteed minimum amount of water, even during droughts. Yet, Georgia also wanted to be able to send Alabama less water than the guaranteed minimum amount in case of a severe drought.

Florida is working on a case to take to the Supreme Court. The dispute over the Coosa River was considered easier to solve than the Chattahoochee, which involves three states and supplies most of the water for metro Atlanta. But the renewed fight over the Chattahoochee affected the Coosa River talks. Georgia wanted Alabama to let metro Atlanta take more water out of the Chattahoochee as part of the deal for the Coosa. ■



THE LEGAL

VIEWPOINT

By Ken Smith
Deputy Director/Chief Counsel

Due Process and Public Personnel Discipline

Note: Readers should also consult the articles “Practical Guidelines for Discipline and Termination of a Municipal Employee” and “Employee Termination Checklist” in the publication *Selected Readings for the Municipal Official*.

Most municipal officials are aware that they generally can’t simply fire municipal employees. Municipal employees, especially since they serve a public employer, are entitled to have their due process rights protected if they are being disciplined or terminated.

Some employees, of course (generally municipal clerk/treasurer, police and fire chiefs) have terms that cannot run beyond that of the mayor. These positions are filled by the incoming council following the election. Other positions (such as individuals serving on appointed boards and municipal judges) serve set terms that cannot be changed by the elected officials. Persons in these positions continue in office following the election and often can’t be removed other than by impeachment.

Other employees may be disciplined or removed, but they are generally entitled to due process protection. This means that they generally can’t be removed without cause, and must be afforded due process.

It is crucial to remember that termination should not be used as a means of retaliation. This is an important fact to remember at election time. Employees have the right to express their views, for example. They can participate in the municipal election process, even if that means that they campaigned against the winning candidates. See, Section 17-1-7, Code of Alabama, 1975.

Over the past 20 years, numerous federal and state lawsuits have centered around public personnel questions. These suits have resulted from public laws relating to equal employment opportunity, employment of the disabled, employment of older persons, and mandated personnel systems. Most of these cases have questioned hiring

practices and statutory safeguards for job applicants. Little attention has been paid to the problems of employers.

Admittedly, vexing problems still exist relating to public employer hiring practices. Even more troubling are problems caused by suspension or termination of public employees. A public employee facing termination has both statutory and constitutional safeguards to ensure fair and reasonable treatment. The most prominent safeguards are found in the Fifth and Fourteenth Amendments to the U. S. Constitution which state that no persons shall be deprived of life, liberty or property without due process of law.

There are, essentially, two different types of due process. “Substantive due process” is the fundamental constitutional legal theory that holds that the due process clause not only requires “due process,” that is, basic *procedural* rights but that it also protects basic *substantive* rights. “Substantive” rights are those general rights that reserve to the individual the power to possess or to do certain things, such as freedom of speech and religion. “Procedural” rights are special rights that, instead, dictate *how* the government can lawfully go about taking away a person’s freedom or property or life, when the law otherwise gives them the power to do so.

This article addresses the due process requirements of public personnel disciplinary procedures to assist public employers in establishing personnel procedures for suspensions and dismissals. Proper respect for due process could very well avoid expensive and harassing litigation for the public employer.

Major Decisions

The Fifth Amendment to the U. S. Constitution states that “no person shall be deprived of life, liberty or property without due process of law.” Originally this amendment was construed to be applicable only to the federal

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government. Later, the Fourteenth Amendment was ratified to provide “nor shall any State deprive any person of life, liberty or property without due process of law.” The Fourteenth Amendment clearly applies to municipalities as well. *City of Mobile v. Bouldin*, 446 U.S. 55 (1980). Further, Section 1983 of Title 42 of the U.S. Code prohibits any person from depriving another of his or her civil rights under color of state law. Section 1983 covers municipal actions as well.

Here we are concerned about a public employee who is called by the employer to answer for some transgression and employment is terminated. The employee appeals, claiming that the public employer breached a duty owed the employee by depriving him or her of property (in this instance, the job) without extending due process of law, and further, depriving the employee of liberty (in this instance, his or her good name in the community) without providing due process of law. A public employee with a constitutionally protected property interest in that employment must be afforded due process prior to termination. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487 (1985).

The public employer is certainly justified in asking whether a public employee’s job is property within the meaning of the Fifth and Fourteenth Amendments and also how the loss of the job might cause a deprivation of the employee’s liberty within the meaning of these amendments.

Three major U. S. Supreme Court decisions shed light on these questions: *Board of Regents v. Roth*, 408 U.S. 564 (1972); *Perry v. Sinderman*, 408 U.S. 593 (1972); and *Bishop v. Wood*, 426 U.S. 341 (1976).

The decisions in *Roth* and *Sinderman* involved tenured teachers who were dismissed and who claimed violation of due process as to property and liberty rights. These decisions were applicable to all public employees, whether tenured or nontenured. The court held that a public employee has a property interest protected by due process if he or she could show a “legitimate claim of entitlement” to the job – a contract, or tenure, or even oral or implied understandings – creating a reasonable expectation of continued employment. The court observed that property interests are not created by the Constitution but by the rules or understandings that stem from independent sources such as state law.

The court then defined liberty rights entitled to due process protection as existing in cases where (1) the employee is terminated for reasons which deprive the employee of his or her reputation or standing in the community or (2) the reasons stigmatize the employee in such a way that he or she cannot find other employment in his or her chosen field. The court did observe that mere firing might make it harder to find another job, but that alone did not create a liberty interest infringement. The hearing

an employee is entitled to in such cases gives him or her an opportunity to refute charges and clear his or her name. Following the decisions rendered in these two cases, the federal courts were flooded with due process personnel cases.

In 1976, the U.S. Supreme Court took another look at the situation in the *Bishop* case. In this case, a police officer was discharged without a hearing after being told privately that his dismissal was based on specified violations. The city ordinance under which he was employed made no provision for a hearing on dismissal but provided that a permanent employee could be discharged for failure to perform up to the standards of his classification, for negligence, inefficiency or unfitness to perform his duties. The officer claimed he had a right to continued employment which gave him a right to a pre-termination hearing. Also, the officer claimed he was deprived of his liberties because the discharge stigmatized him without his having an opportunity to refute the reasons of discharge.

The court held that he did not have a property interest protected by due process and set out the following:

- Whether a property interest is created by ordinance or by implied contract, the sufficiency of the claim of entitlement must be decided by reference to state law; and
- That the interpretation of the ordinance by a federal district judge that the employee served at the pleasure of the employer and had no property right, which finding was affirmed by the court of appeals, would not be re-examined by the Supreme Court.

In denying the employee’s claimed deprivation of liberty without due process, the court held that, assuming that the dismissal was a mistake and based on incorrect information, he was not deprived of his liberty in the discharge. Termination of an employee is not in itself a deprivation of liberty. In this case, reasons for discharging the employee were not made public. He could not claim damage to reputation or stigma to his name based on reasons not generally known or recorded.

While this decision came as a breath of fresh air, we must hasten to add that the **laws of the state and the ordinances of a municipality must be regarded as the determining factors as to whether an employee has a property right which is entitled to due process protection.** The ruling of the court regarding the liberty right, which is entitled to protection, depends upon the **reasons** set forth in the termination notice specifications, the discharge decision and whether such reasons are generally available for public dissemination.

Application in Alabama

Alabama laws relating to employment and dismissal of municipal employees are not uniform statewide. General laws pertain to employees of mayor-council cities and towns. Several cities have special acts establishing their forms of government, and special personnel laws are applicable to Anniston, Jasper, Sylacauga, Tuscaloosa and the cities in Montgomery, Mobile and Jefferson Counties, among others. While these statutes afford different degrees of protection to employees, the laws do provide a property right for municipal employees that is protected by due process, except in cases of probationary employment, temporary employment, employment contracts that are expressly limited as to term, and dismissals for reasons of economy – that is, abolishing a job for economic reasons.

It is important to keeping mind that Sections 11-43-230 through 11-43-232, Code of Alabama 1975 specifically provide that a pre-disciplinary hearing must be provided to any municipal law enforcement officer. These sections should be reviewed carefully before any disciplinary action or termination action is initiated against a municipal law enforcement officer.

What is Due Process?

The following essential elements of a due process hearing have been identified by various American court decisions.

- Notice of the charges to be heard;
- Notice of the time and place of the hearing;
- An opportunity for the to-be-terminated or to-be-disciplined employee to fairly refute the charges; and
- An impartial decision maker.

Other elements or sub-elements of a due process hearing which are generally required and which should be furnished (depending upon the situation and the municipal attorney's advice) are:

- The hearing should be held prior to the termination, the discipline or the stigmatizing charge except where impractical due to an emergency;
- The employee should have an opportunity to suggest any desired hearing procedures;
- The notice of the hearing and notice of the charge against the employee should be in writing;
- The decision maker should be impartial, that is, someone other than the charging authority and someone who is not privy to the facts prior to the hearing;
- If possible, the charging authority should present the employee with a list of witnesses to be called at the hearing;

- All witnesses should be required to testify under oath;
- All parties should be afforded the right to be represented by legal counsel present at the hearing;
- The informal evidence rules of administrative hearings should be followed;
- The employee should be allowed to have the record transcribed at his or her own expense;
- The decision makers should prepare findings based upon the hearing record consisting of a short written summary of the relevant facts and reasons for termination;
- Each party should be afforded an opportunity to present witnesses;
- Each party should be afforded an opportunity to cross-examine witnesses;
- Each party should be afforded an adequate opportunity to prepare for the hearing prior to the date of the hearing.

By informing the to-be-terminated employee of his or her rights and affording the employee an opportunity to exercise those rights, the disgruntled employee is forced to inform the municipality of any complained of wrongdoing on the part of the city with respect to either the substance of the matter or the procedures used by the city. If the employee fails to do so, the city may later explain that the employee was informed of his or her rights, was afforded an opportunity to exercise those rights, chose not to avail himself or herself of those rights, and should be stopped from later asserting unfair treatment and lack of due process.

Notice requires a fair and reasonable amount of time and specification of the charges, not just generalities. A listing of evidence to be brought by the employer before the hearing is not required. As to whether the notice must be in writing depends on the governing statutes. If a written notice is required, an oral notice is insufficient. The League recommends that a carefully drafted notice be delivered in writing. The notice must be sufficiently explicit to enable the employee to make an explanation and generally, it is signed by the person empowered to remove the employee. Notice may be waived by the employee. However, for safety's sake, a waiver should be in writing.

As for the opportunity to be heard, the Supreme Court has ruled that the opportunity must be granted at "a meaningful time and in a meaningful manner." In *Bishop*, the court stated that the hearing could be held after the employee had been terminated from employment, which is sufficient if there is no conflict with the provisions of the state law. Alabama laws might allow suspension pending a hearing but not final dismissal.

And, in *Stallworth v. City of Evergreen*, 680 So. 2d 229 (AL 1996), the Alabama Supreme Court held that an

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employee with a right to continued employment is entitled to an impartial hearing officer at a pre-termination hearing, and that a fair post-termination hearing will not cure the due process violations of the pre-termination hearing. Although, in *Gilbert v. Homar*, 65 LW 4442 (1997), the U.S. Supreme Court held that tenured employees in positions of public trust and visibility – such as police officers in this case – who are charged with felonies, are not entitled by due process to notice and a hearing prior to suspension without pay.

The hearing must be before an officer or tribunal vested with jurisdiction to act. Generally, the tribunal vested with the authority to conduct removal or suspension hearings cannot delegate that authority. Attorney General's Opinions 88-00252 and 92-00234.

On the subject of opportunity to confront accusers, it has been held sufficient if the real and substantive reasons for termination were presented by direct testimony of the witnesses, though reports of nameless complaints can be received.

In Alabama, hearings are generally deemed quasi-judicial unless the power is vested in an administrative officer from whom an appeal is provided. Generally, strict rules of procedure do not apply. Technical accuracy of an indictment and trial in a criminal court are not expected. The hearings may be conducted informally. However, the informality must not be permitted to become unwarranted laxity. The theme of fairness threads its way through the notice, hearing, and right to appeal.

The right to cross-examination is usually recognized. The right to be represented by counsel is not absolute unless required by state law, ordinance or regulation. Denial of counsel has been ruled not to be a violation of due process. Generally, the right to have counsel is provided.

The board holding the hearing is not bound by strict rules of admission of evidence. The board holding the hearing must act upon what is presented and not upon its own information. Evidence should be limited to the charges. Real evidence, such as inspections, may be allowed.

The burden of proof is on the one alleging the infractions and a fair preponderance of evidence is needed to warrant removal.

A final judgment based on the evidence presented at the hearing is necessary. The record of proceedings should show affirmatively: (1) that charges sufficient in law were preferred; (2) that due notice was given; (3) that a trial was had where the employee was permitted to be heard; and (4) that a judgment order was rendered.

The matter of an impartial tribunal has caused considerable legal wrestling but seems to have been fairly well settled now. In one U.S. Supreme Court case, *Hortonville Joint School District No. 1 v. Hortonville*

Education Assn., 426 U.S. 482 (1975), a school board fired tenured teachers and provided them with a hearing. The same board sat to determine if its decision to fire was proper. There was no evidence of actual bias in the form of adverse interest by the members of the board and the fact that the board had fired the employees was held not in itself to constitute bias.

Some Recommendations

Suits challenging terminations on the basis of denial of due process name not only the board as an entity but also the members as defendants. The action is for breach of duty owned and therefore *ex delicto* – that is, through an action in tort. Personal liability may be involved if it can be shown that the body acted maliciously or arbitrarily in depriving the plaintiff of his or her rights.

- Use special care in specifying reasons for dismissal. Wherever possible refer to specific regulations, policies or laws the employee has breached. This protects against infringement of liberty rights.
- Look closely at the ordinance or statute under which the employee was hired to determine whether there was a property right in his or her employment that would entitle the employee to due process protection. An employee may also acquire a property interest in the job through employment handbooks, contracts, legislation or other guarantees of continued employment. These areas should also be carefully examined.
- Confer with officers who are charged with the responsibility of discharging employees to ensure they understand these constitutional issues. Bring in the city attorney to confer about procedures that should be followed in dismissal situations.

Checklist

- Identify the office or board charged with the responsibility and power to remove employees.
- If not required by law, determine the wisdom of giving written notice of the hearing.
- Identify the causes of removal of an employee in the city by statute, ordinance or regulation.
- Ensure that the hearing power over dismissal proceedings has not been unlawfully delegated.
- Does the procedure require or allow representation by counsel?
- What provision for records of hearings are required? What records are essential?
- Are subpoena powers available to compel attendance of witnesses?
- Are basic judgment entries for the record?

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Due Process continued from page 16

Attorney General's Opinions and Court Decisions on Due Process

- If the personnel rules of a municipality require a personnel board, the municipality must create the board and give it the powers set out in the personnel rules. Attorney General's Opinion 92-00111.
- The Legislature has the power to create by local act a county personnel system. Attorney General's Opinion 93-00004.
- Alabama is an at-will employment state but the employment-at-will relationship can be modified by provisions in an employee handbook, through promises in a letter, or by contract. *Campisi v. Scoles Cadillac, Inc.*, 611 So. 2d 296 (AL 1992); *Udcoff v. Freidman*, 614 So. 2d 436 (Ala. 1993); *Abney v. Baptist Medical Centers*, 597 So. 2d 682 (AL 1992).
- Evidence which supports one charge against an employee is sufficient to justify dismissal of the employee, even if the evidence fails to support other charges. *Williams v. Mobile County Personnel Board*, 607 So. 2d 268 (AL Civ. App. 1992).
- An employee of a public agency that is meeting in executive session may sit in on the session only if his or her presence is required in order to protect due process or if the entity requires the employee's presence in an official capacity. Attorney General's Opinion 99-00247.
- When a city limits its right to terminate an employee by providing specific procedures that must be followed in order to terminate an employee, a violation of those procedures gives rise to a breach-of-contract wrongful termination claim. *Hardric v. City of Stevenson*, 843 So.2d 206 (AL Civ.App. 2002).
- In *City of Orange Beach v. Duggan*, 788 So.2d 146 (Ala. 2000), the Alabama Supreme Court held that procedural due process does not require an entirely neutral decision-maker at a pre-termination hearing for a public employee, where a full-evidentiary post-termination hearing remedies any defects at the pre-termination hearing. ■



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Legal Notes

By Lorelei A. Lein
Staff Attorney

COURT DECISIONS FROM OTHER JURISDICTIONS

First Amendment: Town council meeting invocations that consistently refer to “Jesus Christ” advance one religion in preference to others and therefore violate the First Amendment’s establishment clause. *Wynne v. Great Falls*, 376 F.3d 292 (4th Cir. 2004).

First Amendment: Police restrictions on the location of large signs depicting photographs of mutilated fetuses at busy intersections is a reasonable place and manner restriction designed to prevent the hindrance of traffic flow and thus does not violate the First Amendment rights of abortion protesters. *Frye v. Kansas City Police Dept.*, 375 F.3d 785 (8th Cir. 2004).

ATTORNEY GENERAL OPINIONS

Telecommunications: Cities may be exempt from the payment of the Commercial Mobile Radio Service (CMRS) service charge provided in Chapter 98 of Title 11, Code of Alabama 1975, for mobile radio service lines used by city employees performing core governmental functions where payment of the service charge could be funded only through city taxes. 2004-173. **NOTE:** This opinion provides examples of factors to be considered in determining whether the city is exempt. There are situations in which a city would not be exempt from payment of the charge.

Police Department: Uncompensated reserved police officers do not hold an “office of profit.” 2004-174.

Volunteer Fire Departments: Because volunteer fire departments are not state agencies, Section 1-2A-7 of the Code of Alabama 1975, relating to the display of the Alabama State Flag, does not require such departments to fly the state flag. However, if a department is sanctioned by a municipality, the fire department building may be considered a municipal building thus requiring that the state flag be flown. 2004-178.

Elections: Section 17-1-7(d) of the Code of Alabama 1975, would not mandate that a mayor take a leave of absence as superintendent of utilities to run for office where he or she is acting as superintendent of utilities for a separately incorporated utility board or for a municipally owned utility where he or she has been directed by the council to act as superintendent. 2004-179.

Easement: Cities may make any needed provisions for drainage to maintain efficient sanitary and storm water sewers or sewer systems provided the proper easements exist. 2004-181.

Streets and Roads: While a county has the authority to maintain a road in a municipality with the agreement of the city, a city does not have the authority to maintain a road in the county. A county and city may, however, enter into an agreement by which each will maintain roads in the jurisdiction of the other if the contract is executed as provided in Chapter 102 of Title 11, Code of Alabama 1975. 2004-182.

Employees: A city may allow employees to use the civic center at a discounted rate if the benefit is made a part of the employees’ annual compensation. The mayor and city council members may receive the benefit if it is made a part of their compensation, which must be set at least six months before the next general municipal election. 2004-188.

Property: In general, a municipality is not authorized to purchase property for future development with the municipality providing infrastructure and selling all the parcels to a developer for resale to the public. A municipality, however, is authorized to undertake redevelopment and urban renewal projects to clean up and prevent blighted areas or slums. When a public purpose will be served by the conveying of property for nominal consideration, a city may make such grant without violating section 94 of the Constitution of Alabama of 1901. 2004-191.

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Federal Legislative and Regulatory Issues

Mary Ellen Wyatt Harrison
Staff Attorney

Handling HAZMAT Tools

First responders may soon be able to tap into a valuable resource that can be used to identify and handle unknown and potentially hazardous substances. The Wireless Information System for Emergency Responders (WISER) is a free system that can be uploaded to a personal digital assistant (PDA) and used by first responders at the scene of a hazardous materials (HAZMAT) incident.

WISER, which was developed by the National Library of Medicine (NLM), provides information on how to identify 390 hazardous substances; guidance on immediate actions necessary to save lives and protect the environment; and directions on how first responders, HAZMAT specialists and emergency medical services (EMS) technicians should respond to a substance.

By entering information such as victim symptoms or the physical properties of an unidentifiable substance, emergency responders can obtain critical data and know-how regarding the situation they have encountered. WISER also assists responders in handling known substances.

First responders can find out what personal protective equipment is appropriate for dealing with a specific substance; what distance an individual should keep from the particular substance; and appropriate fire procedures, reactive properties and treatment options related to a substance. HAZMAT specialists can use WISER to determine a substance's physical properties and flammability limits and what personal protective equipment they should be wearing when involved with a particular substance, among other things. EMS specialists can obtain information on how to treat persons exposed to a substance, along with a material's health effects and toxicity. WISER also can be used to send and receive information over wireless networks.

At present, the program can be downloaded onto PALM OS handheld devices, versions 3.5 and higher. Other

operating systems, including pocket PCs, table PCs, RIM devices and laptops, will be compatible with the program in the near future. Additional information on this resource can be found at <http://wiser.nlm.nih.gov/index.html>. WISER can be downloaded from <http://wiser.nlm.nih.gov/register.html>. The program also is available on CD. To obtain a copy, contact Customer Service at tehip@tehl.nlm.nih.gov.

Assessing Youth

Assistance in determining the mental health needs of youth in the juvenile justice system is available from the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

In a recent report, "Assessing the Mental Health Status of Youth in Juvenile Justice Settings," OJJDP highlights several best practices for juvenile assessment centers. These include: basing mental health assessments on multiple methods of evaluation and on the input of multiple informants; using reliable and valid instruments to determine diagnoses; including parental input in a diagnosis; focusing on recent symptoms in order to determine current treatment needs; and periodically reassessing youth who are held in custody over an extended period of time.

The report also reveals the benefits of a new computerized, self-administered version of the Diagnostic Interview Schedule for Children (DISC) that enables juvenile justice professionals to screen for psychiatric disorders in youth and immediately come up with a provisional diagnosis. Six sets of questions on a youth's relationships with his or her caretakers, family or peers and at school are involved in the assessment.

"This initial feasibility study demonstrates that a comprehensive, scientifically sound diagnostic instrument can be a valuable part of mental health assessment for youth in the juvenile justice system," says the report, which is available at <http://www.ojjdp.ncjrs.org/publications/PubAbstract.asp?pubi=11733>, or from the Juvenile Justice Clearinghouse, (800) 851-3420.

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Municipal Bond Interest Rates Have Shifted Up and Down Over Past Year

Reported by Perry C. Roquemore, Jr., League Executive Director

The Committee on Finance, Administration and Intergovernmental Relations of the Alabama League of Municipalities met on Monday, August 9, 2004, at the Montgomery Civic Center. Mayor Charles Murphy, Robertsdale, chair, called the meeting to order at 10:00 am. Mayor Murphy welcomed those in attendance and thanked members for coming to this important meeting while municipal elections are underway. He also thanked the resource advisors for taking time to attend the meeting to keep our members informed as to activities of state agencies. He told the committee members that the vice chair, Mayor Jay Jaxon of Eufaula, sent his regrets for not being able to attend the meeting.

The League Director was asked to call the roll. Those members present were: Mayor Charles Murphy, Robertsdale, chair; Mayor Frank Houston, Coosada; Mayor Fred M. McNab, Pinckard; Mayor Lew Watson, Lincoln; Mayor Barbara Patton, Opelika; Mayor Leon Smith, Oxford; Mayor Gordon Dunagan, Good Hope; Councilmember Gwyneth Jones, Guin; Councilmember Wayne Dunkin, Priceville; Mayor Melvin Duran, Priceville; Councilmember Charles Allen, Thomasville; Administrator/Manager Alan Pate Hoover; and City Administrator Chris Miller, Bay Minette. Also present was Paul Dabbs, Birmingham; John Paradise and Angela Till, Alabama Department of Revenue; and Michael German, Regional Coordinator for the Southeastern United States, U.S. Interagency Council on Homelessness. Resource advisors present were: Mr. Bob Young of the Frazer Lanier Company; Eric Locke, Administrative Office of Courts; Mr. Allen Elrod, Property Tax Division, Alabama Department of Revenue; Tom Surtees, Commissioner, Alabama Department of Revenue; and Mr. Bob Hill, ABC Board. Also present was League Director Perry C. Roquemore, Jr.

Mr. Bob Young of the Frazer Lanier Company was called upon for his presentation. He stated that the bond market is an important aspect of municipal financing and that interest rates on municipal bonds have moved radically up and down during the past year, but that the current rates are at a level very similar to the one a year ago. The municipal bond rates hit a low in March and then went straight up until they hit a peak in late May. This was due to discussions

at the time about the Federal Reserve raising interest rates. By May people had realized that inflation had been held in check and at that point, the rates started to move downward again. Mr. Young advised municipal officials that already know they will borrow money in the next year to go ahead and get prepared to do so as soon as possible so that the city can act quickly when the next rate dip occurs. The only way to take advantage of a rate dip is to be ready to act when the dip occurs. Mr. Young told the committee that the average rate for the past five years had been 5.17%. The highest rate during that period was 6.09% and occurred on January 20, 2000. The lowest rate was 4.21% which occurred on June 12, 2003. The latest rate was 4.78%. He also stated that we will probably not see much better interest rates than we have today. According to Mr. Young, long term interest rates give you a good picture of what the market feels about inflation. Looking at the Fair Market Yield Curves for the past 30 years we see that the last 15 years have been pretty steady. This shows us that the market doesn't see inflation as an issue. Mr. Young recommended that unless a city has extenuating circumstances, the city should borrow long term for buildings and water systems. The Federal government has a \$10 million limit on industrial revenue bonds. Mr. Young said it would be great to have the Congress raise the limit to \$20 million.

The Chair thanked Mr. Young for his presentations over the years. He then called upon Mr. Eric Locke of the Administrative Office of Courts for his presentation. Mr. Locke commended the Committee for all of its policy statements relating to the municipal court system. He stated that the biggest complaint they get is that the Legislature, when increasing court fines or costs, has made the municipal courts glorified collection agents for the state. Every year the Legislature increases court costs collected by municipal courts. Rarely does any of the increased collections go to the municipality. He encouraged city officials to send their new court clerks and magistrates to receive their training as soon as possible after appointment. Such action could go a long way in reducing the number of lawsuits against municipalities for improper actions by court officials. The

continued next page

Administrative Office of Courts also provides training for municipal judges. Mr. Locke asked municipal officials with their own defensive driving schools to make sure defendants were not charged more for a defensive driving class than their court fine and court costs would have been. Officials were also urged to make sure the police chief who writes the tickets is not the same person teaching the defensive driving class at \$50 per head. Further, the municipal court clerk should not be involved with the class. Mr. Locke stated that the Legislature needs to repeal the law which prohibits municipal police officers from making speeding arrests on interstate highways unless the city is more than 19,000 population.

The Chair thanked Mr. Locke for his presentation and called upon Revenue Commissioner Tom Surtees. Commissioner Surtees explained that he had recently become Alabama's Commissioner of Revenue. He introduced John Paradise and Angela Till of the Department who act as liaisons between the Department of Revenue and municipalities. Mr. Paradise serves North Alabama and Ms. Till serves South Alabama. Commissioner Surtees stated that the state will have 40 counties with implemented Geographical Information Systems (GIS) by the end of the year. A fully implemented system will prove very helpful to municipalities and their tax officials. The department continues to work hard to make sure that proper ad valorem taxes are collected on mobile homes. He said that the department fully supports the League's position calling for the actual selling price of real property to be included on property deeds. The Commissioner referred committee members to the department's web site: www.ador.state.al.us. The site contains a tremendous amount of information on the department and the tax rates of each county and municipality.

There are 60 tobacco wholesalers operating in Alabama. Of these, 14 are from out-of-state. The department audits these tobacco wholesalers. The audit results are shared with the department's sales tax division. Recent audits of tobacco wholesalers resulted in information leading to the collection of \$3 million in unreported taxes. He stated that there are three ways to collect taxes: (1) from the taxpayer who owes and pays the tax; (2) when the taxpayer voluntarily pays the taxes to avoid penalties; and (3) a product of audits. He cautioned officials to understand that revenues collected as a result of an audit are usually one-time collections.

Commissioner Surtees distributed to committee members a report showing the amount of taxes collected in each of the state's revenue categories. He reported that there was a 94.92% increase in Financial Institutions Excise Tax collections this year over last year. He cautioned members that due to the fluctuations in the Financial Institutions Excise Tax, a city should budget based on an

average of the collections for a 3-year period and not based on the most recent year's collections.

The Commissioner stated that the department now sends money collected to the municipalities on the same day it is received by the department. As for sales taxes, he told the committee that sales tax collections are being driven by construction. Those cities with a lot of construction going on will most likely be those with the largest increase in sales tax collections. Construction brings about purchases of lumber and other building materials as well as appliances and furniture. Implementation of the GIS system will greatly aid the collection of sales taxes. He reminded committee members that gasoline taxes are based on volume – not price. Therefore, the increase in gasoline prices does not result in an increase of gasoline tax revenues. In fact, if people buy less gasoline due to the price increases, the tax revenues could drop.

The Legislature recently increased the state tobacco tax from 16.5 cents to 42.5 cents per pack and required all local governments to use tobacco stamps to collect these taxes. State law authorizes a 7.5 percent discount to be paid to jobbers for placing the stamp on the product. The law increase created a windfall for those receiving the discount. The Commissioner stated that he had issued a ruling allowing the collection of county tobacco taxes without stamps if the taxes are collected by the department. He hopes the attorney general will give a similar ruling for those cities and counties that collect their own tobacco taxes.

Commissioner Surtees said that the department and the League were working together to find a way where municipalities can give clear title when they sell abandoned or confiscated property. He also stated that 98 percent of all state sales tax reports are being filed electronically. He promised to work with municipal revenue officials in the sharing of audits. State license plates are going to a computer driven system with the tags containing a bar code with all pertinent information about the owner of the vehicle.

The Chair thanked Commissioner Surtees for his remarks and then called upon Mr. Allen Elrod, Property Tax Division, Alabama Department of Revenue, for his presentation. Mr. Elrod said that his department favors amendment of the state law to require real property deeds to contain the actual purchase price of the property rather than wording such as "\$100 and other valuable consideration." This change will result in additional property tax revenues for the state and local governments. He mentioned that the *Wysinger* case requires the state to administer property taxes fairly. All counties in the state will be going to an annual reappraisal system for property taxes by 2008. He also stated that 60 percent of the state's land mass is owned by 68 companies. Development of a statewide GIS program is going better this year. This year

we will go from 32 to 40 counties using the technology. GIS is not simply a property mapping system. The system can be used for many purposes. He asked for the help of local governments to support the department's GIS efforts.

Mr. Elrod was thanked for his presentation. Mr. Bob Hill of the Alabama Alcoholic Beverage Control Board was then called upon. Mr. Hill told the committee that the ABC Board has regulated traffic in alcoholic beverages for many decades and has regulated the sale of tobacco products since 1997. Four additional cities voted this year to become a "wet" municipality within a "dry" county. This brings to total number of "wet" cities located in "dry" counties to 12. Applicants for liquor and wine licenses must obtain local government approval before the ABC Board will grant a license. Beer is treated differently. Local approval is not required, but local concerns will be considered by the ABC Board before a beer license is granted. Alabama is one of 19 states that controls and sells alcoholic beverages. The agency is self-supporting. Revenues earned go to the ABC Fund and are appropriated by the state Legislature pursuant to state law. Two years ago a new law was enacted to change the manner in which ABC profits are distributed. The change has had minimal effect on local government revenues. The ABC Board has a very good working relationship with Alabama municipalities. Mr. Hill pointed out the problems associated with adoption of ordinances prohibiting the sale of alcoholic beverages within a specified distance of a church or school. A city cannot pass such an ordinance and grandfather establishments that are already located in the area where sales are prohibited. He advised city officials to be very careful when considering the adoption of such ordinances.

The Chair thanked Mr. Hill for his comments. He then asked members to review the *Policies and Goals 2004*. Mr. Roquemore suggested several changes to the existing statement that were suggested by the League attorneys to address recent detrimental court decisions. Mayor Lew Watson of Lincoln moved adoption of the new policy statements. The motion, which was seconded by Mayor Leon Smith of Oxford, passed. Paul Dabbs of Birmingham moved that the League adopt a policy position calling for legislation to reinstate the right of municipalities to regulate the construction of state and county facilities such as schools. The position was recommend as a result of a recent opinion of the attorney general on this matter. The motion, which was seconded by Mayor Leon Smith of Oxford, passed.

Mayor Leon Smith of Oxford moved that the committee add a statement urging municipalities to have the records ready for their auditor and to require the auditor to complete the audit within 120 calendar days. The motion, which was seconded by Councilmember Iris Ethridge of Orange Beach, passed unanimously. The following changes should be made

to the FAIR Policy Statement and the statement should be renumbered where appropriate:

F-5.14. That Section 11-43-160 of the Code of Alabama 1975 be amended to clearly provide that in municipalities with a population of under 12,000, the mayor is a voting member of the council whose vote may be included in the required two-thirds vote of the council needed to discipline or terminate employees.

F-5.15. That the League actively pursue legislation to further clarify that employees of separately incorporated municipal boards are not employees of the city in which the board is incorporated.

F-5.16. That Section 32-13-3 of the Code of Alabama 1975 be amended to clearly provide that municipalities have the ability to sell abandoned motor vehicles at public auction pursuant to the Abandoned Motor Vehicle Act. In the alternative, that Section 11-47-116 of the Code of Alabama 1975, relating to the sale of abandoned and stolen property by municipalities, be amended to clearly provide that municipalities have the authority to sell abandoned motor vehicles free and clear of any liens and encumbrances.

F-9.7. That Section 11-47-190 of the Code of Alabama 1975, limiting a city's aggregate liability to \$300,000 on any combination of judgments arising from a single occurrence, be amended to clearly provide that this limit on liability applies to property-damage claims in addition to personal injury claims.

F-11.2 That the League seek legislation to amend Section 11-46-28(a), Code of Alabama 1975, relating to polling hours, so as to provide that all polling places located in municipalities operating on eastern time may open and close pursuant to eastern time.

F-12.17 That the League seek legislation to provide that state and county buildings must meet municipal code requirements.

There being no further business, the meeting was adjourned at 12:15 pm.

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Alabama Received \$249 Million in EPA Grants for Clean Water State Revolving Loan Program

Reported by Gregory D. Cochran, Director of State and Federal Relations

The League's Committee on Energy, Environment and Natural Resources met at 10:15 a.m. on Monday, August 9, 2004 with Councilmember Arthur Davis, Calera, and committee chair presiding. Other committee members present were committee vice chair, Councilmember Bill Stewart, Gadsden; Councilmember Nell Gustavson, Daphne; Councilmember Sadie Britt, Lincoln; Councilmember Billy Pearson, Lincoln; Councilmember Rodney Mitchum, Valley; Mayor Charles O'Rear, Attalla; Mayor Phil Segraves, Guin; Councilmember Gary Gray, Guntersville; and Mayor, John Bradshaw, Moundville. Resource advisors present were Ed Hughes, Water Division of ADEM; Aubrey White, ADEM SRF Program Manager; Chris Howard of ADEM Air Division; Larry Bryant, Solid Waste Division of ADEM; Dave Davis, Brownfield SRF Program Manager; Louie Cardinal, Thornton Farish, Dr. Nick Tew, Supervisor, Alabama Oil & Gas Board, and Dr. Dave Bowlin, Alabama Oil & Gas Board. Also present was Gregory D. Cochran, Director of Intergovernmental Relations.

The Chairman called on Chris Howard of ADEM's Air Division for his comments. Mr. Howard stated that ADEM is continuing to monitor air quality across Alabama. Shelby and Jefferson Counties are the only non-compliant areas of the eight-hour standard in the state. ADEM and local officials have implemented a plan to bring the area into compliance by the end of 2005. The eight-hour standards are a little more difficult to reach in areas of Alabama due to transportation patterns, geological makeup, industrial and community developments. NOx (combustible engine exhaust) regulations require controls to be in place by this summer and compliance met by 2007. President Bush's "Clean Skies Initiative" requires 70 percent cuts in NOx by 2018. New PM2.5 (PM Fine) regulations must be met by 2020. Currently, only Jefferson and Russell counties are in non-containment of these regulations. EPA may also place Walker, Shelby, Jackson and Lee counties under a non-containment watch. New lower sulfur diesel fuel emissions and standards must be met by 2008.

The chair called on Ed Hughes, ADEM Water Division. Mr. Hughes stated that EPA and ADEM are preparing municipalities for securing drinking water systems. Any system serving over 3,300 people is required to submit an

assessment report to EPA by December 1, 2004. Alabama drinking water authorities produce almost one billion gallons of drinking water daily reaching 96 percent of Alabama citizens with 97 percent in compliance. ADEM has established a website to assist municipalities with the evaluation process. FY03 construction: 32 storage tanks, 2.3 million feet of distribution lines (infrastructure), 5828 new customers have been added by public water systems.

The chair called on Aubrey White, ADEM Drinking Water and Wastewater SRF programs Administrator. Mr. White stated that over \$920 million in SRF loans have been granted by ADEM since 1989. ADEM is continuing to work at lessening paperwork and red tape involved in applying for SRF funding. Congressional Report shows Alabama is fourth in the country on return on federal investment. Regionally, Alabama is seventh in state investments and second in loan activity. ADEM doesn't require repayment of SRF loans until a construction project is completed. Starting in 2005, ADEM will no longer charge closing costs on new loans. Alabama has received \$249 million in EPA grants for the Clean Water State Revolving Loan Program which required \$50 million in state matching funds. Alabama has only appropriated \$17 million so ADEM has supplemented this shortfall by purchasing bonds to make the state match. Currently, the CWSRF has administered 165 loans valued at \$750 million and the DWSRF has 77 loans valued at \$172 million. The Wastewater/Drinking Water Certification Program have certified over 3300 operators in Alabama. ADEM is considering on-line training programs and staff reductions for Grade III sewage treatment facilities. Senators Shelby and Sessions have appropriated \$1 million in federal funds to pay for the training/education costs.

The Chair called on Dave Davis, ADEM Brownfield SRF Program Manager. Mr. Davis discussed a newly created Brownfield SRF program. Legislation supported by the League of Municipalities was passed during the '03 regular session of the Legislature establishing the Brownfield SRF program. EPA has provided Alabama with a \$1 million grant to the Alabama Land Recycling Authority for the SRF program. The Brownfield SRF Program can provide funds for evaluation, assessment, clean-up and rehabilitation of

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Jacksonville POST Facility to Become Residential Training Facility

Reported by Ken Smith, Deputy Director/Chief Counsel

The League's Committee on Transportation, Public Safety and Communication met at 10:00 a.m. on August 9, 2004, at the Montgomery Civic Center in Montgomery, Alabama, with Councilmember Lewis Washington of Wetumpka, committee chair, presiding.

Also present were committee vice chair Mayor Tim Kant of Fairhope, and committee members Councilmember Michael Waltman of Citronelle, Councilmember Roger Adkinson of Flomaton, Councilmember George E. McCall, Jr., of Prichard, Mayor Ken Williams of Saraland, Councilmember Sidney Butler of Saraland, Councilmember Larry Landrum of Satsuma, Mayor Curtis Jackson of Autaugaville, Councilmember Fred Watts of Millbrook, Mayor Jim Byard of Prattville, Mayor Bobby Payne of Tallassee, Councilmember Hal Miller of Tallassee, Councilmember Marshall Shaddix of Oxford, Councilmember Cecil E. Hanson, Jr., of Piedmont, Councilmember Mack Arthur Bell of Roanoke, Mayor Gary Livingston of Eva, Councilmember Robert Echols of Gadsden, Councilmember Johnnie E. Veal of Haleyville, Mayor David H. Bradford of Muscle Shoals, Councilmember Ross F. Palmer of Rogersville, Mayor George Roy of Calera, Mayor Bobby Hayes of Pelham, Mayor Jack Fendley of Pennington and Councilmember Don Moore of Uniontown. Technical Advisors present were Administrative Assistant Donna Tesslar of Pelham and City Clerk Jimmy Tatom of Frisco City. Also present was Ken Smith, Acting Secretary.

Resource advisors present were Cecil Colson, Alabama Department of Transportation, Richard Montgomery, State Fire Marshal, John Eagerton, State Aeronautics Bureau, DOT, Alan Benefield of the Peace Officers Standards and Training Commission (POST), Mark Fowler of the Alabama Telecommunications Association (ATCA) and Maury Mitchell, Alabama Criminal Justice Information Center (ACJIC).

Councilmember Washington called the meeting to order and welcomed those present. He then called on Cecil Colson to make his presentation.

Mr. Colson pointed out that he works on nontraditional projects within DOT's multimodal transportation division. There are 12 enhancement activities multimodal is involved in, including areas such as railroad safety, enhancement

projects and scenic by-ways. He noted that multimodal will help rehabilitate historic transportation buildings and can help remove outdoor ads and billboards. The most popular projects involve sidewalks followed by scenic beautification as the second most popular. Projects must fall within one of the 12 areas and must involve surface transportation.

Mr. Colson said that ISTEA created the enhancement program in 1993. TEA-21 confirmed the program and it is also included in the new program called SAFTEA. He noted that applications for projects went out in May and must be returned by the first of October. Proposals will be reviewed and selected then. He pointed out that his department funds 80 percent of the projects, with 20 percent coming from the project sponsor. He emphasized that there is no cap on the amount that may be given, so applicants should ask for the funds they need. His department receives approximately \$12 million a year for these projects. The average project cost is \$277,000. The majority of the projects have been in Jefferson County, followed by Tuscaloosa County then Lee County. He reviewed a number of projects that his department is involved in for the committee, including walking trails, rehabilitation of train depots, scenic byways and even renovation of lighthouses on the Gulf coast.

Richard Montgomery spoke next. Mr. Montgomery is the newly appointed State Fire Marshal. He said that his department is working on helping municipalities train their firefighters and that some money is available for this purpose. His staff has increased and they are focusing their efforts on fire prevention instead of merely investigating fires. His department encourages municipalities to adopt codes dealing with fire prevention.

Councilmember Washington next called on John Eagerton for his presentation. Mr. Eagerton said that the airport program in Alabama is experiencing one of its best periods, largely due to federal funding. Congress has passed a four-year authorization bill and funding bill. This, he said, will put approximately \$60 million into Alabama airports.

He stated that his department administers grant programs for airports. He pointed out that a good airport helps municipalities with economic development by attracting industry. The federal government puts up 95 percent of the

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funds for a project. Aeronautics will contribute up to 2.5 percent, and the local government must provide the remainder. He noted that they try to maximize the use of the federal dollars available. Having this money available is important, he stated, because airport projects are getting larger and more expensive.

Alan Benefield spoke next. Mr. Benefield discussed his and the League's involvement with training programs for law enforcement officers. He stated that there are approximately 370 police departments in Alabama and that POST is involved in training every officer employed by them.

Mr. Benefield reviewed the training requirements of law enforcement officers, which include 480 hours of training for officers, as well as continuing education requirements of 12 hours/year for officers and 20 hours/year for police chiefs. He noted that an officer who was previously certified by POST but whose training has lapsed must complete an 80 hour recertification program in order to bring his or her training into compliance.

Mr. Benefield said problems have occurred concerning reserve law enforcement officers. These individuals do not have the power to arrest and their duties are limited. He said municipal officials need to be aware of these restrictions on the activities of reserve officers. Mr. Benefield also discussed the regional training facilities in Alabama. He noted that the Jacksonville facility will become a residential training facility. Officers who train there must live there. This will help reduce costs by reducing travel time and will let POST have more control over their training.

Mark Fowler spoke next. He said that it is important for ATCA and the cable industry to maintain good working relationships with municipalities. He noted that about 95 percent of the cable companies in Alabama are members of ACTA.

He said that in 2003, cable companies paid \$21.3 million in franchise fees and \$2.5 million in state and local taxes. ACTA members serve 890,000 cable television subscribers and about 67 percent of those use broadband Internet service. He noted that cable companies employ about 1,800 Alabamians and stressed that most help centers are located in Alabama, many of them in the local municipality.

Maury Mitchell with ACJIC spoke next. He said that he has been with the organization for about eight months. He said that he sees ACJIC as a service organization for municipalities, which help fund ACJIC through the payment of use fees. He said that ACJIC shares criminal justice information and that they can provide information to officers in the field in seconds of a request. This can help officers make life and death decisions on the spur of the moment. He said that over 14,000 sworn officers are potential users of ACJIC and that one of his goals is to increase participation in ACJIC. He noted that ACJIC is involved from the moment

a crime is reported through all aspects of a case, including the aftermath through parole, etc. ACJIC works hard to focus on technology and criminal information. ACJIC has a single incident report that all participating agencies fill out and submit. He wants to make this form available to all agencies in Alabama for free.

He said that ACJIC gets funding from court fees, federal grants, user fees and from the state general fund. He has a total budget of \$6.3 million. He would like to increase the portion of their budget that is paid by the state. He said that they are also looking at new revenue streams. He noted that ACJIC is working to develop a web site called AlaCop. This site will provide information to assist officers in performing their jobs. This will include GIS mapping, statewide I/O (incident/offense) report access, an Alzheimer's database to ID missing person when they are located, a stolen property database and even information on jail management.

Councilmember Washington thanked the resource advisors for their valuable contributions. The Committee then discussed needed additions and deletions to the League policy statement. After discussion, Mayor George Roy of Calera made a motion to adopt the recommended changes to the Transportation, Public Safety and Communication section of the policy statement. The motion was seconded by Councilmember Don Moore of Uniontown. The recommended changes were adopted unanimously. The recommended changes are:

1. That Policy Position T-6.3 be deleted as no longer needed.
2. That Policy Position T-6.6 be amended by deleting words "~~Aeronautics Department~~" and inserting in lieu thereof the words "Aeronautics Bureau of the Department of Transportation" to reflect the correct name of the organization.
3. That a new Policy Statement to be number P-3.5 be added to read as follows:
"That the League encourage the state government to provide municipalities with access to stored driver history records maintained by the state for the purpose of making employee background checks."
4. That Policy Position P-8.3 be amended by deleting words "~~Criminal Justice Information System~~" and inserting in lieu thereof the words "Alabama Criminal Justice Information Center" to reflect the correct name of the organization.
5. That Policy Position P-8.7 be deleted as accomplished. See, Sections 13A-12-120 through 13A-12-122, Code of Alabama, 1975.

Alabama Leads Nation in Home Ownership

Reported by Lorelei A. Lein, Staff Attorney

The Community and Economic Development Committee met at 10:15 a.m. on Monday, August 9, 2004, at the Montgomery Civic Center with Chairperson Lee Garrison, Councilmember from Tuscaloosa, presiding. Present at the meeting were: Committee Chair Councilmember Lee Garrison, Tuscaloosa; Committee Vice-Chair Councilmember Thomas O. Moore, Demopolis; Mayor Howard Shell, Atmore; Councilmember Clemente Brooks, Flomaton; Councilmember Jerry Lundy, Mount Vernon; Councilmember Brentley Kendrick, Robertsdale; Mayor Bob Bunting, Ozark; Councilmember Thomas Edwards, Valley; Councilmember Charles R. Lane, Lincoln; Councilmember Leamon Jarmon, Guntersville; Councilmember Don Gentry, Phil Campbell; Mayor Freida Eubank, Phil Campbell; Mayor Clif Knight, Hartselle; Mayor Al DuPont, Tuscaloosa; Councilmember Roberta Jordan, Pine Hill; and City Administrator Perry Wilbourne, Foley. Resource advisors present included: David Hutchinson, Alabama Development Office; Lee Flennory, Alabama Department of Economic and Community Affairs; Ed Coberly, U.S. Department of Housing and Urban Development; Steve Pelham, USDA Rural Development; and Elizabeth Brown, Alabama Historical Commission. Also present was Lorelei Lein, Staff Attorney, Alabama League of Municipalities.

Reports from the Resource Advisors

Elizabeth Brown from the Alabama Historical Commission led the morning's discussion with a slide presentation demonstrating that what makes a town a community relates directly to community preservation. Preservation connects people to their community. She briefly discussed the historical preservation commission and the Heritage Tourism Program. Through her slide show presentation, Ms. Brown covered the Main Street Program. She stated that there is a four-point approach to the rehabilitation of a downtown under the Main Street Program. First and foremost is organization; every aspect of the community needs to be involved. Second is promotion; downtown must be promoted as a desirable destination. The areas that need promoting are image, retail, and special events. Examples of promotion might include a newsletter and/or specially planned children's programs in the

downtown area. The third point is design; a city must actively reclaim what she described as the "historic fabric" of the downtown. Fourth is Economic Restructuring; finding available funding sources is key to rehabilitating downtown areas. Ms. Brown concluded her remarks by commenting on the Preserve America Program started by First Lady Laura Bush. Ms. Brown encouraged the committee to adopt a policy and goal that all cities register for the Preserve America Program.

David Hutchinson, assistant director of the Industrial Recruitment Division with the Alabama Development Office (ADO) addressed the committee next. Mr. Hutchinson began his remarks by commenting on several policies and goals. In relation to policy C-1.14, he stated that ADO has instituted the Alabama Communities of Excellence program and would encourage the committee to urge the Legislature to support this program. With regard to policy C-5.3, Mr. Hutchinson pointed out that this is the first year that ADO has been level funded in the past several years and thanked the League for its support. For policy C-5.5, he pointed out that this is a very worthy policy to keep in place because 80 to 85 percent of all new jobs come from existing industry. By way of policy C-5.9, he pointed out to the committee that one of the biggest disadvantages plaguing rural municipalities in the economic development front is the lack of excess water and sewer capacity. He recommended the League urge municipalities and the Legislature to work on solutions to excess water and sewer capacity problems. Finally, with regard to policy C-5.14, he pointed out that ADO has no authority to encourage or assist in the development of retail and commercial businesses. After discussing the various policies and goals, Mr. Hutchinson reported to the committee members that in the past 10 years the automobile industry has provided 30 to 40 thousand jobs to Alabama's citizens and that those jobs are not strictly limited to the immediate geographic areas of the various automobile plants. He concluded his remarks by commenting that 85 percent of all initial contacts made to ADO by potential industries involve the existing availability of building space. If a city has an existing building that meets the criteria of a particular industry they are immediately on that industry's "radar". Just recently, Johnson Controls agreed to locate in

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an existing building in Montgomery potentially providing for up to 70 new jobs and Fleetwood Metals is locating in an existing building in Sylacauga providing for 100 new jobs.

Steve Pelham, with the USDA Rural Development, was the next resource advisor to address the committee. Mr. Pelham began his remarks by stating that despite several name changes and the fact that they are part of the USDA, his office has nothing to do with agricultural production and everything to do with economic development in rural areas to improve the quality of life for citizens in those areas. He pointed out that they are involved in areas of preservation, including infrastructure rehabilitation and tourism. In his discussion, Mr. Pelham pointed out that they are also involved in providing assistance for broadband and wireless internet development. He reported that over the next year they expect to have somewhere between \$140M and \$150M available. \$100M of that will be spent on housing alone with \$35M used for infrastructure and the remaining going toward economic development, including assistance for existing industries.

He reported to the committee that over the last year USDA Rural Development visited every county in the state and he wanted the committee to know that there are wonderful things taking place in Alabama. As a state, we are number one on some lists. Alabama leads the nation in accessibility to public drinking water; nearly 89 percent of all Alabamians have access to public drinking water. That still means, however, that one in 10 Alabamians do not have access. Alabama also leads the nation in home ownership. According to Mr. Pelham, 76.5 percent of all Alabamians own their own homes compared to the national average of 68 percent. He concluded his remarks by reminding the committee that USDA Rural Development helps Alabama's rural communities and they have 17 field offices around the state. He reminded the committee that when available funds are not utilized, Alabama loses those funds to neighboring states. Cities must enter to win.

Ed Coberly, community planning and development representative with the U.S. Department of Housing and Urban Development (HUD), the third resource advisor to address the committee, informed the committee that this year, the Community Planning and Development program provided \$80M dollars to the state of Alabama. One-third of that amount was allocated for the 16 entitlement cities and Mobile and Jefferson Counties. Approximately \$50M was allocated for ADECA to administer to non-entitlement cities and counties. Of that amount approximately \$30M dollars was allocated for Alabama's municipalities. HUD oversees and monitors all community planning and development money whether through ADECA's CDBG program or directly with the entitlement cities. Mr. Coberly stressed that in addition to the community planning and

development program, HUD's economic development program presents opportunities for money and assistance. Mr. Coberly discussed the various funds that are available to municipalities and stressed that planning is key to success in the competitive process for available funds. He stated that when you fail to plan, you plan to fail with regard to obtaining available funding. Mr. Coberly concluded his remarks by reminding the committee that a city cannot apply for new funding if they have an incomplete application already in process or if there are any audit issues pending on an existing application or project. Mr. Coberly made no new suggestions to the committee's policies and goals.

Lee Flennory of the Alabama Department of Economic and Community Affairs (ADECA) addressed the committee last. He gave a brief overview of the programs offered through the department – particularly the CDBG program. Mr. Flennory discussed with the committee ADECA's 2004 CDBG Action Plan which includes 13 policies. Some of the policies mentioned include allowing applicants to compete fairly for funds to address essential community facility needs; facilitating a broader distribution of CDBG funds by funding a large number of applicants; providing additional consideration to those communities who commit to do the most to help themselves, taking into account their level of resources; assisting communities, where feasible, in "welfare to work" programs; and insuring that all grants are managed in a timely and effective manner.

As in years past, Mr. Flennory stressed the importance of municipal input at public hearings held prior to the award of CDBG funds. He stated that this input is key to the decision making process. He also mentioned that cities should be on the lookout in the near future for a mailing from ADECA regarding survey information for developing a consolidated plan for HUD. He stressed the importance of local government input in that process. The information will be sent to all mayors but any person interested in the information may contact ADECA to receive the information. He concluded by discussing several of the committee's policies and goals and addressing questions from the committee.

At 11:45 a.m., Chair Garrison thanked the resource advisors for their presentations and after some discussion, the committee made the following recommendations for changes to existing policies and goals as well as the following addition of new policies and goals:

Changes to existing policies and goals:

C-4.11 That the League urges ADECA to allow the use of inmates for consideration of in-kind services (personnel) as local match for ~~CDBG~~ all ADECA grants on

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Alabama Department of Public Health Establishes Nutrition-Obesity Task Force

Reported by Twanna Walton, League Legal Researcher

The Committee on Human Development of the Alabama League of Municipalities met at the Montgomery Civic Center on Monday, August 9, 2004 at 10:15 a.m. Mayor Randall Shedd of Fairview, Committee Chair called the meeting to order and thanked all those present for their attendance with special thanks to the resource advisors who were present. Chairperson Shedd also asked Vice Chair, Councilmember Isabell Boyd of Brundidge, to share a few words with the Committee.

The following were present: Mayor Randall Shedd, Chair, Fairview; Councilmember Isabell Boyd, Vice Chair, Brundidge; Councilmember Howard Rubenstein, Saraland; Mayor Charles S. Rogers, Oak Grove; Councilmember Norma S. Martin, Oxford; Councilmember James Harris, Wedowee; Councilmember Sonata Howell, Guntersville; Mayor Harold D. Chandler, Rogersville; Mayor Charles W. Penhale, Helena; Councilmember Cora Smith, Brighton; City Administrator Tony Rivera, Gulf Shores. The following resource advisors were present: Ms. Terri Reid, Alabama Department of Human Resources; Ms. Michelle Jones, Alabama Department of Public Health; Ms. Anne Evans, Alabama Department of Mental Health & Retardation; Mr. David Barley, Alabama Department of Economic and Community Affairs; Mr. Dennis Hopper, Alabama Department of Economic and Community Affairs; Mr. Nexton Marshall, Alabama Development Office.

Ms. Terri Reid began by stating that the mission of the Department of Human Resources is to promote family stability. This effort includes assisting in the areas of: child adoption, child day care, family assistance and the welfare program, etc. She informed the Committee that the Alabama Department of Human Resources has a new director, Dr. Walley Page, who is a wonderful leader.

Her report included: 40,000 cases of child abuse reported; 6,000 children in foster care; 8,000 active cases on adult protection; 19,000 families receiving some form of family assistance; 30,700 parents receiving child daycare assistance. She continued by stating that 5,000 of adult abuse was reported annually and 650 adults received daycare in their own homes.

Ms. Reid commended the League for their assistance in a survey performed by the Department of Human

Resources. She also informed the Committee about a task force created by the Governor to strengthen families via various town meetings. She discussed a \$20 million dollar federally funded grant that was in collaboration with Medicaid. Mayor Charles S. Rogers of Oak Grove commented on the large number of senior adults who did not receive assistance. Ms. Reid responded with the number of active cases who receive adult protection, that meals are delivered, and the like.

Ms. Michelle Jones with the Alabama Department of Public Health was the second speaker and began by stating that the department's goal was to attempt to protect the public's health. She reported that, due to financial constraints on their budget, the All Kids low cost health insurance program had experienced an enrollment freeze which was recently removed. The program has reopened for enrollment.

Ms. Jones also let the Committee know that her department was doing an immunization-influenza school entry survey in an effort to bring all children up to date on their shots. In addition, the department is establishing a newborn screening to detect disorders. The department plans to collaborate with the federal government in the Childhood Lead Prevention program.

Ms. Jones reported that the department's HIV/AIDs program had served 1231 people in 2003-2004 with 353 on a waiting list. This program also had the first Alabama AIDs prevention counsel. She also spoke of a new prescreen drug-monitoring program to monitor and help reduce the illegal distribution and improper use of drugs.

The department has also established a nutrition-obesity task force to address the various physical activities that could reduce obesity, youth and families who battle with obesity, community planning, etc. The task force has already determined that there should be safer areas for exercising such as businesses, churches and schools.

Council Member Howard Rubenstein of Saraland asked if the Department of Health had looked into pre-marital testing for marriages. Ms. Jones responded that the department had looked at the idea of such tests but had not determined if they would go in that direction at this time. City Administrator Tony Rivera of Gulf Shores inquired about

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problems getting the flu vaccine this winter. Ms. Jones stated that four additional state vaccine clinics would be established to administer the vaccines this winter.

Ms. Anne Evans with the Alabama Department of Mental Retardation was the third resource advisor to speak. She began by stating that her department serves individuals with mental retardation, mental health and substance abuse challenges. During 2003-2004, the department assisted in the recovery of 800 individuals. The department is working with the Governor in a consolidated plan to better serve people with mental retardation. Through the plan, 30 additional beds have been opened in psych hospitals and/or on psych floors of hospitals. The consolidated plan also addresses necessary training for hospital staff in order to provide mental health patients with the very best care.

Ms. Evans reported that three facilities have closed – Wallace (Decatur), Brewer (Dempolis) and Tarwater (Wetumpka) – potentially threatening the jobs of 886 employees. However, because the department was successful in assisting employees with new job placement, only 41 individuals were laid off. A Committee person asked what was done with vacant facilities. Ms. Evans responded that the closed Tarwater facility in Wetumpka has partnered with Tutwiler prison to be renovated into a transition program for inmates with substance abuse challenges.

Ms. Evans also shared with the Committee that the Alabama Department of Public Health houses and supports the Alabama Council of Developmental Disabilities. She said that the Council of Developmental Disabilities was requesting proposals for awarding eight potential grants to municipalities. At this time, models and innovative ideas are being sought. All proposals were due by August 25, 2004. Ms. Evans also informed the Committee that additional law enforcement training was being offered to assist in dealing with people with mental illness.

Addressing the Committee's policies and goals, Ms. Evans offered suggestions to policy numbers H7.1, H7.3a, and H7.5. Ms. Evans commended the city of Brundidge for renovating two buildings which are now being used to assimilate persons with mental health challenges into the community. She asked Councilmember Isabell Boyd of Brundidge (Vice Chair) to comment on the success of their program. Councilmember Boyd replied that it took little effort to get the buildings renovated and that the community was receptive.

Councilmember James Harris of Wedowee expressed concern about the rehab housing for people with mental challenges without on-site supervision or monitoring. Ms. Evans said that a person not able to be on his or her own would not have been approved for such housing.

Mayor Charles S. Rogers of Oak Grove asked what has been done to solicit monies from municipalities to assist

in meeting the department's budget? Ms. Evans said that mental health boards can be used as a vehicle to solicit monies. In addition, community health centers can be encouraged to talk to their local mayors and council members.

As a physician, Councilmember Howard Rubenstein of Saraland commented that due to the shortage of psych beds, he was having to send substance abuse patients to Mississippi for care. Ms. Evans agreed with the need for more beds by saying that many patients with mental health challenges were still in jail until adequate space was available.

The next presenter was Mr. David Barley from the Alabama Department of Economic and Community Affairs (ADECA). Mr. Barley shared with the Committee the various programs that ADECA administers. One such program is the Community Block Grant Program which has a budget of approximately \$130-\$150 million dollars. This grant is for economic development and community service projects including infrastructure, housing, bringing in industry, etc. The grants range from competitive statewide grants to grants for small cities. Each grant has its own deadline.

Mr. Barley also mentioned that ADECA works to assist municipalities with discretionary grants, which can be used for human resources, planning, etc.. In order to receive funding for economic development, the industry has to come to the municipality before the funds would be issued. Mr. Barley said that grants are also offered to municipalities in rural areas for ball fields, walking trails, etc.

Mr. Barley also informed the Committee that ADECA also participates in community service efforts to help those with low-incomes become self-sufficient. To assist in this effort, ADECA assists in paying utility bills and the weatherization program for low-income and elderly people. The weatherization program assists by improving the heating or cooling systems of the needy. Such assistance is administered through community action agencies located throughout the state.

Mr. Barley continued by mentioning the various federal tax credit programs used to recruit businesses in various areas. These programs are used to help attract business to distressed areas and to provide job training.

The next presenter was Mr. Dennis Hopper with the Alabama Office of Workforce Development (under the Alabama Department of Economic and Community Affairs). Mr. Hopper began by informing the Committee that as of December 31, 2004, an Executive Order is in place and mandated to establish a state workforce planning council whose purpose is to create a complete workforce development plan for the state of Alabama.

The Workforce Development Office has 31 career centers and 23 satellite offices throughout the state where

individuals can get assistance in applying for jobs, career training, etc. These offices also assist dislocated workers and youth seeking employment. Mr. Hopper said that in 2003, 7,000 Alabamians went through some form of the various programs available under the Workforce Development Offices. These programs ranged from short-term courses, i.e. truck driving courses, etc.

Mr. Nexton Marshall with the Alabama Communities of Excellence program (ACE) began by stating that this was the first year for this program, and that it is a comprehensive, collaborative effort to give communities assistance in services that they need to develop. This collaborative effort includes various state agencies: the Alabama Department of Education; the Alabama Department of Public Health; the Alabama Department of Economic Development, etc.

The ACE program is designed for populations 2,000 – 12,000, which have fewer resources and need great assistance in building their municipalities. Mr. Marshall stated that 125 municipalities were invited to submit applications and 25 responses were received. Of those who submitted applications, eight municipalities were chosen: Brewton, Demopolis, Guntersville, Haley, Wetumpka to name a few.

The ACE program's first phase focuses on a visual economic development assessment of the community to determine what the exit signs look like; what the downtown area looks like, etc. The ACE program provides recommendations to those municipalities as well as various means of funding to meet the recommendations. Another goal of the ACE program is to improve leadership in these municipalities.

The Committee discussed policy additions and changes. Mayor Charles S. Rogers of Oak Grove presented two prepared policy statements on senior services for consideration. These policies were voted on and approved. Councilmember Howard Rubenstein of Saraland presented two policy statements for possible adoption. The first policy supported the definition of marriage as one man and one woman. After much debate the policy was adopted. The second policy, which focused on the display of the 10 Commandments in the State House, generated much debate as well. After two votes, the policy did not pass nor did the suggestion of taking the policy to the general body during the League's 2005 convention. There being no further business, the meeting was adjourned at 12:22 P.M. The following policy changes were approved:

H-4. Senior Citizens

Two new policy statements:

H-4.14. That the League urges the State of Alabama to provide the Alabama Department of Senior Services

(ADSS) with the necessary funding to meet the daily nutritional meals of the homebound elderly.

H-4.15. That the League encourages the State of Alabama to provide an increase in funding to the Alabama Department of Economic and Community Affairs (ADECA) for the purpose of providing grants to enable municipalities to build more senior centers for the elderly.

H-7. Mental Health and Mental Retardation

That policy position H-7.5 be amended by deleting the following after the word "to" on line 2: 'support homes for those persons with mental illness and/or mental retardation', and by adding the words: "support persons with mental illness and mental retardation as they live in local communities. Further, that the League encourages municipalities to assist in the elimination of barriers that people with mental illness and mental retardation face in their need for affordable and adequate housing."

Alabama One Call

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proposed sites. The 104 Grant Program funds provide up to \$200,000 for assessments and an additional \$250,000 for clean-up. The 128 Grant program provides federal funds for assessment and clean-up.

The Chair called on Larry Bryant, Solid Waste Division of ADEM. Mr. Bryant praised the Scrap Tire Legislation supported by the League of Municipalities and passed by the Legislature during the '03 regular session. This legislation places a \$1 fee on each new tire sold with the proceeds to be used to investigate, cleanup and recycle used tire dumps around the state. ADEM expects the new fee to generate \$3.6 million annually, with ADEM receiving \$700,000 for operating expenses.

Mr. Bryant discussed the major rewriting of the Solid Waste Regulations. Highlighting some changes, life of service permits in lieu of five-year permits. This was requested by the owners of landfills to lessen legal fees associated with the permitting process. Fees would be prorated annually instead of receiving them every five years upon approval of the renewal permit. ADEM currently collects over \$200,000 annually in landfill permitting fees. ADEM stakeholders have proposed raising the tipping fees by \$11-\$13 million annually to fully fund ADEM. The Commission has said this is too high but would support a modest tipping fee increase to fund the ADEM solid waste division. An increase of 40 cents per ton would generate \$2 million annually. Mr. Bryant shared his thoughts on the need of legislation to grant ADEM oversight and regulation

authority over recycling facilities and the ability for ADEM to require assurance bonds from all landfill operators.

The Chair called on Dr. Nick Tew, Supervisor of the Alabama State Oil & Gas Board. Dr. Tew discussed the vital role of the Oil & Gas Board. The board is comprised of three members appointed by the Governor charged with promoting conservation of Alabama's oil and gas resources, protection of mineral rights, permit issuance and rule making authority. The staff is charged with compliance monitoring, emergency response, record maintenance and inspections. Alabama is ninth in the nation in natural gas production. The Oil & Gas Trust Fund generated \$506,844,000 in 2003 for a balance of \$2.2 billion. The Local Government Capital Improvement Trust Fund estimates to distribute \$20.6 million for 2004. Dr. Tew hopes the Oil & Gas Board will continue to receive adequate funding from the Legislature

Gregory D. Cochran thanked the resource advisors for their presentations. The steering committee convened to review and discuss the EENR policy statement. After discussion, Council Member Bill Stewart made a motion to adopt the changes to the EENR policy statement. Council Member Gary Gray seconded the motion. The recommended changes are: **E-1.7** The League opposes ADEM legislation changing of five-year solid waste landfill permitting renewal requirements to life of service ~~thirty-year~~ permits without improved accountability and oversight of landfill management and operations. (Sept 2003)(Aug2004)

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the same rate scale allowed by federal law (~~September 2003~~) (August 2004).

C-4.14 That the League ~~continue to monitor the use of~~ urge the Alabama Legislature to require the use of ISO ratings by insurance companies where appropriate.

New policies and goals:

C-1.17 That the League urge the Alabama Legislature to continue to fund and support the Alabama Communities of Excellence Program. (August 2004)

C-2.8 That the League encourage all municipalities to register for and become a part of the Preserve America Program. (August 2004)

C-5.15 That the League urge the Alabama Legislature to authorize the Alabama Development Office (ADO) to

work with and provide assistance to municipalities to attract and develop commercial and retail businesses. (August 2004)

C-5.16 That the League encourage every municipality to provide for a full time economic developer. (August 2004)

C-5.17 That the League encourage rural municipalities to actively seek out available funding to provide for excess water and sewer capacity so that they may work towards overcoming competitive disadvantages when seeking economic development opportunities.

All the above changes/additions were moved for approval by Mayor Bob Bunting of Ozark and were seconded by Councilmember Thomas O. Moore of Demopolis. The committee then unanimously approved the motion. Chair Garrison thanked the committee members for their participation and adjourned the meeting at 11:55 a.m.

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