

# THE ALABAMA MUNICIPAL JOURNAL

November 2005

Volume 63, Number 5

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*from the League Officers and Staff!*

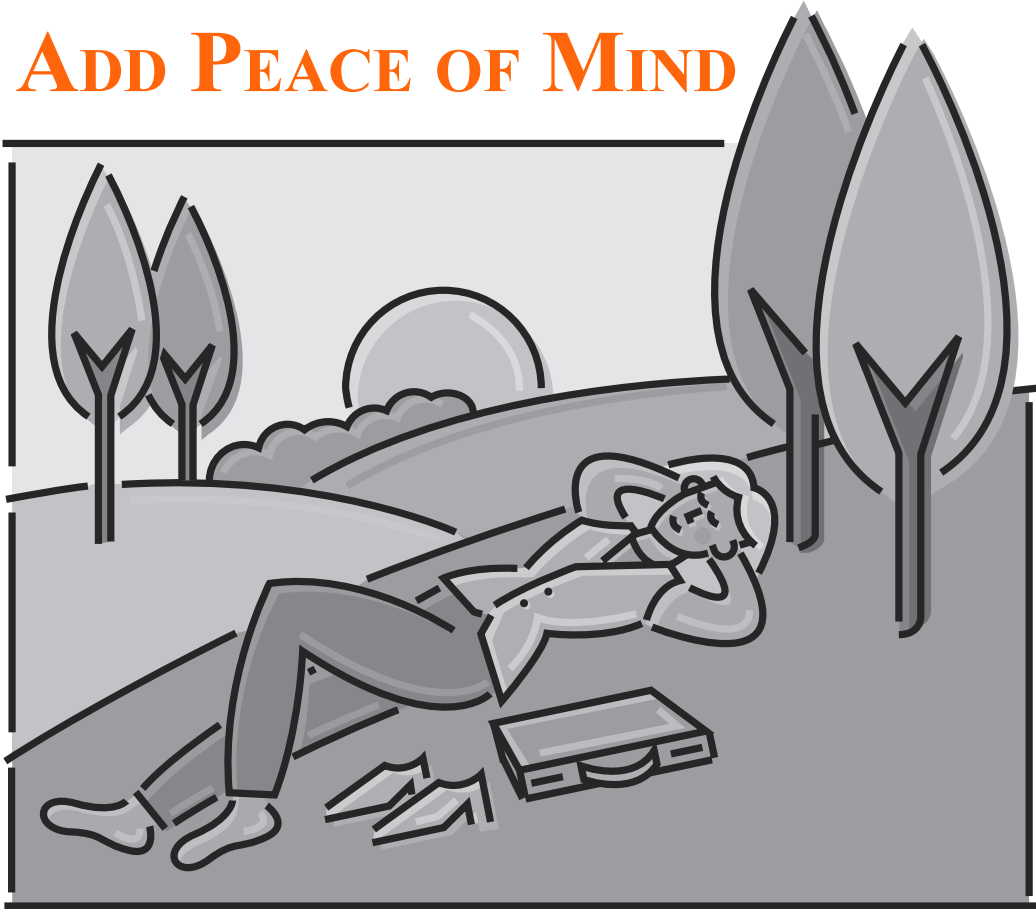
## Inside:

- Probable Cause
- Minutes from the League's Five Standing Committees
- Alabama Communities of Excellence Program

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# THE ALABAMA MUNICIPAL JOURNAL

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November 2005 • Volume 63, Number 5

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# The President's Report

Bobby Hayes  
Mayor of Pelham

## 2005-2006 Committee on State and Federal Legislation

Listed below are the members of the 2005-2006 Committee on State and Federal Legislation.

**Chair:** Mayor Bob Bunting, Ozark (31)

**Vice Chair:** Council Member Charles Woods, Childersburg (11)

### Members from State Senatorial Districts (districts shown in parentheses)

- Mayor Harold D. Chandler, Rogersville (1)
- Mayor Dan Williams, Athens (2)
- Council Member Wayne Dunkin, Priceville, (3)
- Mayor Frank Lee Cox, Arab (4)
- Mayor Walt Maddox, Tuscaloosa (5)
- Mayor Phil Segraves, Guin (6)
- Mayor Loretta Spencer, Huntsville (7)
- Mayor John W. Lewis, Bridgeport (8)
- Council Member Richard Showers, Huntsville (9)
- Mayor Steve Means, Gadsden (10)
- Mayor Carroll L. Watson, Lincoln (11)
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- Mayor Jim Trout, Chickasaw (33)
- Mayor Sam Jones, Mobile (34)
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- Council Member Debbie Quinn, Fairhope, Vice Chair FAIR (32)
- Council Member Lee Garrison, Tuscaloosa, Chair CED (5)
- Council Member Thomas O. Moore, Demopolis, Vice Chair CED (24)
- Mayor Tim Kant, Fairhope, Chair TPSC (32)
- Council Member Bobby Phillips, Calera, Vice Chair TPSC (15)
- Council Member Bill Stewart, Gadsden, Chair EENR (10)
- Mayor Ron Davis, Prichard, Vice Chair EENR (33)
- Mayor Randall Shedd, Fairview, Chair HD (4)
- Council Member Isabell Boyd, Brundidge, Vice Chair HD (30)

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- Mayor Ray Nelson, Fayette (6)
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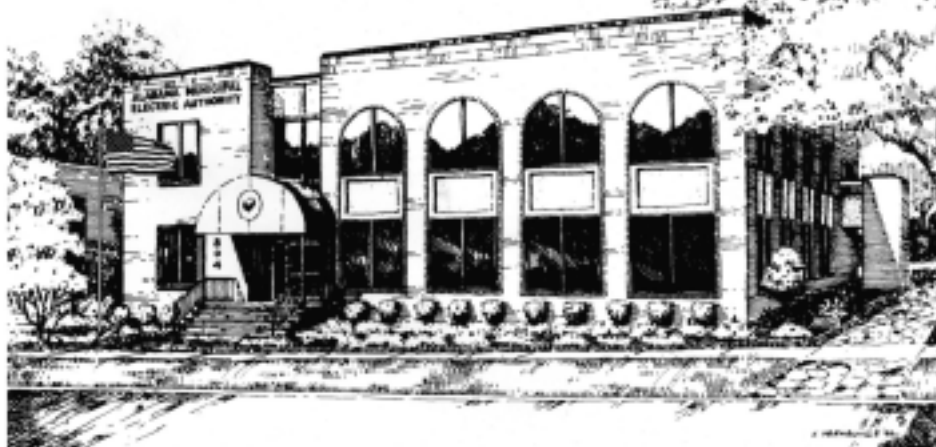
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# Municipal Overview

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

## Legislative Recommendations from the League's Five Standing Committees

The League's five standing committees met during September to develop the League's Proposed Policies and Goals for 2006. The new document will be provided to League members in the December issue of the *Alabama Municipal Journal*. The League's Committee on State and Federal Relations will meet at League Headquarters on Thursday, November 10, to develop the League's Legislative Package for the 2006 Regular Session. The League's policy statement will be a primary source of legislative proposals to be considered by the committee on that date. Other bill proposals come from League members and staff. The items below are the latest legislative recommendations of the League's five standing committees.

### Finance, Administration and Intergovernmental Relations

**F-1.5.** That the League seek authority for cities and towns to collect taxes or payments in lieu of taxes from contractors undertaking projects on property owned by federal, state or county agencies located within the municipality. That the League and its membership urge Alabama's Congressional delegation to support legislation needed to provide equitable payments in lieu of taxes on federal properties located in our cities and towns.

**F-1.14.** That the League sponsor legislation to require actual purchase prices be placed on all deeds in the state.

**F-2.3.** That the League sponsor legislation to amend the state license limitation statute applicable to insurance companies other than fire and marine to provide that the 1 percent limitations shall be applicable to the full first year premium less return premiums, thereby removing the tax avoidance feature of issuing policies and collecting only a partial year premium during the license year. Further, that the League sponsor legislation to amend our statutes relating to municipal licenses on insurance companies so that licenses shall be

computed on total premiums less return premiums collected during the preceding year without the qualification of when the policies are issued.

**F-3.7.** That the League strongly pursue legislation to totally exempt municipal corporations from the application of all state utility taxes.

**F-4.2.** That the League sponsor an amendment to the Cater Act to prevent the use of industrial development financing to remove existing taxable industrial property from the tax rolls.

**F-4.6.** That the League seek legislation to amend Section 11-54-80, Code of Alabama 1975, which relates to the appointment of board members to an incorporated industrial development board, so as to provide that the municipal governing body may, in its discretion, appoint any person who resides within the boundaries of the board's jurisdiction to serve on the board.

**F-5.8.** That the League seek legislation to provide that persons acting as mayor during a lengthy absence from duty of the mayor shall receive the compensation established for the holder of the position of mayor during his or her time of service as acting mayor.

**F-5.9.** That the Alabama Constitution be amended to allow full-time municipal officials to participate in the Employees Retirement System of Alabama.

**F-5.11.** That Section 41-16-51, Code of Ala. 1975, which provides that the purchase of dirt, sand and gravel by county governing bodies from any county property owners in order to supply a county road or bridge project may be purchased without the necessity of bidding, so as to give a similar exemption to municipalities.

**F-5.12.** That Section 11-44G-2, Code of Ala. 1975, which relates to the filling of vacancies in the office of mayor in Class 7 or 8 municipalities, be amended to allow the council president to fill the vacancy in cities of 12,000 or more population.

**F-5.13.** 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-5.14.** 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-5.15.** 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

*continued next page*

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-6.4.** That legislation be introduced which would prohibit picketing in a manner which would impede the use of public safety vehicles with provision that any public employee engaging in such activities must be terminated from their public employment.

**F-8.1.** That restrictions be enacted to prevent incorporation of new municipalities within the police jurisdiction of an existing municipality.

**F-8.3.** That legislation be sponsored to provide a special procedure for the annexation of unincorporated territory used for nonfarm or nonresidential purposes when such property has been completely surrounded by the incorporated area of a municipality for five or more years.

**F-8.9.** That the League sponsor legislation to provide that where two entities are competing to annex similar parcels of unincorporated territory, the entity which begins the annexation process first shall have exclusive jurisdiction over annexation of the subject property until such time as the annexation effort is either successful or until the effort fails.

**F-9.2.** That the League sponsor legislation to protect reimbursement unemployment compensation employers from payment of unemployment compensation to employees who leave their service and are later dismissed by a subsequent employer for a disqualifying cause.

**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-10.47.** That the League seek legislation to amend Section 11-45-9, Code of Ala. 1975, which provides for the maximum fine for violation of municipal ordinances, so as to allow municipal fines to be the same as the maximum allowed by state law.

**F-11.1.** That the Fair Campaign Practices Act be amended so as to provide a more workable law.

**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.

### **Energy, Environment and Natural Resources**

**E-6.2.** That the League Committee on Legislation sponsor a bill to provide for an exemption from the state 4% utility tax for gas and electricity used for operating water and wastewater treatment facilities.

**E-11.1.** That the League urge the Alabama Legislature to appropriate all of the required 20% state matching money to fund the State Revolving Loan Fund for municipal wastewater treatment. The urgency of this request is underscored by the fact that if the 20 percent matching money is not appropriated, federal aid to the Alabama revolving loan fund for municipal wastewater treatment will forever be lost to the state.

**E-11.2.** The League urges the Congress to fully fund such revolving loan programs and allow the full funding to continue over a period of time sufficient to meet the needs of drinking water systems throughout the country. The League urges the Alabama Legislature to appropriate all of the required state matching money to meet the requirements of the federal government to fund this proposed state revolving loan fund for drinking water systems. That the League encourages EPA to expedite and adopt reasonable and enforceable rules to implement the drinking water revolving loan fund.

### **Transportation, Public Safety and Communications**

**T-10.4.** That the League seek legislative remedies to improve procedures for the installation of county and municipal utilities on state and federal rights-of-way.

**T-10.8.** That the definition of 'Person' in Section 37-15-2 of the Code of Alabama be amended to include counties in this definition. This would require counties to notify underground utility facility operators of their intent to perform an excavation or demolition.

**P-8.15.** That Section 11-47-7.1 of the Alabama Code (pertains to corrections funds) be amended to allow for more liberal uses of these funds. Particularly, municipalities should be permitted to use this money for the construction of municipal jails and court complexes.

### **Human Development**

The Human Development Committee's legislative recommendations applied only to Congress. No recommendations for state legislation were made by the committee.

### **Community and Economic Development**

**C-1.2.** That municipalities be given permissive legislative authority to zone their police jurisdictions.

**C-1.3.** That a state statute be adopted to specifically authorize municipalities to control unzoned areas in newly-annexed territory pending the adoption of appropriate zoning for newly-annexed areas.

**C-1.13.** That the League propose legislation to make it clear that a municipal governing body may withdraw its planning jurisdiction to less than the five-mile limit currently established by state law.

*continued page 24*



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# ENVIRONMENTAL OUTLOOK



By Gregory D. Cochran  
Director, Intergovernmental Relations

## Alabama Communities of Excellence Program

Looking for guidance with your economic and community development efforts? If you are a small community between 2,000 and 12,000 in population, help is available through the Alabama Communities of Excellence (ACE) program, which offers a comprehensive approach to economic and community development.

ACE uses a three-phase approach to assist participating communities in planning and preparing for a more vibrant future. Throughout each of these phases, ACE partners from the private sector, government agencies and universities work with each community to help it achieve its goals. Created in 2002 as a nonprofit corporation organized for the purpose of utilizing the collective expertise of its partner organizations, ACE provides participants with a “one-stop shopping” type of experience - community development programs and tools needed to ensure long-term success can all be found in one location.

The wealth of knowledge and expertise available to ACE communities is evident from the list of ACE partners, including: Alabama Association of Regional Councils, Alabama Cooperative Extension System, Alabama Department of Agriculture and Industries, Alabama Development Office, Alabama Electric Cooperative, Alabama Gas Corporation, Alabama Historical Commission, Alabama Municipal Electric Authority, Alabama Power Company, Auburn University Economic Development Institute, Auburn University Truman Pierce Institute, Chamber of Commerce Association of Alabama, Tennessee Valley Authority, the University of Alabama Center for Economic Development, USDA- Rural Development and Regions Bank.

To participate in the ACE program, communities must submit an application and be selected as a participant. At the beginning of each selection process, applications are mailed to the mayors of those communities with a qualifying population of between 2,000 and 12,000. Once a community has been accepted into the ACE program, it begins Phase I, the assessment phase. During this time, the community

undergoes a complete assessment to identify its assets as well as the challenges affecting its growth and prosperity. A comprehensive report card detailing these community assets and challenges is prepared and presented to the community along with a recommended strategy for success. Once a community completes Phase I, it is declared an Alabama Communities of Excellence participant and is invited to move into Phase II.

During Phase II, the leadership development and strategic planning component, each community must establish a leadership development program, prepare an up-to-date strategic plan and identify a local ACE coordinator. This coordinator will not only spearhead ACE efforts locally but also serve as a liaison between ACE and the community. Once a community completes Phase II it is declared an Alabama Communities of Excellence developmental community and is invited to move into Phase III.

Phase III is the implementation and comprehensive planning segment of the ACE program. Issues addressed during Phase III include comprehensive planning, commercial business development, education enhancement, infrastructure, health and human services, retiree attraction, tourism, economic development and quality of life. Upon completion of Phase III, a community is formally designated as an Alabama Community of Excellence.

The timeframe for completion of the ACE program varies from community to community; however, communities are encouraged to complete the program within three years. To maintain the Alabama Community of Excellence designation, a community must be recertified every three years. ACE’s pilot program began in 2003. Of the 114 municipalities with qualifying populations, 26 applied for the pilot program and eight were selected. Demopolis, Guin, Haleyville, and Monroeville, all participants in the ACE pilot program, completed the ACE program in 2005 and were designated Alabama Communities of Excellence. These communities were honored during a graduation ceremony

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# Alabama Department of Revenue Continues Efforts to Fully Implement State GIS System

*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 Wednesday, September 21, 2005, at League Headquarters. Mayor Jay Jaxon, Eufaula, chair, called the meeting to order at 9 am. Mayor Jaxon welcomed those in attendance and thanked members for coming to this important meeting. He also thanked the resource advisors for taking time to attend the meeting to keep our members informed as to activities of state agencies.

The League Director was asked to call the roll. Those members present were: Mayor Jay Jaxon, Eufaula, Chair; Council Member Debbie Quinn, Fairhope, Vice Chair; Council Member Henry E. Uptagrafft, Brewton; Council Member Terry Powell, Andalusia; Mayor Frank Houston, Coosada; Mayor Lomax Smith, Cottonwood; Council Member Beth M. Rogers, Rutledge; Mayor J. Earl Hinson, Union Springs; Council Member Leatha Harp, Cedar Bluff; Mayor Lew Watson, Lincoln; Council Member H.H. Kuykendall, Lincoln; Council Member Jean B. Burk, Lincoln; Council Member Teresa Lott, Ohatchee; Mayor Gary Fuller, Opelika; Mayor Charlie Fagan, Piedmont; Council Member Elaine W. Junkin, Guin; Council Member Wayne Dunkin, Priceville; Mayor Melvin Duran, Priceville; Mayor Jerri McLain, Mooresville; Council Member Martha Smith, Tusculumbia; Mayor Terry Oden, Mountain Brook; Mayor Cecil P. Williamson, Demopolis; Council Member Reginald N. Wilson, Midfield; Council Member Charles Allen, Thomasville; and Administrator/Manager Alan Pate Hoover. Resource advisors present were: Mr. Bob Young of the Frazer Lanier Company; Mr. Will Martin, Property Tax Division, Alabama Department of Revenue; Mr. Bob Hill, Alabama Alcoholic Beverage Control Board; Mr. Angelo Trimble, Alabama Coalition Against Domestic Violence; and Donna Joyner, Local Tax Unit, Alabama Department of Revenue. Also present was League Director Perry C. Roquemore, Jr. A group of seventeen Russian elected officials joined the committee and ate lunch with the committee.

Bob Young of the Frazer Lanier Company was called upon for his presentation. He stated interest rates had dropped slightly since the committee met last year. Even with continually rising oil prices (in advance of Hurricane

Katrina), the belief in the market has been that inflation is generally in check. This has kept long-term interest rates at levels lower than most expected. The fact that our economy has continually improved and long-term rates have remained low, has befuddled many economists.

Many officials may have wondered why, with last year's low interest rate environment, there were not opportunities to advance refund some of their debt that was carrying a higher than market rate interest rate. As you may be aware, when a city issues refunding debt, the proceeds are placed into an escrow and invested in U.S. government securities. In order for the refunding to generate the greatest amount of savings, the investment rate on the treasuries needs to be as close as possible to the interest rate on the new bonds.

In the third quarter of 2004, there was a significant amount of negative arbitrage (the difference in the interest rate on the escrow and the interest rate on the bonds). This year, treasury rates have greatly increased meaning the opportunity for advance refunding is significantly better now than it was last year.

Young suggested municipal officials who considered advance refunding last year but found that negative arbitrage ate up all the potential savings should take another look and see if the market has improved to the point they can take advantage of a refunding.

He briefly discussed how interest rates have moved over the last two months. As the market fears of higher oil prices adversely affecting the economy subsided during August, we saw rates trending downward. When Hurricane Katrina hit the Gulf Coast, the federal government committed to rebuilding southern Mississippi and southeastern Louisiana. This will cause a tremendous amount of borrowing by the federal government and there is a growing concern this will push our interest rates up. September saw a steady increase in long-term rates. But, our rates remain quite attractive when compared to rates over the past thirty years. He said it is still an extremely good market for borrowing money on a long-term basis.

The chair thanked Young for his presentations over the years. He then called upon Will Martin, Property Tax Division, Alabama Department of Revenue, for his

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# THE LEGAL VIEWPOINT

By Ken Smith  
Deputy Director/Chief Counsel

## Probable Cause

The Fourth Amendment to the United States Constitution provides, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.”

Like many constitutional provisions, this one is not a model of quality drafting. Law review articles frequently complain the courts have misinterpreted it and even courts acknowledge the law interpreting this amendment is confusing. However, everyone agrees the Fourth Amendment is one of our most basic protections under the Constitution.

All searches and seizures by government agents are controlled by the Fourth Amendment. This amendment contains two separate clauses: a prohibition against unreasonable searches and seizures, and a requirement that warrants be supported by probable cause. If you read it literally, the amendment does not require warrants for searches and seizures, nor does it require searches and seizures be supported by probable cause. However, the U.S. Supreme Court has imposed a presumptive warrant requirement for all searches and seizures, and has required probable cause in order for a warrantless search or seizure to be reasonable. There are, of course, a few exceptions to these general rules.

Municipal judges, court clerks, magistrates and police officers confront Fourth Amendment issues on a daily basis. Court officers use the probable cause standard to determine whether to issue warrants and to decide whether a person arrested without a warrant should remain in custody. And, in order for police officers to search a dwelling or arrest a person without a warrant, they must decide if probable cause justifies their actions. This article is designed to provide these individuals with a basic overview of probable cause principles that courts have developed.

### The Exclusionary Rule

The Fourth Amendment is a balance between individual liberties and social costs. By regulating searches and seizures, the amendment limits the effectiveness of criminal and civil law enforcement. The amendment requires police and courts to structure their investigative and evidentiary techniques by restricting many of the most effective means of detecting law-breaking and apprehending law-breakers. If police go beyond the boundaries of the Fourth Amendment, courts will refuse to allow improperly obtained information into evidence. This is called the exclusionary rule.

The exclusionary rule provides any evidence obtained as a result of an illegal search not be admitted in evidence against the defendant. Not only is evidence directly obtained from the illegal search excluded but also any information police gather through the use of the improper evidence. This is known as the fruit of the poisonous tree.

There are exceptions to the exclusionary rule. For instance, if the prosecution can demonstrate evidence was obtained from an independent source or discovery of the evidence was inevitable, it may use the evidence to prosecute the defendant.

The exclusionary rule also prohibits the introduction of any evidence obtained without probable cause even when a search warrant has been issued by a judge or magistrate, unless officers act “in ‘objectively reasonable reliance on a warrant issued by a neutral, detached magistrate, conduct a search and the warrant is found to be invalid, the evidence need not be excluded.’” *Rivers v. State*, 695 So.2d 260, 262 (Ala. Crim. App. 1997), citing *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984).

The court has recognized only four circumstances in which the good-faith exception does not apply: (1) when the magistrate or judge relies on information the affiant knew was false or would have known was false except for reckless disregard for the truth; (2) when the magistrate wholly

*continued next page*

abandons his or her judicial role and fails to act in a neutral and detached manner; (3) when the warrant is based on an affidavit so lacking in probable cause that belief in its existence is unreasonable; and (4) when the warrant is so facially deficient the executing officer cannot reasonably presume its validity. *Straughn v. State*, [Ms. CR-01-1378, May 30, 2003] \_\_\_ So.2d \_\_\_ (Ala. Crim. App. 2003).” *State v. Odom*, 872 So.2d 887 (Ala. Crim. App. 2003).

### History of the Fourth Amendment

Why do we have the Fourth Amendment? Why did the founding fathers feel it was necessary to include the right to freedom from unwarranted invasion by the government in the Constitution? To understand this, you have to examine colonial policies regarding search and seizure before the American Revolution.

British policy at the time allowed for the issuance of general warrants. One particular type of general warrant, a writ of assistance, was used to discover goods for which a custom tax had not been paid. Essentially, a writ of assistance authorized customs officials, in cooperation with local constables, to enter any home, shop, cellar, warehouse or other place and seize uncustomed goods. They were given the power to break open doors, chests, trunks and other packages on the barest suspicion uncustomed goods were hidden inside. In short, officials could search anyone or anything on mere suspicion. The warrant could be received without any particularized information or oath by the official. Probable cause was not required. Worse yet, once issued, the writ lasted for the life of the monarch.

This intrusion into colonists’ lives was a contributing cause of the American Revolution. In 1774, colonial complaints regarding the widespread abuse of the writ of assistance fell on deaf ears. Once the Revolution began, the new states quickly enacted declarations of rights, which set out specific rights, including limitations on governmental searches.

Perhaps the greatest concern to the drafters of these documents was that procedural protections be put into place. Declarations generally required warrants to be issued upon oath or affirmation and specifically state the person or place to be searched or seized.

This indicates warrants themselves were not the main reason for objection – that is, the fact that government officials received warrants to search homes or to arrest individuals was not the problem. Instead, it was the lack of procedural protections. Although the Fourth Amendment only requires probable cause to receive a warrant, it makes no sense to say an arrest or a warranted search be based on probable cause; searches without a warrant do not have to have probable cause. Therefore, courts have read into the Fourth Amendment a probable cause requirement restricting

law enforcement officers from searching or seizing anyone or anything without probable cause.

### What is Probable Cause?

It is important to note whether a warrant is obtained or not, probable cause must exist before a search or seizure by any governmental agent. Allowing the development of probable cause after the fact becomes more difficult. Imagine the pressure on a judge to look the other way when an illegal search proves a defendant was involved in illegal activity. Requiring warrants ensures the fact-finding regarding justified police behavior is done prior to a search or a seizure.

The warrant requirement also reduces the possibility police would commit perjury to justify the discovery of incriminating evidence. The motivation to “invent” a justification for a search or an arrest is lessened when police don’t know whether the search or arrest will provide evidence of criminal activity.

Alabama law also recognizes the importance of individual privacy against improper governmental intrusion. The Alabama Constitution contains a provision similar to the Fourth Amendment: Section 5, Alabama Constitution, 1901, states, “That the people shall be secure in their persons, houses, papers, and possessions from unreasonable seizure or searches, and that no warrants shall issue to search any place or to seize any person or thing without probable cause, supported by oath or affirmation.”

In *Brown v. State*, 42 Ala. App. 429, 167 So.2d 281 (1964), the Alabama Court of Appeals stated the purpose of this provision was to prevent all unlawful intrusions into the private lives of citizens. Further, in *City of Bessemer v. Eidge*, 162 Ala. 201, 50 So. 270 (1909), the Alabama Supreme Court acknowledged it is often better that crimes go unpunished than citizens have their privacy invaded and their books and papers exposed or destroyed by improper search.

Chapter 7, Title 15 of the Code of Alabama concerns the filing of complaints with judges and magistrates and the subsequent arrest of the accused. A complaint is an allegation made before a judge or magistrate stating a person is guilty of a designated public offense. The judge or magistrate is required by Section 15-7-2 to examine the complainant and witnesses under oath and take a deposition in order to establish the accused is guilty of the offense to which he or she is charged. The judge or magistrate must determine whether the person swearing to the complaint and any other witnesses are credible. Section 15-7-3, Code of Alabama, 1975, provides a judge be “reasonably satisfied ... that the offense complained of has been committed and that there is reasonable ground to believe that the defendant is guilty thereof.”

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# Legal Notes

By Lorelei A. Lein  
Staff Attorney

### DECISIONS FROM OTHER JURISDICTIONS

**Attorney/Client Privilege:** A municipality may invoke attorney-client privilege in civil litigation, and such privilege is not waived when a municipal employee, sued in their individual capacity, asserts a qualified immunity defense based on the advice of the municipality’s counsel and information regarding such advice is sought through discovery. *Ross v. Memphis, Tenn.*, 423 F.3d. 596 (6<sup>th</sup> Cir. 2005).

**First Amendment:** A municipality’s unwritten policy banning signs and banners on highway overpasses directed at drivers below the overpass is a content-neutral place and manner restriction narrowly tailored to serve the municipality’s interest in traffic safety and is sufficiently clear as to the prohibited conduct so as not to be impermissibly overbroad or vague under the First Amendment to the United States Constitution. *Faustin v. Denver, Colo.*, —F.3d—, 2005 WL 2235435 (10<sup>th</sup> Cir. 2005).

**Tort Liability:** A public employee who brings a “class of one” equal protection claim against a public employer can prevail only by demonstrating that no reasonably conceivable set of facts could provide a rational basis for the challenged action by the public employer. *Lauth v. McCollum*, —F.3d—, 2005 WL 2277119 (7<sup>th</sup> Cir. 2005).

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on-line at  
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### ATTORNEY GENERAL OPINIONS

**Courts:** The provisions of Section 11-47-7.1 of the Code of Alabama 1975 allow for a municipality to contract to pay a fee from the corrections fund to a county E911 center to enter and maintain the municipality’s warrants into the NCIC database. To do so, the municipality must determine payment of the fee is a necessary expenditure for the operation and maintenance of the jail and court system. 2005-193.

**Courts:** Where the municipal general fund receives no more than seven dollars per case, a city council is authorized to increase court costs distributed to the general fund by ten dollars. 2005-194. NOTE: Pursuant to Sections 12-14-14 and 12-19-172 (d) of the Code of Alabama 1975, the maximum amount a municipal court may distribute per case into a municipality’s general fund is seventeen dollars.

**Courts:** Because Rule 30.3(d) of the Alabama Rules of Criminal Procedure requires a defendant provide written notice of appeal and an appeal bond, a municipal judge lacks the authority to impose conditions restraining a defendant’s behavior pending a *de novo* appeal. 2005-195.

**Elections:** The purchase of a voting system and related professional services does not have to be competitively bid if the professional services provided by the vendor are inextricably intertwined with the particular voting system purchased. 2005-197.

**Fire Protection:** The chief of a municipal fire department or a municipally sanctioned volunteer fire department who has complied with APOST standards may, if directed by the state fire marshal, issue a citation for the violation of a state law related to the matters set forth in Section 36-19-2 of the Code of Alabama 1975, relating to fire protection. 2005-198.

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# Federal Legislative and Regulatory Issues

Mary Ellen Wyatt Harrison  
Staff Attorney

## Continuing Resolution for Federal Budget Passed

In early October, Congress passed a six-week continuing resolution in effect until Nov. 18, 2005. The resolution funds all programs at the lowest level of three figures: the enacted 2005 fiscal level, the House 2006 passed fiscal level or the Senate 2006 passed fiscal level. At the resolution level, the funding will seriously hinder many programs essential to local governments. Some of the programs affected include the CDBG program, the Section 8 Tenant-Based Assistance Account and the Hope VI program. In addition, transportation spending levels will be limited, leading to states receiving only a percentage of their annual apportionments based on last year's level. Community Services Block Grant (CSBG) funding was cut in half by the resolution and lawmakers from both parties are diligently working to restore funding levels. The CSBG program helps provide low-income families with meals, transportation, job training and home-heating assistance. Senator Tom Harkin, D-Iowa, proposed CSBG funding be maintained at the FY 2005 level under the continuing resolution but the proposal failed by a 39-53 vote. It will be better for Alabama's municipalities if these funding levels are restored to their highest level as passed by either the Senate or the House for FY 2006.

## Homeland Security Funding for Local Government Funding Cut

Congress passed H.R. 2360, a \$30.8 billion homeland security appropriations bill for fiscal year 2006. The bill cuts some grants to state and local governments and alters the funding formula to rely more on an area's perceived threat. The largest perceived threat funding alteration in the bill concerns first responder grants. In the new bill, \$425 million in grants will be allocated based on the 2005 per capita formula. Of that money, at least \$20 million must be available for interoperable communications grants. The balance of the moneys for state and local governments will be distributed by the secretary of Homeland Security to the states based on threat level. Formula grants were also negatively affected in H.R. 2360. In FY 2005, Congress

provided \$1.1 billion, and the administration requested a little more than \$1 billion for the 2006 fiscal year; however, the final bill passed with a mere \$550 million. The national pre-disaster mitigation fund was cut in half, from \$100 million to \$50 million. The administration requested more than \$150 million for national pre-disaster mitigation funding for the 2006 fiscal year. The programs receiving additional focus and funding include border protection programs and emergency management performance grants.

## Communication for First Responders

In light of Hurricanes Katrina and Rita, the Assure Emergency and Inoperable Communications for First Responders Act (EICOM) was introduced on Sept. 19, 2005. At press the bill had 11 sponsors. As drafted and amended, the bill will require the Office for Emergency Communication, Inoperability and Compatibility (ECIC), to conduct a baseline nationwide assessment of inoperability compatibilities. If passed as currently written, the bill will require ECIC to evaluate the state of emergency communications compatibilities, compile a list of best practices and study the feasibility of developing mobile communications compatibility (modeled on the Army Signal Corps) that would be deployed to support emergency communications in the event of a disaster. The bill would also require biannual reports to Congress. The bill directs the Department of Homeland Security to develop two pilot projects and evaluate strategies for providing and maintaining emergency communications between first responders and government officials in the event of a disaster where significant damage to critical infrastructure has occurred. The bill proposes grant programs to assist state and regional consortiums in achieving short-term and long-term solutions for emergency communications and inoperability. The grant program will be funded at \$400 million in fiscal year 2006 and will increase to \$1 billion by fiscal year 2010. On Sept. 29, 2005, Senate Bill 1725 was placed on the Senate Legislative Calendar. Its calendar number is 232.

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### **Additional Hurricane Aid Passes House**

In House Bill 3896, the House unanimously passed the Hurricane Katrina Emergency Relief CDBG Flexibility Act of 2005. The bill temporarily suspends certain requirements under the CDBG program for communities affected by Katrina and Rita. The bill waives the 15 percent public services cap for CDBG grants and also waives the public hearing requirements. The program was designed to give local governments some flexibility in providing homebuyer down payment assistance, fair housing counseling, health services and child care to hurricane victims. The House also unanimously passed H.R. 3894, the Hurricane Emergency Housing Act of 2005, which waives some eligibility requirements, inspections and tenant contributions under the Section 8 rental housing voucher program for people left homeless after Hurricane Katrina. Both measures will now go to the Senate for consideration.

### **Head Start Funding May Face Wall in the Senate**

The House voted to reauthorize the Head Start program through 2011. The House reauthorization budgeted \$6.9 billion for fiscal year 2006 and nearly \$29 billion for the period 2007-2010; however, a controversial amendment excluding religious programs, provided by nondiscrimination provisions of the bill, may stall approval in the Senate. The Head Start bill also contains reforms aimed at creating more transparency and accountability from providers, requiring annual audits for grantees and annual financial reports to be made public. The bill also authorizes the secretary of Health and Human Services to cancel funding to providers at any time during the funding cycle. The House struck an amendment allowing companies to net a profit from the program. An amendment to suspend the National Reporting System survived.

### **Department of Justice to Hold Conference on Youth**

The Department of Justice is hosting a national conference aimed at reducing juvenile crime and truancy. The program will be held in January for policymakers, educators, social workers, faith-based leaders, community leaders and law enforcement professionals. The conference, "Building on Success: Providing Today's Youth With Opportunities for a Better Tomorrow," will center on four themes: trends in victimization, delinquency and the juvenile justice system- helping youth with the greatest need; strengthening families; holding programs and ourselves accountable; and identifying what works. The meeting will be held in Washington, D.C., Jan. 10-13, 2005, with a pre-conference on Jan. 9. The deadline for registration is Dec. 9, or whenever capacity is reached. For more information, visit [www.juvenilecouncil.gov/2006NationalConference](http://www.juvenilecouncil.gov/2006NationalConference), e-mail at [registration@jjrc.org](mailto:registration@jjrc.org) or call (301) 519-6449. The

registration fee is \$450 per individual attending and the pre-conference fee is \$100.

### **Grant Funds to Clear Waterways of Debris**

The National Oceanic and Atmospheric Administration's Marine Fisheries Services is administering a marine debris removal grant program designed to catalyze the implementation of community-based prevention and removal projects benefiting coastal habitats, waterways and NOAA trust resources. Projects should have strong "on-the-ground" habitat components to provide educational and social benefits for individuals and communities in addition to long-term ecological habitat improvements. Debris can include derelict fishing gear - abandoned traps, nets and lines - and manufactured or solid waste material dumped or washed into a marine environment. The proposed project should include both removal and prevention programs, as well as an outreach or volunteer program. Application, submission information and evaluation criteria for the NOAA community-based Marine Debris Prevention and Removal Project Grants can be found at <http://fedgrants.gov/Applicants/DOC/NOAA/GMC/NMFS-HCPO-2006-2000351/listing.html>. Grant applications must be sent to [grants.gov](http://grants.gov) no later than Dec. 12, 2005. For more information, contact Elizabeth Fairey at (301) 713-3459, or Robin Bruckner at (301) 713-0174.

### **Hurricane Ravaged Airports Receive Funding Support of Senate**

The Senate unanimously passed a bill providing 100 percent funding to rebuild airports damaged by Hurricanes Katrina and Rita. The bill was introduced by Sen. Trent Lott, R-Miss., and authorizes the Department of Transportation to make emergency repair and reconstruction funds available, which should total between \$15 and \$20 million. The bill would also waive certain environmental regulations. The House is expected to take up the measure in the coming weeks. ■



Only if the judge or magistrate is “reasonably satisfied” the offense complained of was committed by the person accused can he or she issue an arrest warrant. The term “arrest warrant” is defined in Section 15-7-4, Code of Alabama, 1975, as “an order in writing, issued and signed by a judge or magistrate, stating the substance of the complaint and directed to a proper officer, commanding him to arrest the defendant.” It is necessary to have the arrest warrant signed by a judge or magistrate to show the judge or magistrate was satisfied by the evidence and probable cause exists for the issuance of the warrant. In *Johnson v. State*, 82 Ala. 29, 2 So. 466 (1887), the court pointed out an arrest warrant may only be issued if probable cause exists

Thus, probable can be established from other sources outside the information gathered by police. For instance, in *Ex parte City of Gadsden*, 718 So.2d 716 (Ala. 1998), the Alabama Supreme Court held a city plumbing inspector had probable cause to have a homeowner arrested for plumbing without a license. In this instance, the plumbing inspector was the one with personal knowledge the accused had committed the crime.

Additionally, even “[a] ‘bare bones’ affidavit can be validated if it is supplemented with additional facts which the magistrate considered before determining that probable cause was present. *Crittenden v. State*, 476 So.2d 632, 634 (Ala.1985).

But what is probable cause? Black’s Law Dictionary defines the word “probable” as “having the appearance of truth,” that which is “supported by evidence which includes the mind to believe, but leaves some room for doubt.”

The phrase “probable cause,” means “having more evidence for than against. An apparent state of facts found to exist upon reasonable inquiry which would” lead a reasonable person to believe the accused committed the crime for which he or she is charged. Probable cause is “Reasonable grounds for belief that a person should be arrested or searched. Probable cause exists where the facts and circumstances would warrant a person of reasonable caution to believe that an offense was or is being committed. Probable cause is the existence of circumstances which would lead a reasonably prudent man to believe in the guilt of an arrested party; mere suspicion or belief, unsupported by facts or circumstances, is insufficient.” Black’s also notes “The finding of probable cause for issuance of an arrest warrant may be based upon hearsay evidence in whole or in part.”

The Alabama Supreme Court has defined probable cause as a reasonable ground for suspicion, supported by facts sufficiently strong to warrant a cautious person of an

accused person’s guilt. *Gulsby v. Louisville & N.R.R.*, 167 Ala. 122, 52 So. 392 (1910). The court stated it is essential, at the time the oath is made, the person have knowledge leading them to reasonably believe the accused is guilty. It must be more than a mere unsworn statement of the accused’s guilt. *Ex parte Rhodes*, 202 Ala., 79 So. 462 (1918). “Probable cause to arrest exists when, at the time the magistrate issues the warrant or the officer makes the arrest, there are reasonably trustworthy facts and circumstances sufficient, given the totality of the circumstances, to lead a reasonable person to believe there is a fair probability that the suspect is committing or has committed an offense.” *Swain v. State*, 504 So.2d 347 (Ala. Cr. App. 1986).

What does this mean? Let’s take the elements in order. First, remember an alleged criminal charge must be based on a finding of probable cause, which necessarily requires the development of facts. The probable cause test is an objective one; that is, would an objective person of reasonable intelligence believe circumstances indicate the accused is guilty?

The second thing to remember is probable cause does not mean beyond a reasonable doubt. In other words, when an arrest warrant is requested, magistrates need not be absolutely convinced of the accused’s guilt concerning the alleged crime. The judge or magistrate needs only enough evidence to be reasonably convinced the person may be guilty. In the case of a search warrant, the execution of the search must be likely to obtain evidence of guilt. Probability, not proof necessary to convict, is the standard for probable cause.

Black’s Law Dictionary says hearsay evidence may be used to prove the existence of probable cause. Probable cause hearings don’t have to be conducted according to specific evidentiary rules. Judges and magistrates are free to consider evidence that would be inadmissible in court.

The accused does not have the chance to refute the allegations at this point. In *Lomax v. Alabama*, 629 F.2d 413 (5<sup>th</sup> Cir. 1980), the Fifth Circuit Court of Appeals noted a probable cause hearing is an *ex parte* hearing, meaning it is held without the other party being present and having the opportunity to address the charges. In short, to determine probable cause, both parties need not be present.

Although there are exceptions, probable cause generally concerns whether or not police obtain a warrant. The warrant requirement means an impartial judicial officer must assess whether probable cause exists. As the U.S. Supreme Court has said:

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“The point of the Fourth Amendment is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.” *Johnson v. United States*, 333 U.S. 10 (1948).

To be neutral, a magistrate cannot be directly associated with a police department. This also means magistrates cannot have a financial interest in the outcome of cases. Associations with the complaining parties or the accused indicate a lack of impartiality.

**In *State v. Garrison***, — So.2d —, 2005 WL 1491994 (Ala. Crim. App. 2005), the court stated:

“The task of the issuing magistrate [or judge] is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate [or judge] had a ‘substantial basis for ... conclud[ing]’ that probable cause existed.” *Illinois v. Gates*, 462 U.S. 213, 238-39, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).

Appellate courts give great deference to a magistrate’s determination of probable cause to issue a warrant. *Benge v. State*, 551 So.2d 430 (Ala. Crim. App. 1989). This must not be taken as leeway to act hastily or recklessly, though.

A magistrate must consider the facts and circumstances in a practical, common sense manner and make an independent assessment of the existence of probable cause. This requires the development of essential facts which support the crime charged, and that the accused committed the crime. The magistrate should never become a mere rubber stamp for issuing warrants. As the court noted in *Ex parte Perry*, 814 So.2d 840 (Ala. 2001), “Sufficient information must be presented in an affidavit in support of a ... warrant to allow the magistrate to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others.”

### **Exceptions to the Warrant Requirement**

As noted above, police officers must generally obtain a warrant prior to searching or arresting someone. In certain instances, however, the law recognizes that requiring the police to obtain a warrant would place unreasonable restrictions on them. The scope of a warrantless search based on probable cause is no narrower and no broader

than one authorized and supported by probable cause. *Vogel v. State*, 426 So.2d 882 (Ala. 1982).

In *Dixon v. State*, 476 So.2d 1236 (Ala. Crim. App. 1985), the Court of Criminal Appeals listed the exceptions to the requirement for an officer to obtain a warrant prior to searching a person or property. These exceptions are:

1. Plain view;
2. Consent;
3. Incident to a lawful arrest;
4. Hot pursuit or emergency situations;
5. Exigent circumstances coupled with probable cause;
6. Stop and frisk situations.

In *Smith v. State*, 606 So.2d 174 (Ala. Crim. App. 1992), the Court of Criminal Appeals discussed the plain view and exigent circumstances exceptions. In this case, police observed two individuals smoking something in a vehicle parked outside a bar. Police continued watching as the car drove away. At a red light, the driver turned left after using his right-turn indicator. The police stopped the vehicle.

While talking to the driver, one of the officers smelled burnt marijuana coming from the car. He also saw “quite a bit of green plant material in the seat on the driver’s side.” Based on this observation, the officer opened the console and discovered a plastic bag of marijuana.

The court said the plain view exception justified the search because the officer 1) had prior justification for the intrusion; 2) came across the evidence inadvertently; and 3) immediately recognized the contraband as evidence of a crime.

Exigent circumstances existed because the car was mobile. All evidence of wrong-doing could be disposed of by the time the officers obtained a warrant. After making a routine traffic stop justified by the observation of a traffic violation, the odor of marijuana and the observation of green plant material in the seat coupled with the mobility of the vehicle was enough to provide probable cause to search in this case.

In order to search a vehicle, police must have probable cause. Police may, though, erect a DUI or license checkpoint and stop every vehicle or every vehicle on a regular basis (every third vehicle, etc.) without probable cause. At these stops, probable cause to search vehicles may develop.

Police may also conduct a warrantless search incident to a lawful arrest. If the arrest was permitted, police may search the individual or his or her personal belongings regardless of whether they fear for their safety or believe they will discover evidence of a crime. The search may extend to the area within the arrested person’s immediate reach or to the immediate area if the police reasonably believe accomplices are in the area.

A person may consent to a warrantless search. In *Welden v. State*, 328 So.2d 630 (Ala. Crim. App. 1976), the

defendant voluntarily opened the trunk of his car, where police discovered illegal liquor. The consent must be given voluntarily. The person giving consent has the right to limit the scope of the search and to revoke consent at any time.

In *Terry v. Ohio*, 392 U.S. 1 (1968), the U.S. Supreme Court authorized police officers to stop individuals without probable cause if the officer has an articulable and reasonable suspicion that criminal activity exists. Officers may conduct protective searches of individuals in order to discover whether they are carrying dangerous weapons. The purpose of these searches is to protect the police officer and others. If an officer goes beyond the purpose of the search, any evidence seized cannot be used against the defendant.

For instance, in *Ford v. State*, 680 So.2d 948 (Ala. Crim App. 1995), a police officer ordered the defendant to remove the contents of his pocket. The defendant refused to comply and the officer attempted to search the pocket himself. After a scuffle, the officer revealed the defendant was carrying crack cocaine. The court stated the officer did not inadvertently discover the narcotics under the reasonable mistaken belief he was feeling a weapon during a pat down. Because the evidence indicated the officer was looking for drugs and not weapons in the defendant's pocket, the search and subsequent seizure was ruled improper. Police may also search and arrest fleeing felons if they are acting in hot pursuit.

### **Probable Cause after Arrest**

Magistrates and judges must also determine whether probable cause existed for arrests made as a result of unwarranted searches. In *Gerstein v. Pugh*, 420 U.S. 103 (1975), the U.S. Supreme Court decided whether an individual arrested without a warrant must be afforded a judicially rendered probable cause determination before extending pretrial detention.

The defendants in *Gerstein* were arrested in Dade County, FL, and each was charged with a number of offenses. Under Florida law at the time, an individual arrested without a warrant could demand a probable cause determination only after 30 days. Thus, a person could be detained for up to 30 days before a judicial determination of probable cause was required.

The Supreme Court held this violated the Fourth Amendment. The court based its decision on the Fourth Amendment, common law and previous cases it stated afforded individuals protection from "rash and unreasonable interferences with privacy and from unfounded charges of crime."

The Supreme Court held probable cause determinations, carried out by neutral judicial officers following warrantless arrests, would protect individuals from any abuses of police

discretion. The court noted a preference for the use of arrest warrants, but recognized such a requirement would unnecessarily bind the hands of law enforcement. Thus, warrants are not always necessary. However, the court held that continued detention based on warrantless arrests without a judicial determination of probable cause violated the rights of an arrested individual.

The Supreme Court also based its ruling on the common law rule of an accused person's entitlement to have the strength of evidence against him or her assessed by a neutral magistrate. If the magistrate's examination warranted a belief the crime charged had been committed, the accused would be ordered confined in jail or admitted to bail. Otherwise, the accused was to be released quickly and unconditionally.

Having decided a determination of probable cause is constitutionally required, the Supreme Court attempted to set out rules and guidelines for conducting these hearings. The court stated probable cause hearings don't have to be adversarial processes, making the range of safeguards such as counsel, confrontation, cross-examination and compulsory attendance of witnesses unnecessary. As the hearing becomes more complex and important, the court stated the likelihood of it being held promptly diminishes.

One thing the Supreme Court didn't do in this case was determine how quickly after arrest the probable cause hearing must be held. The justices specifically left this decision to the states, instructing only that hearings be held "promptly." Cases from a number of federal circuits came to different, and sometimes contradictory, conclusions.

In 1991, the Supreme Court was forced to re-examine what constitutes promptness in holding a probable cause hearing. In *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991), Riverside County had a policy of bringing defendants before a magistrate within two days of arrest. The policy excluded weekends and holidays, meaning a defendant could be held up to five days before the probable cause hearing. For instance, a person arrested on Thursday would not be required to see a magistrate until Saturday. Because weekends were not workdays for magistrates, the defendant would have to remain in jail until Monday. If Monday were a holiday, the defendant could stay in jail until Tuesday. The accused in *Riverside* was arrested without a warrant and filed a class action against the county, arguing the county policy violated the Fourth Amendment.

In its majority opinion, the Supreme Court recognized certain pre-hearing delays were inevitable for reviewing documents, for handling the potential of holding a number of hearings and for arranging for counsel. However, the time allotted for these delays must be reasonable.

While the court refused to set a specific time for holding probable cause hearings, it attempted to create a definite

*continued page 23*

# Communities of Excellence continued from page 11

at the 2005 Annual Convention of the Alabama League of Municipalities in Huntsville.

Gov. Bob Riley was on hand to congratulate the mayors of each of the cities as they accepted a \$5,000 grant from ACE for funding a priority economic and community development project as identified by the strategic plan created during the ACE program. Local ceremonies were also held in each community. Alabama Community of Excellence signage for posting at the city's gateway and a framed certificate signed by Gov. Riley and the president of ACE were presented to the city during these ceremonies.

During the League's 2005 Annual Convention, the city of Brewton was also recognized for its completion of Phase II of the ACE program and was declared an Alabama Community of Excellence developmental community. Guntersville and Valley, two other ACE pilot program members, have been declared Alabama Communities of Excellence participants and are working to complete Phase II of the ACE program. Six more communities were selected in 2005 for participation in the ACE program: Atmore, Fayette, Gulf Shores, Heflin, Millbrook and Thomasville.


Assessment visits have been conducted in each of these communities. Fayette and Thomasville have successfully completed Phase I and are preparing to move into Phase II. The remaining communities are in various stages of progress in Phase I.

Applications for the next round of participants will be mailed to the mayors of eligible cities in January 2006. Applications will then be reviewed with participants selected in early spring of 2006. ACE participants are selected according to the level of local commitment to the ACE program, the community's capacity to support the ACE program and the provision of complete and accurate information in the application. With these standards in mind, interested communities should work with their mayors to submit an application.


For more information on the ACE program and application process, contact Stacey Bryan, ACE state coordinator, at (866) 557-0007, or by e-mail at [staceylbryan@earthlink.net](mailto:staceylbryan@earthlink.net). Additional information may also be found on the ACE website, at [www.alabamacommunitiesofexcellence.org](http://www.alabamacommunitiesofexcellence.org). ■

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outer limit for states and local governments. Thus, the Supreme Court established a 48-hour rule requiring that arrestees be brought before a judicial officer to determine probable cause within 48 hours of arrest, not excluding weekends and holidays. This, according to the court, creates a presumption that the state or locality act properly.

Of course, this is merely a presumption. If a defendant can show the hearing was unreasonably delayed, even if a hearing was held within 48 hours, he or she can overcome that presumption. Examples of improper reasons to delay include the gathering of additional evidence to justify the arrest, delays due to ill will and delays just to delay. Any delays, even within 48 hours of the arrest, then, must be reasonable under the circumstances.

In Alabama, Rule 4.3, Alabama Rules of Criminal Procedure, provides that any person arrested without a warrant must be brought before a judge or magistrate for a probable cause determination hearing within 48 hours of the arrest. If not, the person must be released upon the execution of a minimal appearance bond, unless the offense is not a bailable one.

Similarly, Rule 4.3 provides if a police officer arrests an individual without a warrant but releases him or her with a citation or instruction to appear at a later date, the officer must appear before a judge or magistrate and demonstrate the existence of probable cause. If the judge or magistrate determines probable cause does not exist, the individual must be notified their appearance is not necessary. If there is a finding of probable cause, a complaint shall be issued.

Rule 2.4, Alabama Rules of Criminal Procedure, provides a judge or magistrate may subpoena any necessary witnesses in order to make a determination of probable cause. The comment to this rule notes:

“The judge or magistrate is required to determine from the complaint, from any affidavits filed with the complaint, and from any testimony taken that the offense complained of has been committed and that there is probable cause for believing that the defendant committed it.” The purpose served by the rule is consistent with Alabama law and the mandates of the Fourth Amendment to the United States Constitution. In *Giordenello v. United States*, 357 U.S. 480, 486, 78 S.Ct. 1245, 1250, 2 L.Ed.2d 1503 (1958), the United States Supreme Court stated that: “The purpose of the complaint, then, is to enable the appropriate magistrate ... to determine whether the ‘probable cause’ required to support a warrant exists. The [magistrate] must judge for himself the persuasiveness of the facts relied on by a complaining officer to show probable cause. He should not accept

without question the complainant’s mere conclusion that the person whose arrest is sought has committed a crime.” The rule allows the judge or magistrate to examine any witnesses, under oath, that he deems necessary. The rule also makes it clear that the judge or magistrate must subpoena only those witnesses who are deemed necessary by him and that the prosecutor of a complaint cannot require issuance of a subpoena to compel attendance of non-essential witnesses. The requirement of calling ‘necessary’ witnesses does not preclude the use of hearsay testimony even on essential elements of proof, assuming the requirements of the ‘totality of the circumstances test’ are met. See *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).”

## Tort Liability

In *Campbell v. Sims*, 686 So. 2d 1227 (Ala. Civ. App. 1996) a motorist claimed she was stopped by an officer whose only allegation against her was she was driving a “suspicious vehicle.” The officer allegedly ordered her to exit the automobile and “not to say anything.” When she attempted to explain, the officer searched her, her automobile and her purse without permission or probable cause, then grabbed her by wrist and jerked both of her arms above her head, handcuffing her and placing her in the rear seat of his police vehicle before continuing to search the woman’s automobile. The motorist sued under 42 U.S.C. Section 1983, arguing these actions, absent probable cause, violated her rights guaranteed by the U.S. Constitution. Although this case was before the court on a motion to dismiss, meaning the facts had not been properly discovered yet, the court held these facts stated a sufficient claim against the police officer and the city.

Thus, in a proper case, when a public official acts without probable cause he or she may be found liable for damages, since municipalities are liable for the actions of their officers and employees.

For instance, in *City of Birmingham v. Sutherland*, 834 So.2d 755 (Ala. 2002), the Alabama Supreme Court held when an officer has probable cause to make an arrest, he or she is performing a discretionary function in deciding to make a warrantless arrest; thus, the city has discretionary-function immunity under Section 6-5-338, Code of Alabama, 1975. The court, though, made clear this immunity does not apply when an officer acts without probable cause. The court stated, “In determining whether there is probable cause to arrest, it is not necessary that the officer have before him evidence that would support a conviction for the

*continued next page*

offense. He need only have facts and circumstances within his knowledge which are reasonably trustworthy and which would lead a prudent man to believe that the accused committed or was committing an offense.” *Owen v. State*, 418 So.2d 214 (Ala. Crim. App. 1982). These factors must be present, though, for discretionary immunity to apply.

### Cases and Opinions on Probable Cause

The Court of Criminal Appeals has held exigent circumstances and probable cause together justify the search of an envelope found on a patient in the emergency room of a hospital. *Woods v. State*, 695 So.2d 636 (Ala. Crim. App. 1996).

In *State v. Ivey*, 709 So.2d 502 (Ala. Crim. App. 1997), the Court of Criminal Appeals held a police officer did not have probable cause to search a file cabinet protruding from the trunk of a vehicle he stopped.

The Alabama Court of Criminal Appeals held a police officer who saw a pistol on the floorboards of an illegally parked vehicle did not have probable cause to search the vehicle. *Lykes v. State*, 709 So.2d 1335 (Ala. Crim. App. 1997).

In *Hill v. State*, 665 So.2d 1024 (Ala. Crim. App. 1995), the Court of Criminal Appeals held an officer had probable cause to arrest a defendant for public intoxication and the officer had the same authority as a private citizen to arrest the defendant outside the officer’s county of jurisdiction.

The Alabama Supreme Court, under the “plain-feel” doctrine, adopted three prerequisites for a police officer’s seizure of contraband: (1) the officer must have a valid reason for the search, such as a pat-down permissible under *Terry*; (2) the officer must detect the contraband while the *Terry* search for weapons legitimately and reasonably is in progress; and (3) the incriminating nature of the object detected by the officer’s touch must be immediately apparent to the officer so that before seizing it the officer has probable cause to believe the object is contraband. Therefore, the Alabama Supreme Court held the police officer was not entitled to seize a plastic box containing crack cocaine from the defendant’s pocket under the plain-feel doctrine because criteria (3) was not met. *Ex parte Warren*, 783 So.2d 86 (Ala. 2000).

The U.S. Supreme Court held police officers did not violate the Fourth Amendment by barring a defendant, who had exited his home during an encounter with them, from re-entering the premises unaccompanied while the officers sought a warrant to search the home for drugs. The court found the police officers had probable cause to believe the defendant had hidden drugs in his home and a good reason to suspect he would destroy the drugs if given the opportunity to do so. *Illinois v. McArthur*, 531 U.S. 326 (2001).

If a law enforcement officer has probable cause to believe a person has committed a simple minor criminal offense in his or her presence, he or she may arrest the offender; therefore, a motorist’s Fourth Amendment right to freedom from unreasonable seizure is not violated when arrested, handcuffed and detained in jail for failing to wear a seat belt and failing to fasten children’s seat belts. Anyone arrested in this manner is entitled to a magistrate’s review of probable cause within 48 hours. *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001).

Under Alabama Code 1975, Section 15-10-3, according to the Alabama Court of Criminal Appeals, when a felony has been committed, as long as an officer has reasonable or probable cause no exigent circumstances are required before the officer may make the arrest. Probable cause exists when it is reasonable for the officer to believe, pursuant to the facts and the circumstances within their knowledge, the offense was committed and committed by the suspect. *McWhorter v. State*, 781 So.2d 257 (Ala.Crim.App. 1999); see also Alabama Code 1974, Section 15-10-3. The Alabama Court of Criminal Appeals held a search conducted immediately preceding an arrest may be justified as an incident to the arrest if probable cause for arrest existed before the search. Also, the court held that after arresting the driver of an automobile, an officer may search the passenger compartment of the car as a contemporaneous incident of the arrest. *Hopper v. City of Prattville*, 781 so.2d 346, 350-51(Ala. Crim. App. 2000). ■

## Legislative Recommendations continued from page 8

**C-1.16.** That the League strongly encourages the Alabama Legislature to authorize the creation of central business district boards with the authority to protect the architectural integrity of downtown commercial buildings and ensure that their use promotes economic growth and prosperity.

**C-4.4.** That the need for a viable annexation statute becomes more acute as time passes. The League strongly urges an all-out effort on the part of its members, the Legislature and the state administration to produce a workable answer to this need at the earliest possible time. Furthermore, this committee urges the League Committee on State and Federal Legislation to make a viable annexation statute a top priority.

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

**C-5.2.** That the League continues to urge the repeal of state industrial park acts which threaten the orderly growth and development of our cities and towns. ■



presentation. Martin stated his department supported the League policy which sought legislation to require that actual purchase price be placed on property deeds when real estate is sold. He also reported the department had developed a good working relationship with the Alabama Manufactured Housing Association and now receives a copy of every inspection report on every manufactured home installed in Alabama. The Department of Revenue compiles a report and shares it with local taxing officials so they can be sure the manufactured home is registered or appraised as required by law and the proper local taxes are collected.

The 1992 Tax Incentive Reform Act was passed as an attempt to keep existing taxpaying property from being removed from the tax rolls. The act does prevent the abatement of school taxes. Therefore, all industrial property will pay some ad valorem taxes. Alabama investigates each tax exempt parcel of property to assure it meets the qualifications for an exemption. Martin recommended each taxing jurisdiction report any new annexations to tax collecting officials so jurisdictional boundaries can be corrected in order to collect the proper amount of tax.

The department is continuing its effort to fully implement a GIS system for the state. Last year, the Alabama Department of Revenue received a federal grant to help get aerial photos, hardware and software to build base maps. Many state departments are cooperating on this project. Once the system is operational, it will provide a wealth of information for all levels of government.

In the mid-1970s, federal courts in the *Wysinger v. Boswell* case held that the state had to develop a standard uniform appraisal system for property on a statewide basis. The Department of Revenue was required to reappraise property every five years. This system has cost the state a lot of money and still does not comply with state law requiring taxes to be based on the property's fair market value on October 1 of each year. The state is now trying to go to annual reappraisals in each county. Montgomery County has voluntarily done this each of the last 10 years. Ten counties have moved to annual reappraisals and 20 more are implementing the system this year. All counties should be doing annual reappraisals by 2008. The estimated increase in municipal property tax revenues statewide for the 2005 fiscal year is \$5.7 million for the first 10 counties. It is estimated the increase in municipal property taxes from the 30 counties doing annual reappraisals in fiscal year 2006 will be \$11.5 million. The new system should be fairer to all property owners in Alabama.

Martin was thanked for his presentation. Bob Hill of the Alabama Alcoholic Beverage Control Board was then called upon. Hill told the committee the ABC Board has

regulated traffic in alcoholic beverages for many decades and has regulated the sale of tobacco products since 1997. He stated the ABC Board has a newly renovated and expanded facility. The automated system helps in material handling. The board ships 40,000 cases per week. It handles 475 types of liquor. However, 50 percent of the demand relates to only 19 of the 475 types. Revenues in the amount of \$175 million were distributed this year to the State General Fund, various state agencies and municipal and county governments.

The board issues 14,000 liquor licenses and 8,000 permits for retail sale of tobacco products each year. The ABC Board is actively involved in problems associated with stills and meth.

The board's Responsible Vendor Program works with schools to educate students on alcohol and tobacco. The board also works with employers to train their employees on the laws relating to sales of alcohol and tobacco products. A special emphasis is placed on laws relating to sales to minors.

Twenty-six of the state's 67 counties are "dry" and 12 of these counties have "wet" municipalities. There are 15 "wet" municipalities in Alabama. After the law authorizing a "wet" municipality was enacted in 1984, eight municipalities went "wet" in the first six years. In the last two years, seven more municipalities have gone "wet". Several bills have been proposed in the Legislature in recent years to lower the requirements for becoming a "wet" municipality. Hill stated municipal development and revenue needs have been responsible for the creation of additional "wet" municipalities.

Hill stated applicants located in the corporate limits or police jurisdiction of a municipality seeking an ABC license to sell table wine or spirits must receive municipal governing body approval before the ABC Board will issue the license. Applicants for a beer license are not required to obtain municipal approval but the ABC Board will make every effort to comply with municipal wishes on these matters if possible.

Hill requested any city or town seeking legislation relating to alcohol or tobacco products contact his office for advice and assistance in the effort. By doing so, the municipality can make sure that its proposed law does not unintentionally affect other laws relating to these products.

The chair thanked Hill for his comments. The chair then asked Angelo Trimble from the Alabama Coalition Against Domestic Violence (ACADV) to present his report. Trimble stated domestic violence continues to be a serious problem throughout Alabama. Domestic violence can involve every

*continued next page*

person in a municipality – not just police and court personnel. Domestic violence can reduce standards of living and quality of life. It affects hospitals, insurance costs and security in the workplace. It also can affect workplace productivity.

Since domestic violence is a community problem, it requires a community response. You cannot legislate a solution to domestic violence. The community must recognize it is a serious problem before a solution can be found.

Trimble suggested the following policy changes:

**F-5.16. That the League recognize the effect of domestic violence on the cost of providing services within the municipality, including police, prosecution, court, housing, etc., as well as the potential impact on municipal liability of providing services. Further, that the League recognize that domestic violence is a community problem that requires a community response, and support efforts to organize coordinated community responses to domestic violence (sometimes referred to as domestic violence task forces.) Municipalities are encouraged to assist through use of facilities for meetings and other activities and involving municipal law enforcement, court, housing, prosecution and other departments and staff whose work may involve responding to problems related to domestic violence. Municipalities are also encouraged to proclaim October of each year as Domestic Violence Awareness Month and to participate in public awareness events and campaigns.**

**F-5.17. That the League encourage local Housing Authorities to develop policy guidelines regarding domestic violence cases that support victims and their families and hold perpetrators accountable for their violence, abuse and destructiveness. Often, victims are held responsible for actions of perpetrators over which they have no control. Further, in recognition of the problems related to homelessness, member municipalities and housing authorities are urged to be cognizant of the number of domestic violence victims who are among the homeless as a result of attempts to escape the violence and abuse and develop appropriate responses for this population in conjunction with local domestic violence service providers.**

**F-6.13. That the League encourage member municipalities to adopt written policies and procedures for handling of domestic violence within the municipal workplace, and to identify a person to serve as liaison to the community on matters related to domestic violence and ensure that all officers and employees of the municipality receive instruction on the policies. Further that the League staff work with ACADV to research and recommend a workplace domestic**

**violence policy and procedures that emphasize the devastating effects of domestic violence and appropriate employer responses. The League recognizes the potential for each municipality's having employees who may be victims or perpetrators of domestic violence and the need to develop policies for addressing both to maintain a safe workplace environment for all employees.**

**F-7.4. That the League encourage continuing education of governing officials regarding domestic violence and include such education as a part of its education program for municipal officials, as well as its annual conference. This would ensure that all officials have both a basic working knowledge and an opportunity to develop an in-depth understanding of the dynamics of domestic violence and its effect on the provision of municipal services. Coordination with the ACADV is encouraged in this regard.**

**F-7.5. That the League support educational programs for judges, magistrates and court staff, prosecutors and law enforcement officers. Further, that the League encourage coordination with the Alabama Coalition Against Domestic Violence (ACADV) and its member shelters and service providers in training all municipal officers and staff in the dynamics of, and appropriate responses to, domestic violence. The League urges each municipality to ensure that the Alabama guidelines for law enforcement, prosecution and the judiciary, developed by the ACADV and practitioners in the respective areas, are utilized.**

**F-10.29. That the League urge municipalities' support of the use of certified perpetrator intervention programs as a supplement to traditional sanctions imposed by courts. These programs, which are certified by the ACADV pursuant to Section 30-7-6(a), Code of Alabama 1975, should be utilized as part of a coordinated justice system response to domestic violence. Certified Perpetrator Intervention Programs have been determined to be effective in reducing subsequent violence when judges order defendants to complete the program and follow up to ensure program completion. Failure of courts to monitor defendants' completion makes the programs less effective and, in fact, undermines the overall effectiveness of the court. Certified Perpetrator Intervention Programs could also be utilized by municipalities as a part of their response to employees who are determined to be perpetrators of domestic violence and abuse.**

He also suggested Policy Position F-10.40 be deleted as the substance of the position is covered in another policy.

In conclusion, he stated the ACADV had numerous resources to assist the League and municipalities in the implementation of the proposed policies.

The chair thanked Trimble for his remarks and suggestions and called on Donna Joyner of the Local Tax Unit of the Alabama Department of Revenue. Joyner stated several new things were happening at the department. The department is installing a new tax accounting system over the next five years at a cost of \$22 million and an annual maintenance cost of \$2 million. When the system is fully implemented, it is estimated it will increase tax revenues by \$23 million per year. State and local sales, use, lodgings and rental taxes will be the first taxes collected through the system. This should happen in the fall of 2006.

Joyner also reported that last November the department began operation of a new system allowing local governments to look at their tax reports online. E-Government Solutions recognized the program with a national award. The site allows local governments to look at graphs, charts and other information to analyze their local taxes. Local government clients of the Alabama Department of Revenue have given positive feedback on the system. The department continues to use technology to enhance its services to local government customers and these enhancements have resulted in cost savings.

The department has placed local tax analysts in each of its nine taxpayer service centers across Alabama. These analysts service local governments that are clients of the

department and search for ways to enhance local tax revenues. Electronic tax filing was mandated in October 2003 for most taxes administered by the department. There is a 99 percent compliance rate. Approximately one million tax returns were filed through the system. Nine self-administered municipal revenue departments are now using the system and have given positive feedback. In 2004, \$1.4 million in processing costs were saved by using the system. Most errors were also eliminated. All savings are passed on to the local customers of the department.

The chair thanked Joyner for her presentation and then asked members to review the *Policies and Goals 2005*. Roquemore stated several municipalities had requested the law relating to the appointment of Cater Act Industrial Board members be amended so as to give permissive authority to a municipal governing body to appoint any person who resides within the boundaries of the territory served by the board. The committee agreed to add this policy as well as those recommended by the resource advisors. Council Member H.H. Kuykendall of Lincoln suggested a policy urging municipalities to make sure their annexed properties have been added to the tax rolls in the office of the county tax officials. Mayor Gary Fuller of Opelika moved adoption of the amendments to the policy statement. The motion, seconded by Mayor Melvin Duran of Priceville, passed.

The revised FAIR policy statement is attached to and made a part of these minutes. There being no further business, the meeting was adjourned at 12:15 pm. ■

# The Power To Save A Life

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# EPA provided Alabama Land Recycling Authority with \$1 Million Grant for SRF Program

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

The League's Committee on Energy, Environment and Natural Resources met at 9:00 a.m. on Wednesday, September 14, with Council Member Bill Stewart, Gadsden, Committee Chairman, presiding. Other committee members present were Council Member Sadie Britt, Lincoln; Council Member Mike Ford, Fairhope; Council Member Joe Outlaw, Ozark; Council Member Charles Woods, Childersburg; Council Member Billy Pearson, Lincoln; Council Member Garry Young, Hokes Bluff; Council Member Toulis Jones, Uniontown; and City Clerk/Technical Advisor Kim Wright, Russellville. Resource advisors present were Jim Arnold, Water Division of ADEM; Aubrey White, ADEM SRF Program Manager; Chris Howard of ADEM Air Division; Gerald Hardy, Solid Waste Division of ADEM; and Dr. Dave Bowlin, Alabama Oil & Gas Board. Also present was Gregory D. Cochran, Director of Intergovernmental Relations.

The chair called on Aubrey White, ADEM Drinking Water and Wastewater SRF programs Administrator. White stated that over \$982 million in SRF loans have been granted by ADEM since 1989, on \$360 million invested by Congress and the state Legislature. Alabama is 17<sup>th</sup> in the country in loans closed and 2<sup>nd</sup> in the Southeast. The CWSRF received \$15 million in FY04, \$12 million in FY05 and is slated to receive only \$10 million in FY06. Congress is on track to cease federal funding by 2011. ADEM will make \$50 million available for CWSRF programs in FY06.

The chairman called on Chris Howard of ADEM's Air Division for his comments. Howard stated ADEM is continuing to monitor air quality across Alabama. NOX (combustible engine exhaust) regulations require controls to be in place by this summer and compliance met by 2009 and SO2 (sulfur dioxide) regulations by 2010. Diesel sulfur content regulations will be in place by 2006, and diesel emissions standards phased in by 2007. Jefferson County still remains noncompliant for PM Fine regulations.

The chair called on Jim Arnold, ADEM Water Division. Arnold stated ADEM oversees the permitting of 647 public water systems with 850 millions of gallons a day produced, serving over 4 million people. These systems are over 95 percent compliant. Hurricane Katrina affected 70 systems through loss of power and system pressure and flooding.

All systems affected by Hurricane Katrina should return to service by mid-September. ADEM encourages all systems to have back up water and power sources. ADEM is modifying drinking water regulations requiring back up power supplies for all surface plants and to monitor for daily bacterial standards.

The chair called on Gerald Hardy, ADEM, Solid Waste Program. Hardy discussed 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, cleanup and rehabilitation of proposed sites. The grant program funds provide up to \$200,000 for assessments and an additional \$250,000 for cleanup. The 128 grant program provides federal funds for assessment and cleanup. Currently, 65 entities and 221 sites have entered the voluntary brownfield site cleanup program.

Hardy discussed the Solid Waste Division Performances for FY05. ADEM made 239 inspections, issued 18 landfill permits and investigated 70 complaints. Regulations for the newly passed financial assurance legislation should be ready by December 2005. ADEM estimates the cost of closing a solid waste landfill at \$3.5 million. Hardy also discussed ADEM's having \$6.4 million available for scrap-tire site remediation in FY06.

The chair called on Dr. David Bolin, Assistant Supervisor of the Alabama State Oil & Gas Board. Bolin discussed the vital role of the Oil & Gas Board. Alabama is 9th in the nation in natural gas production. The Oil & Gas Trust Fund generated over \$506 million in 2004 for a fund balance of \$2.6 billion. Bolin discussed increased oil and gas production in Alabama, attributing the rise in activity to high energy prices. Less than 200 oil and gas permits were issued in 1999, while 568 were issued during FY05. Oil wells have increased to 5750 in 2005 from 584 in 1970.

Gregory D. Cochran thanked the resource advisors for their presentations. The steering committee convened to review and discuss the EENR policy statement. After discussion, Chairman Bill Stewart made a motion to adopt the changes to the EENR policy statement. Council Member Garry Young seconded the motion. ■

# DOT Funds Nontraditional Programs Including Bike/Pedestrian Trails, Riverwalks

*Reported by Mary Ellen Wyatt Harrison, Staff Attorney*

The League's Committee on Transportation, Public Safety and Communication met at 9 a.m. on September 13, 2005, at the Alabama League of Municipalities headquarters in Montgomery, AL, with Committee Chair and Mayor of Fairhope Tim Kant presiding. Also present were Council Member Bobby Phillips, Calera; Council Member Christopher Norman, Bay Minette; Council Member Michael Waltman, Citronelle; Mayor Curtis Jackson, Autaugaville; Mayor Wess Etheredge, Daleville; Council Member Fred Watts, Millbrook; Mayor Bobby Payne, Tallassee; Council Member Hall Miller, Tallassee; Council Member Celesia Kilgore, Ohatchee; Mayor David Bradford, Muscle Shoals; Council Member George E. Johnson, Sr., Tusculumbia; Mayor George Roy, Calera; Mayor Billy Joe Driver, Clanton; Council Member Owen Drake, Leeds; League President and Mayor Bobby Hayes, Pelham; Council Member Karyl Rice, Pelham; Council Member Joe Matthews, Tarrant; Council Member James E. Robinson, Trussville; Council Member Johnnie Davis, Greensboro; Mayor Jack Fendley, Pennington; Mayor Harry Mason, Pine Hill; City Manager Britt Thomas, Brundidge; and Administrative Assistant Donna Treslar, Pelham.

Resource advisors present were Cecil Colson, Alabama Department of Transportation (ALDOT); Alan Benefield, Alabama Peace Officers Standards and Training Commission (APOST); Richard Montgomery, State Fire Marshal's Office; Frank Farmer, State Aeronautics Department; Maury Mitchell, Alabama Criminal Justice Information Center (ACJIC); Mark Fowler, Alabama Telecommunication Association; and Bill Hutto, Aviation Council.

The chair called the meeting to order and welcomed those present. He then called on Cecil Colson with the Alabama Department of Transportation to make his presentation. Colson began by offering a brief overview of the departmental structure within the DOT. He is in the bureau of motor programs and state planning, which oversees nontraditional programs such as rural transit, DOT safety functions, the rail section and scenic byways. His department is primarily responsible for enhancement programs, which began in 1993 with the federal ISTEA legislation of 1991. The federal TEA-21 legislation reauthorized the ISTEA

funding, and the most recent legislation out of Congress was the Safe and Flexible Transportation Efficiency Act of 2003, or SAFETEA, which provides more federal funding than any other transportation bill.

Some examples of nontraditional programs funded through the DOT include bike/pedestrian trails, restoration of buildings for transportation purposes, restoration of railroad depots, turning railways into trails and the creation of riverwalks. The project must be related to surface transportation. Colson reported the applications for project funding requests were mailed in May and are due by Sept. 30. The application approval process takes six to eight months. Federal funds requested cover 80 percent of the project and the sponsor must fund the remaining 20 percent. In addition, the sponsor is responsible for preliminary engineering costs.

Colson covered some of the more popular projects and gave examples of each. Colson reported the creation of pedestrian overpasses falls under project guidelines, as Muscle Shoals recently completed one such project. The average cost of a pedestrian overpass is \$600,000. Other projects include Daphne's bike/pedestrian trail, Reform's brick sidewalk project, Phenix City's river walk, bike lanes on roads in several college towns around the state, Bridgeport's depot renovation, the Middle Bay Lighthouse project in Mobile Bay, Cullman's covered bridge project, Uniontown's landscape and pedestrian lighting project and the Chief Ladiga Rail to Trail in Piedmont. He pointed out that if a depot is renovated with project funds, the depot may be used for any type of public function. The use does not have to be related to transportation.

At the conclusion of the presentation, the chair thanked Colson and introduced Alan Benefield from the Alabama Peace Officers Standards and Training Commission (APOST) who thanked the committee for requesting his presence and spent a few minutes going over the responsibilities of his department. APOST trains and certifies all law enforcement officers with the exception of elected county constables and sheriffs. A law enforcement officer is defined as a person with the power of arrest. Benefield went on to state the idea a mayor or council member can

*continued next page*

serve as police chief is a common misconception. Benefield stressed if a city has a police department, the city *shall* have a police chief or an acting police chief. The chief must complete 20 hours of continuing education yearly.

All law enforcement officers (police chiefs excluded) must complete 12 hours of continuing education each year. If they are more than 24 hours delinquent on their training, their certificate can be suspended. A city may make a call to APOST at any time to discern whether or not to suspend an individual law enforcement officer.

Each law enforcement officer must be certified by the commission. There are exceptions for provisional officers. Provisional officers must be enrolled in the academy within six months of being hired by the municipality. Any action taken by a provisional officer after the six-month period may be null and void. A provisional officer cannot work alone. They must be under the direct supervision and control of a certified officer.

Academy costs vary depending upon location. Currently, APOST has the ability to provide \$450 toward training costs for everyone who enters the academy. The Northeast Academy cost is \$1200 and includes room and board. The Selma Academy is \$1100 and includes room and board. Other locations are more expensive because APOST has not reached an arrangement on reduced rates for room and board at hotels in those training areas.

Benefield reported the state is currently researching building a new facility to encompass the police academy, the state trooper academy and the corrections officers training academy. The estimated cost is \$30 million.

Benefield then highlighted the Police Chief's Certification Program, organized in conjunction with League participation. APOST funds the program at \$25,500 per year. The funding provides for the chief's attendance and the administration of the test. Several colleges around the state offer classes on campus. The individual will receive college credit and credit toward the certification program. Law enforcement officers can complete the course and receive a certificate of completion (police chiefs excluded) each session usually has 100 to 150 law enforcement officers.

Benefield also discussed the Special Units Training Program, which is currently being developed to provide standards of special law enforcement units. It will also provide for the formulation of regional tactical units. As with all APOST standards, special units are not required to follow them but a unit must provide reasons as to why it chooses not to do so. In addition, if the unit follows the standards, APOST will address why the standard was developed in the event the standard is questioned.

Benefield closed by adding when a police department hires a new law enforcement officer, he or she must submit an application to APOST. The commission is currently

working on an electronic software program to submit applications. The agency will have access to their records and the records of everyone in the department. The affidavit and physical documents will not be included in the electronic system because they must be signed by the individual law enforcement officer or applicant. ACJIC will help develop the program. APOST plans to have the system operational by January 2007.

At the conclusion of Benefield's presentation, the chair thanked him and introduced Richard Montgomery from the State Fire Marshal's Office. Montgomery is the State Fire Marshal. He stated his department is a division of the Department of Insurance, adding it has been very busy in light of the most recent storms. In 2004, the department investigated 862 fires at the request of Alabama's cities. Seventy-two percent were residential fires; of those, 301 were arson, and 116 arrests were made. Of the 116 arrests, eight arsons were found to have been committed to cover up a murder. Thirty-four of the deaths were undetermined causes. Due to budget constraints of the Department of Forensics autopsies were not available on all deaths.

Montgomery addressed the issue of methamphetamine labs, stating the fire marshal will not investigate sites until the areas are cleaned. State Fire Marshal's Office employees are not trained to investigate methamphetamine labs before they are cleaned by the appropriate crews. Most fires started in methamphetamine labs are accidental; therefore, the maximum charge is a misdemeanor. The state fire marshal pursued a felony law for fires in methamphetamine labs, but the law did not get out of committee. At this point, there is no evidence to show the long-term health effects on children, police, fire investigators and future area residents posed by methamphetamine labs.

Montgomery reported the state fire marshal is involved with the National Fire Incident Reporting System (NFIRS), which is working to standardize fire reporting. The goal is to provide Congress with statistics in order to receive more federal money for fire related programs. In order for a city to receive a fire grant, it must report on NFIRS for three years. The state fire marshal will provide free software and training for this. He went on to stress the State Fire Marshal's Office depends on local inspectors and codes. The state fire marshal has not adopted a code at this time. The office has received calls concerning problems with inspections in hospitals and nursing homes. Montgomery mentioned the State Health Department typically conducts these studies. He also noted hospitals and nursing homes are not designed for complete evacuation in case of fire. It is important municipal inspectors understand the evacuation plan of a hospital or nursing home.

Finally, Montgomery noted the duties of the state fire marshal are listed in the code. Police chiefs, fire chiefs,

mayors and sheriffs are all considered assistants to the fire marshal and their duties are prescribed as well. At the conclusion of Montgomery's presentation, the chair thanked him and introduced Frank Farmer of the State Aeronautics Department.

Farmer began his presentation by addressing state funding trends since 2002. Since 2002, the state has seen an increase in the availability of ALDOT funds for terminal buildings, fueling systems and hangars. In addition to the federal funds, the state has offered funds to complete larger airport improvement projects.

Farmer reported the Airport Development Fund is stronger than ever. The capped aviation fuel tax revenue is being supplemented by ALDOT, and the FAA's 95 percent matching ratio helps stretch both state and local dollars.

The interest in the Surplus Military Field Fund has been accumulating. The FAA GA entitlement funds are now paying for many of the projects funded through the Surplus Military Fund. The Surplus Military Funds will be used to conduct an airport pavement maintenance project during FY 2006.

Farmer stressed the importance of protecting Alabama's airspace by preventing the creation of airport hazards through airport zoning laws. Public airport owners may zone within two miles of the exterior boundary of the airport. ALDOT encourages airport owners to establish height zoning. Without height zoning, when an individual wishes to build a structure within designated airspace, the FAA will conduct an aeronautical study. The study will determine the effect of a tall structure on airport operations. If the airspace needs to be altered the FAA will do so, but the FAA does not have the authority to prevent the construction. Farmer stressed the importance of municipal height zoning within two miles of public airports. Farmer also suggested the committee support legislation to establish a permitting procedure for tall structures around airport facilities.

Farmer closed by stressing the importance of municipal airport security plans. In order to receive ALDOT funding for FY 2006, an airport must have a written security plan. ALDOT provides assistance for airports wishing to develop a plan.

At the conclusion of Farmer's presentation, the chair thanked Farmer and introduced Maury Mitchell with the Alabama Criminal Justice Information Center.

Mitchell said ACJIC was established by the Legislature in 1975. Its primary mission is to share crime-related information. The department operates a statewide crime information network. They are the custodian for the National Crime Information Center (NCIC) files and serve as the connection to the National Law Enforcement Telecommunication System (NLETS) network. Currently, the ACJIC serves 357 law enforcement related agencies

out of 871. ACJIC received \$1,539,000 in grant monies in 2004. To date, they have requested \$11,491,005 in grant monies.

The NCIC is located in Clarksburg, WV. The NCIC handles national criminal history information, national hot file data, the violent crime and terrorism file, and the national instant crime background check system. Hot files are files of missing persons, wanted persons, unidentified persons, deceased persons or body parts, stolen property, stolen vehicles, stolen firearms and stolen securities files.

The NLETS covers all 50 states plus the territories. It includes hundreds of federal agencies, the national driver's license files and serves as a communication link for every law enforcement agency in the United States.

Mitchell further discussed the ongoing projects of the ACJIC. The ACJIC Message Switch System will replace the 1996 UNIX computer. New system features include online auditing, online archiving, reporting modules, photo management and web services. The Messenger Workstation hardware has been purchased. The due date is Dec. 1.

A second ongoing project Mitchell mentioned is the wireless NCIC/LETS program. The wireless program allows law enforcement to run NCIC queries from the phone. It is customized to run LETS queries. Most cell phone carriers have agreed to provide a free phone upgrade (including BlackBerrys) to any officer. The system will be available for any mobile device including laptops. There will be a statewide site license to the local agencies, provided free for three years.

A third project is the [www.alacop.gov](http://www.alacop.gov). Eventually, this program will become the portal for all law enforcement officers in Alabama by providing e-mail for every law enforcement officer; a law enforcement directory; access to LETS, GIS, I/O; news and training events; vendor information; document library and much more.

The department is currently working on a statewide GIS, which will provide aerial views of every inch of the state. Regarding online background checks, Mitchell reported ACJIC is working with AOC to develop a plan which will lower the costs of retrieving the data. They would like to be the primary source of background checks for Alabama businesses and local governments. The ACJIC is currently working on several different types of reform legislation, including homeland security integration, flexibility for information sharing, making it a felony offense to misuse ACJIC information, providing easier low-cost access to criminal background checks, computer forensics and research and development. They are also seeking new funding streams. At the conclusion of Mitchell's presentation, the chair thanked Mitchell and introduced Mark Fowler with the Alabama Telecommunications Association.

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# Potential Tax Credits for Downtown Renovations

*Reported by Lorelei A. Lein, Staff Attorney*

The Community and Economic Development Committee convened at 9:10 a.m. on Thursday, Sept. 15, 2005, at the offices of the Alabama League of Municipalities in Montgomery, AL, with Council Member Lee Garrison of Tuscaloosa, committee chair, presiding. Present at the meeting were: Committee Chair and Council Member Lee Garrison, Tuscaloosa; Technical Advisor and City Manager Sam Gaston, Mountain Brook; Mayor Howard Shell, Atmore; Council Member Carolyn F. Wood, Dauphin Island; Council Member Wallace Sabin, Loxley; Council Member Edward H. Carroll, Sr., Orange Beach; Council Member Brentley Kendrick, Robertsdale; Council Member Newton Cromer, Saraland; Council Member Steve Watson, Headland; Council Member Andy Gilland, Ozark; Council Member Winston T. Jackson, Ozark; Council Member Gary Moore, Tallassee; Council member Ethel Sprouse, Cedar Bluff; Mayor Charles C. Gilchrist, Glencoe; Council Member Sandra Fox Sudduth, Jacksonville; Council Member Harold Ward, Sylacauga; Mayor Sam H. Wright, Sylacauga; Council Member Dianne Prestridge, Arab; Mayor Roy Dobbs, Berry; Mayor Phil Segraves, Guin; Council Member Craig Grissom, Russellville; Mayor Dan Deason, Scottsboro; Mayor Mark McLaughlin, Westover; Council Member Ed Bahr, Westover; Council Member Annette S. Tyler, Westover; Council Member Jesse Mathews, Sr., Bessemer; Council Member Velma Johnson, Midfield; and Mayor Anna Berry, Heflin.

Resource advisors present were: Anita Archie, Montgomery Riverfront Development Foundation; David Hutchison, Alabama Development Office; Lee Flenory, Alabama Department of Economic and Community Affairs; Cindy Yarbrough and Harold Cole, U.S. Department of Housing and Urban Development; Steve Pelham, USDA Rural Development; and Elizabeth Brown, Alabama Historical Commission. Also present was Lori Lein, League Counsel, Alabama League of Municipalities.

Anita Archie from the Montgomery Riverfront Development Foundation led the morning's discussion by sharing with the committee Montgomery's experience with downtown redevelopment and its plans to bring in retail, residential and entertainment opportunities to downtown Montgomery. Archie discussed how Montgomery developed its master plan by holding over 100 public meetings which

ultimately resulted in a 20-year plan for the growth and development of downtown Montgomery. She detailed Montgomery's riverfront area development, discussing the Montgomery Biscuits stadium, a riverfront amphitheater and the impact those have had on the continued development of the area. In addition to the plans for residential, retail and entertainment development, she outlined plans for the redevelopment of the Montgomery Convention Center and the hotel complex to be included in the plans.

Archie emphasized the need for a public/private partnership and how the Montgomery Riverfront Development Foundation, a 501(c)3 corporation, helps facilitate that. She concluded by making suggestions for the committee's policies and goals including the consideration of mixed-use zoning in a manner incorporating both business and residential aspects to the downtown redevelopment.

Elizabeth Brown from the Alabama Historical Commission addressed the committee next. She informed the committee of potential tax credits available for renovations to downtown areas and private funds available through organizations such as the National Trust for Historic Preservation. Brown also stressed the importance of having support from the business community for historic preservation of downtown areas and the need to establish public/private partnerships. She suggested the League encourage options such as mixed-use zoning to achieve successful downtown redevelopment.

Brown then discussed some success stories from Winfield, Florence, Birmingham, Selma and Eufaula. In addition to downtown historical preservation, she addressed the importance of preserving historic neighborhoods. Brown emphasized the importance of property values, which in a well preserved neighborhood result in increased value over time. She also stressed the importance of community involvement in historic preservation. Brown concluded by urging the committee to think about what is truly important in their communities and to understand immediate financial gain should not overshadow preserving the history of the community. She stated replacing a sound, 100-year-old building with a building with a 30-year life span that has limited use results in a culturally defunct development.

David Hutchison, Assistant Director of the Industrial Recruitment Division of the Alabama Development Office



(ADO), addressed the committee next. He discussed briefly the role of ADO in statewide economic development and how ADO partners with entities such as Alabama Power, TVA, the Economic Development Authority of Alabama, the Department of Revenue, the Alabama Industrial Development Training agency, ADEM, ADECA, USDA Rural Development and the Alabama Historical Commission, to assist in recruiting and maintaining industry in the state. Hutchison reminded the committee while companies look at states they actually locate in communities, stressing municipalities' need to consider this when seeking to attract industries.

Hutchison suggested the League encourage municipalities to take a regional approach to economic development rather than only settling for location of industry within their corporate limits. He then went through some of the policies and goals and addressed certain issues. Specifically, in C-5.1, Hutchison pointed out to the committee incentives for new industry also apply to existing industry and are sometimes more accessible; therefore, city's should not forget about potential expansion of existing industries.

Hutchison also addressed C-5.3, pointing out available training opportunities and encouraging cities to have personnel and/or elected officials attend such training. He agreed with C-5.4 but again stressed the need to approach economic development on a regional basis. On policy C-5.7, Hutchison said funding for the Industrial Development Grant program is tied to tobacco taxes and is continuing to have decreased funds available, adding that while the program is on the books, it is completely ineffective.

On policy C-5.9, Hutchison stressed that companies are sophisticated and in order for them to be attracted to rural areas infrastructure needs to already be in place. In discussing C-5.12, he said Alabama has one of the best industrial training programs in the United States and has been used as a model for other states. Hutchison agreed with C-5.15, saying ADO presently does not have authority to assist in retail and commercial development. However, he did say retail business general follows manufacturing.

On policy C-5.16, Hutchison suggested the League emphasize regional economic development. He concluded by urging cities to spend time identifying what type of industry they want rather than taking whatever comes along. If cities identify what they are looking for, ADO can assist accordingly.

Steve Pelham, USDA Rural Development, was the next resource advisor to address the committee. Like Hutchison, he pointed out the partnership between ADO, USDA Rural Development and other entities that share the goal of making Alabama a better place. Pelham said despite several name changes and being a part of the USDA, his office has nothing to do with agricultural production and everything to

do with economic development and improving the quality of life for citizens in rural areas. He pointed out their involvement in preservation, including infrastructure rehabilitation and tourism.

Pelham discussed various funding opportunities available from USDA Rural Development and some success stories in Alabama due, in part, to funding from USDA Rural Development, noting specifically a \$4,000,000 project in the town of Berry. As in years past, he pointed out any funds allocated to Alabama by USDA Rural Development not spent in the state are sent to other states. Pelham added that communities cannot receive funding unless they apply through their grant or loan guarantee programs. He encouraged the committee to continue to support, through its policies and goals, the Alabama Communities of Excellence program. Pelham concluded by discussing how USDA Rural Development was helping to assist with disaster relief in the aftermath of Hurricane Katrina.

Cindy Yarbrough and Harold Cole from the U.S. Department of Housing and Urban Development (HUD) addressed the committee and informed them that, contrary to its name, the agency is not 100 percent about public housing. Yarbrough discussed the various programs HUD offers in the housing area and economic development. She spent much of her time discussing disaster relief efforts and providing the committee with a disaster fact sheet from FEMA covering issues such as sheltering evacuees and reimbursable expenses. Yarbrough also provided the committee with information on the Preserving America Program and the America's Affordable Communities Initiative. She told the committee about the [www.fedgrants.gov](http://www.fedgrants.gov) webpage, and said monies available to communities are posted there on a regular basis. She encouraged committee members to check the site frequently to learn of funding opportunities. Yarbrough concluded by introducing Harold Cole, Director of Community Development for HUD.

Cole discussed funding provided to Alabama in the last year, through both direct and ADECA grants. He discussed Section 8 housing programs and housing programs and funding available for people with AIDS. Cole concluded by discussing new waivers being put in place for allowing money granted under the CDBG program to be redirected for disaster relief in an effort to make monies available faster to communities affected by Hurricane Katrina. Neither Cole nor Yarbrough made suggestions for the committee's policies and goals.

Lee Flenory of the Alabama Department of Economic and Community Affairs (ADECA) was the final resource advisor to address the committee. He provided the committee with a brief history of the CDBG program

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# Alabama Has Second-Highest Obesity Rate in the Country

*Reported by Twanna Walton, League Legal Researcher*

The Committee on Human Development of the Alabama League of Municipalities met at League headquarters in Montgomery, AL, on Thursday, Sept. 22, 2005. Mayor Randall Shedd of Fairview, committee chair, called the meeting to order at 9:06 a.m. and thanked those present for their attendance. The chair asked the secretary to call the roll. The following were present: Committee Chair and Mayor Randall Shedd, Fairview; Council Member Isabell Boyd, Brundidge; Council President Howard Rubenstein, Saraland; Council Member Samuel L. Ellis, Camp Hill; Council Member Jannie C. Jordan, Hurtsboro; Council Member James Harris, Wedowee; Council Member Danny Buchanan, Good Hope; Council Member Tayna Rains, Dutton; Council Member Robert B. Hicks, Alabaster; Mayor Charles W. Penhale, Helena; Council Member Cora Smith, Brighton; Mayor Gordon Donagan, Good Hope; and Council Member Wayne Sellers, Guntersville.

The following were present as resource advisors: Michelle B. Jones, Alabama Department of Public Health; Marie Y. Tomlin, Alabama Department of Senior Services; Eddie R. Johnson, PhD, Alabama Department of Education; Terrie Reid, Alabama Department of Human Resources. Also present were Niko Corley, Communications Coordinator, ALM and Twanna Walton, Legal Research, ALM.

Michele B. Jones, Alabama Department of Public Health, was the first resource advisor to speak. The Department of Public Health provides low-cost health insurance for children under 19 to families who cannot afford it through the ALL Kids Health Insurance program. The program provides a statewide, regional breakdown of children/parents who qualified for the program. Jones added the cap for enrolling children had been lifted and no waiting period exists.

The department reports Alabama's infant mortality rate reached its lowest point ever last year, with only eight infant deaths out of every 1,000 live births. Jones said the infant mortality rate for multiple births had fallen as well, down from 50.5 percent in 2000 to 36.8 percent in 2004.

Jones said 27 more physicians (including subspecialties) were added to rural Alabama health assistance programs, increasing the number of J-1 physicians to 97 and expanding

the number of subspecialties to 15. Under the Immigration and Nationality Act, J-1 Visa waivers are issued to international medical graduates. The visas allow them to enter the United States and attend residency and fellowship programs to further training in their chosen fields of medicine. Resident physicians (U.S. citizens) in some areas are in short supply, and J-1 physicians can help alleviate this strain on local doctors.

Alabama has the second-highest obesity rate in the country; but, this is good news, since the state topped the list last year. Jones said an obesity task force had been created to educate Alabamians about nutrition and the dangers of being overweight, and a pilot program has been implemented in Lowndes, Green and Macon counties. Jones added the state has also created a women's health education program.

Jones said in April of 2005, a legislative action provided for federal funds to be issued to enable 1,232 more people with HIV to continue receiving medicine. In 2004, 426 people in Alabama were on the waiting list for such assistance. After legislation passed, the list shrank to 186 people.

The Department of Public Health assisted greatly with the Hurricane Ivan relief effort in 2004. Jones said the department has instituted an assistance plan for use with other natural disasters. It was used, most recently, during Hurricanes Dennis and Katrina.

Many health professionals were recruited during the aftermath of Hurricane Katrina. Despite their efforts, volunteer nurses, pharmacists and mental health professionals were still needed. Jones said 150 physicians were called upon to volunteer immediate care for Katrina victims.

There is a great need for disaster response counseling for disaster victims after a catastrophe like Hurricane Katrina. The Train the Trainer program was established in an effort to educate personnel in dealing with the challenges of disaster response counseling. Jones said a "special population" task force was assigned to address access to and evacuation of special-needs individuals in disaster-affected communities.

Jones said moving people living in shelters into permanent housing facilities and assisting others who need nursing home

type care are two of the biggest problems her department anticipates after Hurricane Katrina. Jones said the Public Health Department is concerned about the long-term needs of people requiring assisted-care living.

The summer months in Alabama provide prime mosquito weather and habitat. Jones said regarding the West Niles virus, the following have occurred this year:

- Two positive human cases;
- Four positive horse cases;
- Two positive bird cases;
- Seven cases where pools of water held virus-carrying mosquitoes.

The biggest concern regarding the West Nile virus, Jones said, is protecting low-lying and swampy areas like those in Mobile and Baldwin counties and preventing the spread of the virus. In these areas, the department is going to spray for mosquitoes and provide residents with bug spray containing high levels of DEET.

In 2004, the percentage of high school students who smoked fell from 30.2 to 20.4 according to Jones, attributable, she said, to the Department of Public Health's focus on preventing teen smoking. Support is growing in the state to ban smoking in enclosed public places, but no legislation has been passed to enforce such action.

Marie Tomlin, Alabama Department of Senior Services, addressed the committee next. Tomlin said the number of senior employees retiring each year is high and with fewer experienced employees her office (like many others) is training more employees than in the past.

The Department of Senior Services serves as an ombudsman, when needed, for Alabama's seniors in nursing homes and care facilities, and also monitors laws affecting seniors. Its legal services division assists seniors in making wills and filing lawsuits.

Tomlin said there are 354 senior centers in Alabama where wellness programs have been initiated to teach seniors good nutrition and exercise habits. She said her department is looking for exercise equipment for the centers.

Seniors oftentimes face transportation problems. Under the United We Ride program, the department provides transportation for the elderly. Tomlin said her department also wants to expand housing opportunities for seniors and is looking into grant monies available for that purpose.

The Alzheimer's Reach Grants make funding available for Alzheimer's patients to stay in their homes by awarding the caregiver, Tomlin said. These grants are also known as the "let the money follow them" grants, since advocates push that money awarded for the continued care and well being of Alzheimer's patients be allowed to "follow" them wherever they go.

Tomlin said seniors who qualify for the Medicaid waiver program receive varied services, ranging from having meals

provided to assistance with shopping and household chores. This assistance program does not provide round-the-clock care, however. Should a senior require this type of assistance, he or she would need to consider nursing home care.

The Nursing Facility Transition program awards grants to Alzheimer's patients transitioning back into their communities. Tomlin said 20 of these grants had been made available in Camden and Jefferson counties. She said the Department of Senior Services had transitioned 15 individuals so far, with five more waiting to begin transitioning back into their communities.

Tomlin discussed special senior programs, such as SenioRX program, which assists low-income seniors in getting prescription drugs at lower prices. The committee was also made aware of the Senior Health Insurance Program (SHIP), which Tomlin said decreases elderly Alabamians' health insurance deductions to between three and five percent.

The Department of Senior Services worked to help seniors who suffered losses due to Hurricane Katrina receive necessary services and assistance. Due to flooding in coastal areas, some seniors lost expensive appliances such as stoves and refrigerators, she said. Many seniors lost their businesses due to hurricanes Ivan and Katrina, and turning senior centers into relief shelters to provide generator power, oxygen and provisions for disabled seniors in case of a disaster is a priority, Tomlin said.

Eddie Johnson, Ph.D., represented the Alabama Department of Education at the meeting. His department's "Educational Ruler" is a four-part test of what every Alabama student should have: safe and disciplined schools, quality teachers, challenging curricula and effective school leaders. These serve as a grade-by-grade progress measure for preparing students for college, work and adulthood in the twenty-first century.

Safe and disciplined schools, Johnson said, teach students to be responsible for their actions and conduct. Greater parent and community involvement also foster responsibility in students.

Qualified teachers must, under the No Child Left Behind Act, be nationally certified, and along with administrators, staff and other personnel who come in contact with students, they must undergo background checks. Johnson said the state will revoke a teacher's certification as a result of improper conduct.

Johnson said programs like the Alabama Math, Science, and Technology Initiative and the state's reading initiative program make curricula more challenging for students. He said 752 students are engaged in the reading program in Alabama.

*continued next page*

Johnson also discussed the importance of effective principals and teachers in Alabama schools. To this end, the Department of Education has established the Leadership Academy to increase leadership skills in educators. Reports regarding state education information are available on the department's website, [www.edu.state.al.us](http://www.edu.state.al.us).

Johnson said Alabama schools with low-income students outperformed schools with students who were better off financially. He said this is a result of having teachers who care about students' educations. Johnson advised the committee to review policy position H-3.15, concerning municipalities forming their own school districts. He encouraged support of and interaction with local school districts and parent-teacher groups.

Johnson said the department's stance on policy H-3.15 needed to be clarified, as it addresses the total population necessary to establish a school district. He also said teaching English as a second language (regarding the state's Hispanic population) is important to the Department of Education.

The Department of Education has taken the stance municipalities coming together to form a school district need a combined, total population of at least 15,000. Smaller communities shy of that population requirement would not be able to form a system under these guidelines.

Johnson said 15,000 was not an arbitrary number and cautioned that one municipality in a combined district may end up shouldering the administrative and financial responsibilities of the school system should the others drop in population. He maintained the need for a combined population of 15,000 to sustain a school system.

Terrie Reid, Alabama Department of Human Resources, was the last to present. Reid said her department is doing a fine job in the areas of child safety and well being. The Department's Child Welfare Report Card is available on their website, [www.dhr.state.al.us](http://www.dhr.state.al.us).

The Adult Protective Services division of the Department of Human Resources handles adult abuse cases. It works in conjunction with the Department of Public Health, the Department of Senior Services and other state agencies to provide resources to assist the elderly and physically and mentally handicapped citizens who have suffered abuse. Reid said Adult Protective Services also helps elderly people wishing to stay in their own homes do so safely.

The Department of Human Resources collected approximately \$256 million dollars in overdue child support last year. Another one billion dollars is still owed, Reid said.

According to Reid, Alabama was awarded \$37 million from the federal government to assist seven of the communities Hurricane Ivan hit the hardest. Those affected by Hurricane Ivan also received assistance from FEMA and the Red Cross.

After Hurricane Katrina, DHR sent 80 personnel to work in shelters in Mobile, Reid said. Millions of dollars have been issued for disaster relief thus far and she said more would be given out. Reid said Gov. Riley has established a new program to assist those affected by Katrina, and Pres. Bush has also signed a bill to extend temporary assistance to hurricane victims.

DHR's Child Care Program licenses early child care centers and homes. Reid said approximately \$130 million dollars is budgeted for 3,000 early child-care homes and 1,000 early child-care centers. She said 13,000 children remain on a waiting list and \$37 million dollars is needed to place them in these facilities.

Reid said the increased use of crystal methamphetamine among child-care workers causes alarm. She said educating cities on crystal methamphetamine abuse is important, and that law enforcement has the duty of cleaning up this problem.

The chair called for a 10 minute recess. When the meeting reconvened, the committee discussed its policies and goals. The resource advisors were asked to clarify portions of the policy and modifications were made. The attached, recommended changes to the Human Development Policy Statement were approved. There being no further business, the meeting was adjourned at 12:06 p.m. ■

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# TPSC Committee Minutes continued from page 31

The Alabama Telecommunications Association represents most cable companies in Alabama. It is important association members maintain a close working relationship with municipalities. Fowler said the Alabama Telecommunications Association strongly supports League policy and goal statements 10.3 and 10.7. He further recommended the language in 10.5 be changed from “cable” to “cable or multi-channel video”. He noted the telecom industry is moving for statewide franchising to usurp municipal franchising authority. The cable industry opposes this move, and the Texas association has filed suit in federal court. There is currently a video choice act in Congress that will most likely rewrite the telecom bill. This bill will more than likely seek to receive statewide franchising in lieu of individual municipal franchising. At this time the TPSC Committee should watch closely for statewide legislation seeking a similar result. At the conclusion of Fowler’s presentation, the chair thanked Fowler and introduced Bill Hutto of the Aviation Council.

Hutto said the Aviation Council is a young organization representing aviation interests in Alabama. He also pointed

out aviation interests are the same as community interests. Their motto is “airports mean business”, because many businesses will not locate in an area without an airport. The Aviation Council represents airports throughout the state, including six commercial ones. The goals of the Aviation Council are fostering economic development, increasing membership base, providing resources for small and large members, hosting security workshops throughout the state and protecting airspace.

The chair thanked the resource advisors for their valuable contributions. The committee then discussed deletions or additions to the League policy statement. After brief discussion, Mayor Billy Joe Driver of Clanton 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 Council Member Celesia Kilgore of Ohatchee. The recommended changes were adopted unanimously. The recommended changes are attached and made a part of these minutes. The changes will be considered at the business session during the annual League Convention in Mobile in May. ■

# CED Committee Minutes continued from page 33

administered by ADECA. Flennory said if a municipality is classified as an “entitlement city” under the program, it must apply directly to HUD for funding; otherwise, cities should apply through ADECA for CDBG funding. Flennory said program funding continues to decrease. In the past year, ADECA had over \$60,000,000 in applications and only \$28,000,000 available for distribution. Flennory addressed policy C-4.8, relating to the former bonus point system employed by ADECA. He informed the committee ADECA is in the process of finding an alternative to the bonus point system and encouraged municipalities to participate in the department’s regularly scheduled roundtable discussions and public hearings. Flennory concluded by discussing several of the committee’s policies and goals and addressing questions from the committee.

At 12:05 p.m., the chair 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-4.8.** The League urges ADECA to reinstate giving bonus points to municipalities who are applying for CDBG grants but who have never received such a grant ~~be continued.~~ (~~September 2002~~) (September 2005)

**C-5.4.** That the League encourages every city and town to establish an Industrial Development Board or authority and support economic development on a regional basis. (~~September 2003~~) (September 2005)

**C-5.16.** That the League encourage every municipality to consider ~~provide~~ providing for a full-time economic developer or to contract for economic development services and to support economic development on a regional basis when appropriate. (~~August 2004~~) (September 2005)

## **New policies and goals:**

**C-1.18.** That the League encourage every municipality in exercising its authority to zone, to explore mixed-use zoning options to encourage and support downtown redevelopment. (September 2005).

**C-5.18.** That the League encourage municipalities to take advantage of all legislatively authorized incentives, including but not limited to, new market tax credits, Tax Increment Financing (TIF), Downtown Redevelopment Authorities and Improvement districts to improve central business districts. (September 2005).

All the above changes/additions were moved for approval by Mayor Roy Dobbs of Berry and were seconded by Council Member Jesse Mathews, Sr. of Bessemer. The committee then unanimously approved the motion. The chair thanked the committee members for their participation and adjourned the meeting at 12:15 p.m. ■

# Applications Now Available for 57th Annual All-America City Award

Communities across the U.S. are facing incredible challenges, including homeland security, disaster response, public education, rising energy costs, declining tax bases and many others. As it has since 1949, the 2006 All-America City Award will recognize communities that are overcoming their challenges through innovative leadership and collaborative problem solving.

The All-America City Award, a program for the National Civic League (NCL), is the oldest and most prestigious community recognition program in the country. The Award recognizes exceptional community problem-solving and is earned by communities that work cooperatively to address and overcome challenges.

For the past 56 years, the All-America City Award has encouraged and recognized civic excellence. It honors communities of all sizes – cities, town, counties, neighborhoods and regions – in which citizens, government, businesses and volunteer organizations work together to address critical local issues. Communities that address their

challenges in innovative and collaborative ways can become an All-American City.

Since 1949, more than 500 communities have earned this prestigious award. The NCL is now accepting applications for the 2006 Awards. Cities, towns, neighborhoods, counties and regions can apply. **Applications are due March 9, 2006.** The NCL will announce the 30 finalists on April 14, 2006. All finalists advance to the 57th Annual All-America City Awards competition in Anaheim, June 9-12. A national panel of judges from all sectors of society will score all 30 presentations and select 10 winners based on the quality of the collaborative projects each community presents.

For more information, or to receive an application for the 2006 All-America City Award, contact Gary Chandler at the National Civic League. Call **303-571-4343** or write to **aleksh@ncl.org**. Applications and information are available at **www.ncl.org/aac**. The 2006 All-America City Award program is sponsored in part by Marriott International and the Marriott Anaheim. ■

## Obituaries

### Jack Bush

**Jack Bush**, former mayor of Alexander City, died Sept. 5, 2005. He was 79. After Hurricane Camille in 1969, Bush moved from Mississippi, where he had operated a fuel refinery, to the Alexander City area. He became the city's first full-time mayor in 1976, serving only one term, yet in those four years Bush upgraded water treatment facilities and began plans to improve infrastructure for Alexander City's wastewater treatment plant.

### Joe Smitherman

**Joe Smitherman**, former mayor of Selma, died Sept. 11, 2005. He was 75. Smitherman served on the Selma City Council for four years before becoming mayor in 1964, a position he would hold until 2000. His position as mayor during the 1960s will forever tie him to Selma's history and the Civil Rights Movement in Alabama. He is survived by his daughter, son, eight grandchildren and one great-grandchild.

### Lonnie Crawford

**Lonnie Crawford**, former mayor of Scottsboro, died Sept. 14, 2005, at Huntsville Hospital. He was 87. Crawford was the city's first mayor under the mayor-council form of government, serving from 1984 until 1988. Prior to becoming

mayor, Crawford was on the Scottsboro City Council from 1968 to 1980. He was a WWII veteran and a charter member of the Scottsboro Kiwanis Club. Crawford is survived by his daughter, two sisters and a granddaughter.

### W. Miles Prater

**W. Miles Prater**, former mayor of Millport, died Sept. 19, 2005, at Baptist Memorial in Columbus, MS. He was 84. Prater served as Millport's mayor for one term. He served in the U.S. Navy in WWII and was a deacon of the Millport Baptist Church. Prior to retiring, Prater ran a dry cleaning business. He is survived by his wife, daughter, son, sister, brother and four grandchildren.

### Earl D. James

**Earl D. James**, former mayor of Montgomery, died Oct. 13, 2005. He was 91. James served five terms on Montgomery's then-city commission, including three as mayor, 1959-1971. During his time in office, James worked to establish a merit system and retirement system for city employees. He also helped create the Parks and Recreation Board and increased the number of recreation centers around the city. He was extremely active with the Alabama League of Municipalities and is a past president of the League.

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