

THE ALABAMA MUNICIPAL **JOURNAL**

May 2006

Volume 63, Number 11



Inside:

- **Liability for Police Operations, Part II**
- **Several League Bills Enacted During the Regular Session**
- **Wetland Grants Available to Southeastern Communities**

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IT Manager Joins League Staff

Monty Paggeot recently joined the League staff as IT Manager and is responsible for all computer operations, technical support, systems analysis and programming. Originally from Biloxi, MS, Monty graduated with honors from Bellevue University with a B.S. in Information Systems in 2000. In addition, he has been trained as a Microsoft Certified Systems Engineer. Monty holds more than seven Microsoft certifications in the systems engineering field.

Prior to joining the League's staff, he worked for four years as the information systems supervisor for the southern central division of Winn-Dixie and then spent four years as an independent systems engineering consultant serving clients in Alabama and western Georgia.

Monty is married with three children.



Vendor Profile

AlaTax Revenue Discovery Systems

3001 Second Avenue South
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Phone: 205-324-0088
FAX: 205-324-1538
Web Address: www.alatax.com

Contact: Yolanda Thomas, 800-556-7274, ext. 505
Email: ythomas@alatax.com
Pete Yonce, 800-556-7274, ext. 113
Email: pyonce@alatax.com

AlaTax Revenue Discovery Systems provides local governments a range of revenue enhancement services including: Revenue Administration, Revenue Discovery & Recovery, Aged Receivables Management and Compliance Auditing. For 25 years, AlaTax has provided cost effective, high value solutions and ancillary services to more than 250 cities and counties. Let AlaTax help you discover more revenue for your city or town.

Vendor Profiles are included in the League's Gold and Platinum advertising packages. For more information on how your company can purchase a package, contact Greg Cochran at 334-262-2566 or gregc@alalm.org.

Vendor Profile

Wachovia Bank, N.A.

210 Wildwood Parkway, 5th Floor
Homewood, Alabama 35209
Phone: 205-667-6110
FAX: 205-667-6130
E-mail: libby.carpenter@wachovia.com
Web Address: www.wachovia.com

Contact: Libby L. Carpenter, CCTS

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Vendor Profiles are included in the League's Gold and Platinum advertising packages. For more information on how your company can purchase a package, contact Greg Cochran at 334-262-2566 or gregc@alalm.org.



The President's Report

Bobby Hayes
Mayor of Pelham

As my term as president of the Alabama League of Municipalities comes to an end, I would like to take this opportunity to thank you for allowing me to serve as your president. It has been my honor to represent municipalities in Alabama as I have traveled with League staff to meetings in Washington and North and South Carolina, as well as many municipalities throughout Alabama.

My tenure as president of the League has given me a profound respect for Perry Roquemore and his entire staff. Our League is highly respected by the National League of Cities for its operations in Alabama and its ability to engage its membership on state and national issues affecting local governing bodies. Alabama's municipalities are fortunate to

have an organization representing our interests that is so well managed and professionally staffed.

As I look back over my years of public service, this year as your League president stands out as one of the most memorable. I have had the opportunity to make new friends, encourage old ones in difficult circumstances and work to impact legislation benefiting all of us.

Through the combined efforts of the League and its members, we achieved a number of successes in the Legislature this year, especially in the areas of provisional and military voting, reverse auctions and abandoned vehicles. There is still work to be done in the areas of a mayor's voting authority, alternates on a municipal planning commission and the pre-zoning of annexed property.

I encourage each of you to continue to lend your support and voice to issues affecting our cities. When the League asks its members to contact the Alabama Legislature regarding important issues, please take the time to make those calls to let our senators and representatives know where we stand. We must make our voices heard, for everyone knows that when our voices are in unison, they are stronger, more powerful and achieve greater results.

Let's keep working for the good of Alabama and its municipalities. Again, I thank you for the privilege of serving as your League president for the past year.

May God bless you and your communities. ■

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Municipal News Briefs

Compiled by Donna Morrill, Communications Intern, ALM

City Map Highlights Madison Hotspots

The city of Madison anticipates a new street map will direct visitors and potential new residents to “Shop Madison First.” The map features an index of street names, a listing of annual city events, photographs and historical information included to draw attention to city attractions.

Copies are distributed free of charge and are available at city hall, the Madison Chamber of Commerce, the Huntsville Chamber of Commerce, the Huntsville/Madison County Convention & Visitors Bureau and the Athens-Limestone Chamber of Commerce. Maps are also available from some local businesses.

Pell City Issues New Smoking Ordinance

Pell City joins the growing list of Alabama cities having passed smoking ordinances. Under the ordinance, establishments generating at least 40 percent of sales from alcohol are classified as pubs and can allow unrestricted smoking. The city’s ordinance took effect in April.

Video Surveillance Coming to Decatur Schools

The Decatur City Council approved a \$358,500 contract with The Contact Network to install a video surveillance system for five city schools. The system includes 285 cameras for Austin High School, Decatur High School, Oak Park Middle School, Brookhaven Middle School and Cedar Ridge Middle School. Officials say the system will probably be ready this summer.

Digital recorders will store 300-400 days of video. School administrators, police, 911 dispatchers and eventually officers with laptops in police vehicles will be able to view the video. No cameras will be installed within classrooms, but mounted in hallways, parking lots and building exteriors. Half of the project will be funded by a federal grant and the city council and school system will split the other half, 60/40.

Mayors Roll Out “Meals on Wheels”

Several Alabama mayors recently participated in “Mayors for Meals,” a part of the Meals on Wheels program that provides lunches to citizens who either cannot afford meals

or are unable to prepare or procure food for themselves. The mayors delivered lunches to residents in Florence, Sheffield, Tuscumbia, Muscle Shoals and Russellville.

Florence Mayor Bobby Irons, Tuscumbia Mayor Bill Shoemaker, Muscle Shoals Mayor David Bradford and Russellville Mayor Johnny Brown participated in the program. They picked up and delivered prepared meals and visited with the people receiving the meals. Sheila Christopher, coordinator for Meals on Wheels, said this will become an annual event.

Bypass Paves Way for Revitalization

This year, New Brockton residents can expect the construction of a highway bypass, new housing developments and commercial buildings and downtown revitalization, thanks to the expansion of U.S. Highway 84. The four-lane highway addition will be 43 miles long and connect New Brockton, Enterprise, Opp, Elba and Andalusia. Locals are optimistic the bypass will bring new residents and business owners to the area.

According to Mayor Charles Cole, “New Brockton had been landlocked with no opportunity for growth.” With the construction of the bypass, however, land has become available, giving the city a chance expand. More than 130 new homes and approximately 15 new businesses are scheduled to be constructed. Other prospective business

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Municipal Overview

By
PERRY C. ROQUEMORE, JR.
Executive Director

State Legislature Enacted Several League Bills During the Regular Session

The state Legislature has enacted several League bills during the 2006 Regular Session. This month we are publishing the complete text of one of these new laws as a service to our members.

Reverse Auction Bidding (Act 2006-107 – SB89 by Sen. Tommy Ed Roberts – House Sponsor was Rep. Jack Williams)

ENROLLED, An Act, To amend Sections 41-16-24, 41-16-27, and 41-16-54, Code of Alabama 1975, relating to the Competitive Bid Law, to provide that public contracts for the purchase of goods or services may be entered into using a bidding process known as reverse auction and to provide for certain exceptions and to provide for the length of time certain contracts may be let.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 41-16-24, 41-16-27, and 41-16-54, Code of Alabama 1975, are amended to read as follows:

“§41-16-24. 15

“(a) The Purchasing Agent shall advertise for sealed bids on all purchases in excess of seven thousand five hundred dollars (\$7,500) by posting notice thereof on a bulletin board maintained outside the office door or by publication of notice thereof, one time, in a newspaper published in Montgomery County, Alabama, or in any other manner, for such lengths of time as the Purchasing Agent may determine. The Purchasing Agent shall also solicit sealed bids or bids to be submitted by reverse auction procedure

by notifying all Alabama persons, firms, or corporations who have filed a request in writing that they be listed for solicitation on bids for the particular items set forth in the request and the other persons, firms, or corporations the Purchasing Agent deems necessary to insure competition. If any person, firm, or corporation whose name is listed fails to respond to any solicitation for bids after the receipt of three solicitations, the listing may be cancelled by the Purchasing Agent.

“(b) All bids, except as provided in subsection (d), shall be sealed when received, shall be opened in public at the hour stated in the notice, and all original bids together with all documents pertaining to the award of the contract shall be retained in accordance with a retention period established by the State Records Commission and shall be open to public inspection.

“(c) If the purchase or contract will involve an amount of seven thousand five hundred dollars (\$7,500) or less, the Purchasing Agent may make the purchases or contracts either upon the basis of sealed bids, a reverse auction procedure, or in the open market.

“(d) For purposes of this article, a reverse auction procedure includes either of the following:

“(1) A real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location, in which multiple anonymous suppliers submit bids to provide the designated goods or services.

“(2) A bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled Internet location, in which multiple anonymous suppliers submitted bids to provide the designated goods or services.

“(e) No purchase or contract involving an amount in excess of seven thousand five hundred dollars (\$7,500) shall be divided into parts involving amounts of seven thousand five hundred dollars (\$7,500) or less for the purpose of avoiding the requirements of this article. All such partial contracts involving seven thousand five hundred dollars (\$7,500) or less shall be void.

“§41-16-27.

“(a) When purchases are required to be made through competitive bidding, award shall, except as provided in

continued next page

subsection (e), be made to the lowest responsible bidder taking into consideration the qualities of the commodities proposed to be supplied, their conformity with specifications, the purposes for which required, the terms of delivery, transportation charges and the dates of delivery provided, that the awarding authority may at any time within 30 days after the bids are opened negotiate and award the contract to anyone, provided he secures a price at least five percent under the low acceptable bid. The award of such a negotiated contract shall be subject to approval by the Director of Finance and the Governor, except in cases where the awarding authority is a two-year or four-year college or university governed by a board. The awarding authority or requisitioning agency shall have the right to reject any bid if the price is deemed excessive or quality of product inferior

“(b) Each bid, with the name of the bidder, shall be entered on a record. Each record, with the successful bid indicated thereon and with the reasons for the award if not awarded to the lowest bidder shall, after award of the order or contract, be open to public inspection.

“(c) The Purchasing Agent in the purchase of or contract for personal property or contractual services shall give preference, provided there is no sacrifice or loss in price or quality, to commodities produced in Alabama or sold by Alabama persons, firms or corporations.

“(d) Contracts for the purchase of personal property or contractual services other than personal services shall be let by competitive bid for periods not greater than five years and current contracts existing on the effective date of the act adding this clause may be extended or renewed for an additional two years with a 90-day notice of such extension or renewal given to the Legislative Council, however, any contract that generates funds or will reduce annual costs by awarding the contract for a longer term than a period of three years which is let by or on behalf of a state two-year or four-year college or university may be let for periods not greater than 10 years. Any contract awarded pursuant to this section for terms of less than 10 years may be extended for a period not to exceed 10 years from the initial awarding of the contract provided that the terms of the contract shall not be altered or renegotiated during the period for which the contract is extended.

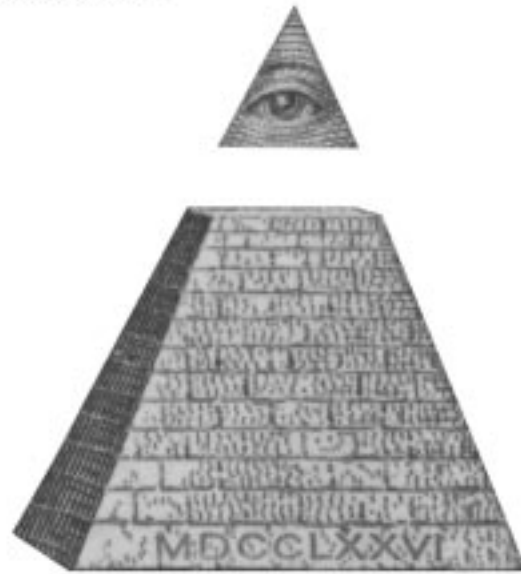
“(e) Contracts for the purchase of services for receiving, processing, and paying claims for services rendered recipients of the Alabama Medicaid program authorized under Section 22-6-7 which are required to be competitively bid may be awarded to the bidder whose proposal is most advantageous to the state, taking into consideration cost

factors, program suitability factors (technical factors) including understanding of program requirements, management plan, excellence of program design, key personnel, corporate or company resources and designated location, and other factors including financial condition and capability of the bidder, corporate experience and past performance and priority of the business to insure the contract awarded is the best for the purposes required. Each of these criteria shall be given relative weight value as designated in the invitation to bid, with price retaining the most significant weight. Responsiveness to the bid shall be scored for each designated criteria. If, for reasons cited above, the bid selected is not from the lowest bidding contractor, the Alabama Medicaid Agency shall present its reasons for not recommending award to the low bidder to the Medicaid Interim Committee. The committee shall evaluate the findings of the Alabama Medicaid Agency and must, by resolution, approve the action of the awarding authority before final awarding of any such contract. The committee shall also hear any valid appeals against the recommendation of the Alabama Medicaid Agency from the low bid contractor(s) whose bid was not selected.

“(f) Notwithstanding the requirements under Sections 41-16-20, 41-16-21, and this section, contractual services and purchases of personal property regarding the athletic department, food services, and transit services negotiated on behalf of two-year and four-year colleges and universities may be awarded without competitive bidding provided that no state revenues, appropriations, or other state funds are expended or committed and when it is deemed by the respective board that financial benefits will accrue to the institution, except that in the cases where an Alabama business entity as defined by this section is available to supply the product or service they will have preference unless the product or service supplied by a foreign corporation is substantially different or superior to the product or service supplied by the Alabama business entity. However, the terms and conditions of any of the services or purchases which are contracted through negotiation without being competitively bid and the name and address of the recipient of such a contract shall be advertised in a newspaper of general circulation in the municipality in which the college or university is located once a week for two consecutive weeks commencing no later than 10 days after the date of the contract. For the purposes of this section, the term Alabama business entity shall mean any sole proprietorship, partnership, or corporation organized in the State of Alabama.

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ENVIRONMENTAL OUTLOOK



By Gregory D. Cochran
Director, Intergovernmental Relations

Wetland Grants Available to Southeastern Communities

U.S. Environmental Protection Agency (EPA) Region 4 (AL, FL, GA, KY, NC, SC, TN) is now accepting applications for the Wetlands Program Development Grants. The goals of the EPA's wetlands program include increasing the quantity and quality of wetlands in the U.S. by conserving and restoring wetland acreage and improving wetland health.

In pursuing these goals, EPA seeks to build the capacity of all levels of government to develop and implement effective, comprehensive programs for wetland protection and management. The Wetland Program Development Grants (WPDG) provide state, tribal and local governments, interstate agencies and intertribal consortia an opportunity to carry out projects to develop and refine comprehensive wetland programs.

This year's WPDG program encourages applicants to pursue projects developing one or more core elements of a comprehensive wetland program: regulation; monitoring and assessment; restoration; water quality standards; public – private partnerships; and coordination with other water programs.

Grant funds may only be used to improve wetland programs by conducting or promoting the coordination and acceleration of research, investigations, experiments, training, demonstrations, surveys and studies relating to the causes, effects, extent, prevention, reduction and elimination of water pollution. All proposed projects must be linked to environmental results and demonstrate how they will contribute to the ultimate goals of healthy communities and ecosystems.

U.S. Invests \$53 Billion in Wastewater Infrastructure

New figures released last month by the EPA reveal the federal government and the states have invested almost \$53 billion in the Clean Water State Revolving Fund (CWSRF) program to rebuild and refurbish the nation's wastewater

infrastructure over the last 18 years. The figures are published in the "Clean Water State Revolving Fund Programs: 2005 Annual Report."

The report also highlights the innovative ideas of state CWSRF programs and includes an update on the financial performance of the CWSRF program. The CWSRF is the largest federal funding program for wastewater infrastructure projects, such as treatment plants and collection systems. The CWSRF has made almost 17,000 loans since the program's inception in 1988.

"EPA is committed to helping our partners sustain progress and increase opportunities for state revolving funds through financial stewardship, innovation, and collaboration," Assistant Administrator for Water Benjamin H. Grumbles, said. "This report demonstrates the power of partnerships to leverage, innovate, and excel to meet wastewater infrastructure, watershed protection, and community health needs."

The CWSRF includes annual EPA contributions matched with at least an additional 20 percent from the states. The states, in turn, make low-interest loans to local utilities. The interest income and repayments derived from the loans help fund future projects. Many states also issue bonds, which added \$940 million to the fund last year. Annual CWSRF assistance has averaged about \$4.5 billion. Borrowers save an average of 21 percent on financing costs over the life of the loan.

Just as the program has expanded since it began, the CWSRF continues to evolve. In 2005, states began submitting information to track environmental benefits. Each project is linked to a river, lake or stream and to beneficial uses of that body of water such as fishing and swimming. More than 60 percent of the total funding reported goes to projects that protect drinking water, preserve fish habitat and provide for water recreation.

continued next page

The report is online at <http://www.epa.gov/owm/cwfinance/cwsrf/annreport2005.htm>, and general information about the CWSRF is at <http://www.epa.gov/owm/cwfinance/cwsrf/>. The report is also available from the Water Resource Center, (202) 566-1729; fax (202) 566-1736; or email, center.water-resource@epa.gov. Refer to document number EPA-832-R-06-001.

Travel Scholarships Available for National Brownfields Conference in Boston

The annual national Brownfields Conference will be held in Boston, MA, Nov. 13-15, 2006. This year’s theme is “Revolution in Redevelopment.” The conference is the premier annual event on the remediation, redesign and redevelopment of potentially contaminated properties. It will offer educational sessions and workshops, networking opportunities, 200-plus exhibitors, the annual brownfields transaction forum, receptions and a film series. Registration for the conference is free.

Travel scholarships for the conference are now available. The International City/County Management Association is pleased to sponsor a limited number of travel scholarships for individuals interested in attending the Brownfields 2006 Conference that cannot attend without financial assistance. To be eligible for a scholarship, applicants must be affiliated with or be a representative of a local government, state or tribal government, community organization, environmental justice organization or other nonprofit entity.

Because funding is limited, only one scholarship will usually be awarded per organization or government office. The scholarship application deadline is Aug. 11, 2006. To apply for a scholarship or for more information about the conference or to register online, visit <http://www.brownfields2006.org>.

Alabama Waters Special: Number of Aquatic Species by State

Earlier this month, Dr. Randy Haddock of the Cahaba River Society gave an extraordinary presentation to the Episcopal Diocese of Alabama Annual Convention in Muscle Shoals about the “life” in Alabama’s rivers, streams and waters. Here is a stunning figure/statistic he provided the group at the meeting:

From the Alabama Department of Conservation:
Number of Aquatic Species by State:

Mussels: Alabama – 175, Tennessee – 132, Georgia – 119, Mississippi – 103, United States – 299

Snails: Alabama –181, Tennessee – 82, Georgia – 66, Mississippi – 67, United States – 655

Crayfish: Alabama – 83, Tennessee – 70, Georgia – 75, Mississippi – 47, United States – 338

Fish: Alabama – 297, Tennessee – 295, Georgia – 219, Mississippi – 220, United States – 1021

Total: Alabama –736, Tennessee – 579, Georgia –479, Mississippi – 437

For more information about the aquatic species in Alabama’s waters and the program presented to the Episcopal Diocese, contact Dr. Haddock at (205) 32-CLEAN, ext. 412.



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THE LEGAL VIEWPOINT

By Ken Smith
Deputy Director/Chief Counsel

Liability for Police Operations, Part II

Editor's Note: This is the second installment of "Liability for Police Operations." Part I was published in last month's issue of the Journal.

The Substantive Immunity Rule

When discussing liability for police operations, one area of municipal tort immunity deserves special consideration. This is the substantive immunity rule. The Alabama Supreme Court has recognized that in certain circumstances, public policy considerations override the general rule that municipalities are liable for the negligence of their employees. In *Rich v. City of Mobile*, 410 So.2d 385 (Ala. 1982), the court adopted the substantive immunity rule as the law of Alabama and stated that no municipal liability could result "in those narrow areas of governmental activities essential to the well-being of the governed, where the imposition of liability can be reasonably calculated to materially thwart the City's legitimate efforts to provide such public services."

Rich involved an alleged negligent sewer inspection. The court noted the purpose of a building code is to protect the public, not an individual property owner. The court recognized that while an individual homeowner may be incidentally affected by the discharge of the sewer inspector's duty, the city owes a larger obligation to the general public. The court stated that to allow an individual to maintain a suit against the municipality for negligent inspection threatens the benefits the general population receives from such inspections.

In two other cases, the court extended the substantive immunity rule to municipal police departments. In *Calogrides v. City of Mobile*, 475 So.2d 560 (Ala. 1985), the plaintiff was attacked and stabbed by a gang of teenagers while attending a fireworks display sponsored, in part, by the city of Mobile. He sued the city, alleging it failed to assign a sufficient number of police officers to patrol the crowd attending the display.

The court held that the plaintiff's action was barred by

the substantive immunity rule. The court recognized the city's duty was to provide adequate police protection to the public at-large rather than to a particular individual, and that to find the city liable would threaten the benefits the public received from police protection.

Similarly, the plaintiff in *Garrett v. City of Mobile*, 481 So.2d 376 (Ala. 1985), was injured by the same group of teenagers that injured the plaintiff in *Calogrides*. However, because he was injured several minutes later, the plaintiff in *Garrett* argued a special duty had been created for him as an individual. Again, the court refused to hold the city liable despite notice of the attack on *Calogrides*.

The court also followed the substantive immunity rule in *Nunnelee v. City of Decatur*, 643 So.2d 543 (Ala. 1993), upholding a summary judgment in favor of two officers who were sued for releasing a drunk driver who later killed another motorist. Substantive immunity has also been used to protect a municipality from liability from failing to destroy a building which had been condemned. *Belcher v. City of Prichard*, 30 ABR 1497 (Ala. 1995).

In *Hilliard v. City of Huntsville*, 585 So.2d 889 (Ala. 1991), the Alabama Supreme Court held that the substantive immunity rule barred an action for negligent electrical inspection against the city of Huntsville. This case contains an excellent discussion of the law regarding substantive immunity, and is important for several other reasons. First, the court lumps several types of building inspections (electrical, sewage, plumbing, etc.) together. This makes clear the court intends to insulate municipalities from liability for providing these vital services as well. A second benefit provided in *Hilliard* is the recognition that Section 11-47-190 will not support claims for wantonness against a municipality. Finally, the court in *Hilliard* ruled nuisance claims are governed by Section 11-47-190 as well. Thus, if a negligence claim is barred by the substantive immunity rule, any alleged nuisance is also precluded.

continued next page

In order to overcome the substantive immunity rule, it must generally be shown that the municipality owed some special duty to the plaintiff that it did not owe to the public as a whole, and that the municipality breached this duty in some way. This issue was raised in *Garrett*, but the court held that the police were not on notice of the attack against him just because of the earlier attack on Calogrides.

When does a police department create a special relationship with an individual? Generally, simply a request for police protection will not give rise to liability. Comment, 1984 Wisconsin L. Rev. at 509. The municipality usually must, through its officers or employees, acknowledge the existence of a special duty in order for it to arise. For instance, in at least one case, a special duty was found to exist when a police department assured a caller that help was on the way and the caller relied upon that assertion to his detriment. *Chambers-Castenes v. King's County*, 100 Wash. 275, 669 P.2d 451 (1983). Additionally, in *City of Kotzebue v. McLean*, 702 p. 2d 1309 (Alaska 1985), a municipality was held liable for the failure of its police department to respond to a call informing them of an impending homicide. Further, in one case, a special relationship was found to exist simply because police protection was provided in the area of a penitentiary. *Cansler v. State*, 234 Kan. 554, 675 P. 2d 57 (1984).

Municipal Liability under Section 1983

42 U.S.C. Section 1983 states:

Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

Municipalities and their officials have been subject to liability under 42 U.S.C. Section 1983 since 1978, when the United States Supreme Court handed down its landmark decision in *Monell v. Department of Social Services*, 436 U.S. 658 (1978). Section 1983, which makes municipalities liable for federal constitutional or statutory civil rights violations resulting from customs or policies of the municipality, has become one of the broadest bases for challenges to municipal actions.

Overview of Section 1983

The most difficult hurdle facing a plaintiff under Section

1983 is demonstrating that the deprivation of civil rights was due to a policy or custom. However, it is clear the existence of a written policy is not necessary to impose liability on a municipality. Conversely, the U. S. Supreme Court has held that a "single egregious incident" cannot establish a policy or custom under Section 1983. *City of Oklahoma City v. Tuttle*, 105 S. Ct. 2427 (1985). Yet, in the *City of Los Angeles v. Heller*, 54 L.W. 3693 (1986), the court found the city liable for a single act by someone the court felt had authority to set policy for the city.

In addition, the court in *Maine v. Thiboutout*, 488 U.S. 1 (1980) held that the plaintiff was entitled to attorneys' fees under the Civil Rights Attorney's Fees Awards Act of 1976, codified at 42 U.S.C. Section 1988.

In *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981), the U. S. Supreme Court held that municipalities are immune from punitive damages in civil rights cases brought under 42 U.S.C. Section 1983. The Alabama Supreme Court has held that state courts must accept Section 1983 cases if the plaintiff selects a state court as his or her forum. *Terrell v. City of Bessemer*, supra. The appropriate statute of limitations for Section 1983 claims is two years. *Owens v. Okure*, 57 L.W. 4065 (1989). However, in *Felder v. Casey*, 56 L.W. 4689 (1988), the U. S. Supreme Court held that state notice-of-claim statutes do not apply to Section 1983 actions. Thus, a plaintiff suing under Section 1983 does not have to provide the municipality with notice of his or her claim within six months. *Morrow v. Town of Littleville*, 576 So.2d 210 (Ala. 1991).

In high-speed chase cases involving police officers, the U.S. Supreme Court has held that high-speed chases resulting in death do not result in §1983 liability unless the officers' actions violate the shock-the-conscience standard because those actions involve a purpose to create harm unrelated to the legitimate object of arrest. *Sacramento County, Cal. v. Lewis*, 66 LW 4407 (1998).

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By Lorelei A. Lein
Staff Attorney

Legal Notes

COURT DECISIONS

Tort Liability: Arresting officer and police dispatcher who searched the National Crime Information Center database for outstanding warrants, as well as the city employing both, had state agent immunity from tort liability for the mistaken arrest of an individual on a warrant for a different individual who had a similar name. Both the officer and the dispatcher were exercising judgment in the enforcement of criminal laws of the state as law enforcement officers, and the city's immunity derives from their status as law enforcement officers. *Swan v. City of Hueytown*, 920 So.2d 1075 (Ala. 2005).

DECISIONS FROM OTHER JURISDICTIONS

Employees: A police lieutenant's First Amendment retaliation claims against a city under 42 U.S.C. § 1983, arising for separate and distinct events, are time-barred under the "discrete acts" rule which requires acts that are individually actionable to be raised within the applicable statute of limitations and therefore cannot be saved by an attempt to view them as a continuing violation. *O'Connor v. Newark, N.J.*, 440 F.3d 125 (3rd Cir. 2006).

Discrimination: A state's exclusion of persons of Spanish or Portuguese descent (unless they come from Latin America) from the state's definition of "Hispanic" in its affirmative action program for minority-owned businesses does not violate the 14th Amendment's equal protection clause. *Jana-Rock Construction v. New York State Dept. of Economic Devel.*, 438 F.3d 195 (2nd Cir. 2006).

ATTORNEY GENERAL OPINIONS

Subdivisions: The approval of a subdivision is not subject to restrictive covenants. Restrictive covenants may be

enforced by the private parties involved and not by the governing body approving the subdivision. 2006-063.

Courts: Corrections Fund monies may be used to pay the cost of police officers transporting prisoners from the county jail to municipal court and for the magistrate to travel to the jail for 48-hour hearings, provided, however, the governing body determines the expenditures are necessary for the operation and maintenance of the jail and court. The determination of the appropriate costs, including mileage rate, per diem or actual expenses, is in the discretion of the governing body. 2006-066.

Elections: A municipal police officer is not required to take a leave of absence to be a candidate for the office of sheriff. 2006-067.

Open Meetings Act: Deliberations by a regional planning commission concerning credit and financial records of applicants for revolving fund loans must be conducted in an open public meeting under the Alabama Open Meetings Act. There is no specific exemption under the act or under federal law allowing commissions to enter into executive session to discuss the credit and financial records of applicants. 2006-068.

Utilities: Pursuant to Section 35-9-14 of the Code of Alabama of 1975, a municipal utility board may enact an ordinance that provides for delinquent monthly sewer bills to become a lien against the property and that such liens can be enforced and collected by a foreclosure sale of the property when the sewer service is in the name of either the landlord or the landlord and tenant. 2006-070.

Open Meetings Act: To be counted towards establishing a quorum, members of a governing body covered by the Alabama Open Meetings Act are required to be physically present. There is no provision for obtaining a quorum by telephone conference. 2006-071.

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Section 1983 Immunities

In discussing immunities under Section 1983, it is important to draw a distinction between immunities which protect the municipality and those which protect the individual. In *Owen v. City of Independence*, 445 U.S. 622 (1980), the court held that municipal defendants in Section 1983 actions cannot take the good-faith immunities of their officers, who are usually co-defendants in Section 1983 actions, derivatively. The good-faith of the defendant municipality is now irrelevant. The only issue is whether the defendant municipality deprived the plaintiff of federal constitutional or statutory rights. Whether the deprivation was intentional, inadvertent, malicious or benign is not an issue.

However, the court in *Owen* made clear that a public officer may be personally immune from liability. The official's good faith is relevant in such cases because it transfers the financial burden of liability from the individual officer to the city or town.

Thus, while municipalities cannot take the immunities claimed by their officials, common law immunities continue to protect officials performing certain functions from Section 1983 liability. Courts have recognized this protection is necessary to preserve independent decision-making by guarding municipal officials from the distracting effects of litigation. See, e.g., *Gorman Towers, Inc. v. Bogoslavsky*, 626 F.2d 607 (8th Cir. 1980); *Bruce v. Riddle*, 631 F.2d 272 (4th Cir. 1980).

As in state court, there are two types of immunity available to municipal officials, depending upon the function being performed. First, there is absolute immunity. A municipal official cannot be held liable for taking an action that entitles him or her to absolute immunity. If the officer or employee's action is not legislative or judicial in nature, he or she may only be granted qualified immunity.

Qualified immunity protects municipal officials when acting within their discretionary authority. Generally, this type immunity requires a good faith showing on the part of the official. This form of immunity protects the actor from liability for a discretionary action only if the employee or officer acted in a good faith, reasonable manner.

Qualified immunity operates somewhat differently in federal court than discretionary function immunity does in state court, however. In *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), the United States Supreme Court ruled that governmental officials performing discretionary functions are generally immune from liability for civil damages, provided their conduct does not violate a clearly established law. The court established this test so that insubstantial

lawsuits would be disposed of on summary judgment, rather than subjecting officials to the expense of a full-blown trial. Courts made clear the test is not based solely on the alleged violation of a clearly established right but also on the official's reasonable belief that the violation was justified in light of the surrounding circumstances. This creates an objective standard for determining the good faith of an officer.

Liability for Omissions

The general rule is that a municipality is not liable for the nonfeasance of police officers in the performance of governmental duties in the absence of other evidence to indicate negligence. McQuillin, *Municipal Corporations*, Section 53.80. For instance, a municipality is generally not liable for the failure of an officer to search someone for dangerous weapons after arresting him or her or for failing to investigate a reported crime. However, where sufficient evidence exists to show a duty was performed negligently, a municipality may be held liable. Thus, where the police received notice of a dangerous situation and failed to respond, causing a death, liability can be attached to the municipality. McQuillin, *Municipal Corporations*, Section 53.80.

In *Luker v. City of Brantley*, 520 So.2d 517 (Ala. 1987), for instance, the Alabama Supreme Court held the city liable when its police officers turned a vehicle over to a person they should have realized was intoxicated and the driver struck and killed someone. But, in *Tyler v. City of Enterprise*, 577 So.2d 876 (Ala. 1991), the Alabama Supreme Court affirmed a summary judgment in favor of Enterprise in a case where it was alleged that a police officer allowed an intoxicated driver to drive home and the driver subsequently died in an accident. The court held that the plaintiff's contributory negligence barred the suit. And, in *Wright v. Bailey*, 611 So.2d 300 (Ala. 1992), where the

continued next page



Alabama Supreme Court held that even assuming police officers were negligent in permitting a drunk driver to leave a tavern, mere negligence is not enough to implicate the due process concerns of Section 1983. Further, in *Flint v. City of Ozark*, 652 So.2d 245 (Ala. 1994), the Alabama Supreme Court held it was not negligence for police officers to fail to arrest underage persons at a party where alcohol was available, even though one of the underage persons was later determined to be driving under the influence when he left the party and struck and killed another individual.

Additionally, in *Stokes v. Bullins*, 844 F. 2d 269 (5th Cir. 1988), the Fifth Circuit found the failure of municipal officials to fully investigate the background of an applicant for a job as a police officer did not justify holding the municipality liable under Section 1983 for injuries resulting from the officer's shooting of a citizen. Note, however, this case was decided before the U.S. Supreme Court decided *City of Canton, Ohio v. Harris*, 489 U.S. 378 (1989), where the court held that the inadequacy of police training may serve as the basis for municipal liability under Section 1983 if the failure to train amounts to deliberate indifference to right of persons with whom the police come into contact and the deficiency identified in the training program is closely related to the ultimate injury incurred.

Failure to Provide Adequate Police Protection

Courts are very reluctant to impose liability upon a municipality for the failure to provide adequate police protection. Comments, *Municipal Liability: The Failure to Provide Adequate Police Protection – The Special Duty Doctrine Should be Discarded*, 1984 Wisconsin L. Rev. 499. This area is usually protected by the substantive immunity rule, discussed above.

Assault and Battery

Ordinarily, a municipality is not responsible for an assault and battery committed by one of its police officers. McQuillin, *Municipal Corporations*, Section 53.80d. However, when the assault and battery occurs in the course of the officer's duties, the municipality may be held liable. See *Lexington v. Yank*, 431 S. W. 2d 892 (Ky. 1968). Remember, too, a municipality may be held liable for off-duty actions if performed in furtherance of the municipality's interest.

In Alabama, Section 11-47-190, Code of Alabama, 1975, states a municipality can only be held liable for the actions of its agents or employees which occur due to neglect, carelessness or unskillfulness. Thus, ordinarily, a municipality is not liable for intentional torts. However, in *City of Birmingham v. Thompson*, 404 So.2d 587 (Ala. 1981), the Alabama Supreme Court held that in some instances, even intentional torts may be committed due to a

lack of skill. If so, then the municipality may be held liable. Municipalities in Alabama, therefore, may be sued for assault and battery.

In suit filed in federal court pursuant to Section 1983, a municipality can be found liable if a plaintiff can establish, first, that the assault and battery deprived him or her of his or her federal constitutional or statutory rights, and second, that it occurred pursuant to a municipal policy or custom. In an unjustified assault case, there is no question concerning the deprivation of rights. The key question in these cases is whether the police officer acted pursuant to a municipal policy.

Generally, of course, there will not be an articulated policy favoring or promoting assaults. Therefore, a plaintiff must establish either that city policymakers intervened to cause the abuse or that there is such a pervasive pattern and practice of abuse as to indicate a municipal policy favoring such behavior. Seng, *Municipal Liability for Police Misconduct*, 51 Miss. L. J. 1 (1980). Municipal inaction, such as failure to train or supervise, might demonstrate a tacit approval. Similarly, failure to discipline others guilty of similar conduct may establish a pattern. Finally, the municipality may be shown to have ratified the officer's action by consistently condoning such behavior or ignoring citizens' complaints.

Use of Excessive Force

A police officer may use reasonable force in order to effectuate an arrest, even to the point of taking life. In Alabama, Section 13A-3-27, Code of Alabama, 1975, sets out the degrees of force an officer may use in various situations. Section 13A-3-27(a) states that an officer may use nondeadly force in order to make a lawful arrest for a misdemeanor, violation, or violation of an ordinance, or to protect himself or a third person he reasonably believes to be in danger from the imminent use of force during an arrest.

Subsection (b) provides that an officer may use deadly force in order to effectuate an arrest for a felony or to defend himself or a third person from what he reasonably believes to be the imminent use of deadly force. Deadly force is defined in Section 13A-3-20(2) as any force which is readily capable of causing death or serious bodily injury under the circumstances in which it is used. Even recklessly driving an automobile to effectuate an arrest may be classified as deadly force in the proper circumstances. See Commentary to Section 13A-3-27.

Section 13A-3-27 was held unconstitutional to the extent that it authorizes the use of deadly force in circumstances where such force is not necessary to prevent death or bodily harm in *Ayler v. Hopper*, 532 F. Supp. 198 (M.D. Ala. 1981). Similarly, in *Pruitt v. City of Montgomery*, 771 F. 2d 1475,

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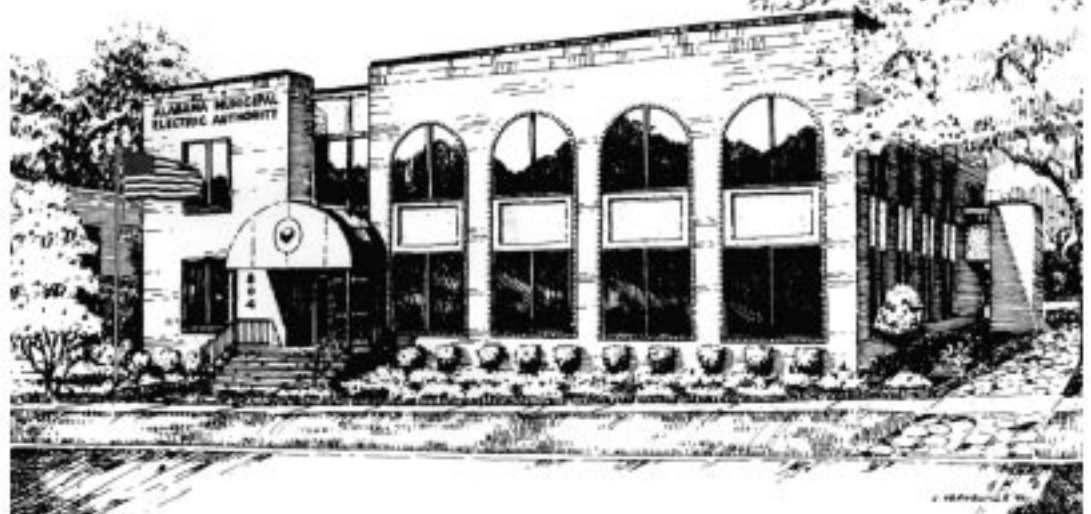
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owners are looking into renovating vacant buildings on Main Street. Grant money has also been obtained to repair sidewalks in the city.

Thomasville Thriving Despite Size

A new hospital building and civic center and more than \$400 million in developments will come to Thomasville over the next three years. Despite its remote location, Thomasville is thriving. Its downtown is flourishing, with every shop either rented or renovated, and a new industrial park in the southern part of the city is also drawing attention. Mayor Sheldon Day predicts the park will be nearly full by 2008, bringing in even more new jobs to the city.

Community Partnership Sends Selma Students to D.C.

Thanks to the work of Selma's Mayor James Perkins, Jr., National League of Cities President James Hunt and Selma Councilwoman Bennie R. Crenshaw, seven students from Selma High School were able to attend the Congressional City Conference in Washington D.C. Perkins, Hunt and Crenshaw formed the partnership in an effort to further the creation of inclusive communities, an NLC priority program. At the conference, students participated in workshops and general sessions focused on forming inclusive communities and promoting cultural diversity.

Madison Residents Have New Option for Water Bill Payments

For a \$1.25 fee, Madison residents can now use their credit or debit cards to pay their water and wastewater bills online or by telephone. Residents can still pay by mail, via a drop box or in person. Those wanting to utilize the new payment option can go to the Madison Water and Wastewater Board's Web site, sign up to view their bill online and follow the instructions to make a payment. *Verisign* encryption protects the information entered on the Web site. The fee covers the board's cost to provide this secure payment option. Residents who don't have computer access can pay by phone or credit or debit card at the office.

Pell City Sees Boom in Residential Growth

More people are moving to Pell City, thanks to commercial development growth along Interstate 10 and an improvement in the quality of life. Residential growth across St. Clair County has led to a large demand for homes in Pell City, and new subdivisions continue to spring up throughout the city. Fire Chief and Pell City Planning and Zoning Board

Member Mike Sewell attributes the growth to people leaving more densely populated communities near Birmingham and along U.S. 280.

Capitol to Use \$5 Million Grant for Facelift

Montgomery is receiving a \$5 million federal grant for landscaping areas near the State Capitol. Former Gov. Don Siegelman halted the project when Confederate heritage groups protested, wanting to keep the grounds as they are. The Riley administration has decided to use the money to improve Dexter Ave. from the Capitol building to Court Square. Most of the work, which includes landscaping and paving, will be done on the blocks closest to the Capitol. The city will spend \$700,000 to hire a consultant to create a master plan.

Famous Quilt Returns to Demopolis

The "Heart of Demopolis" quilt is coming home to Demopolis. New Hampshire resident Mary Lou DeMeester won the quilt at the Christmas on the River celebration in 2004. Though she wanted the quilt to stay in the city, she took it back to New Hampshire to show her brother what she had won. Now it's back in Demopolis, where it will be displayed in the public library, the chamber of commerce building or city hall.

South Alabama resident Marie Brooks made the quilt. It features artwork of famous Demopolis city scenes, such as Christmas on the River and the "Welcome to Demopolis" sign on Alabama Highway 80 East.

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reh'g denied, 777 F. 2d 704 (11th Cir. 1985), the 11th Circuit Court of Appeals held that where a police officer had no probable cause to believe an unarmed burglary suspect posed a physical threat to the officer or others, the city of Montgomery was held liable for his use of deadly force.

A municipality will only be held liable for injuries caused by the excessive force used by an officer. If circumstances justify the officer's use of some force, but he or she goes beyond what is justified, the municipality will be liable only for injuries caused by the excessive force. It is up to a jury to decide at what point the force used became excessive, just as it must determine what injuries the excessive force caused.

In addition, Sections 13A-3-27(e) and (f) place a duty upon a private citizen to aid an officer. Should this private individual use excessive force while acting pursuant to the officer's directions, the municipality maybe held liable for his or her actions as well.

In federal court, the ordinary Section 1983 principles govern. In *Montoute v. Carr*, 114 F.3d 181 (11th Cir. 1997), for example, the Eleventh Circuit Court of Appeals held that in a Section 1983 action against a police officer for excessive force, an arrestee has the burden of proving that no reasonable officer could have believed the arrestee either had committed a crime involving serious physical harm or that the arrestee posed a risk of serious physical injury to the officer or others. And, in *Jones v. City of Dothan*, 121 F.3d 1456 (11th Cir. 1997), the Eleventh Circuit Court of Appeals held the actions of a police officer, while rude, would not inevitably lead a reasonable officer to conclude the amount of force used under the circumstances was excessive. In this case, the plaintiff filed an excessive force claim after the officer yelled at her, twice told her to shut-up, ignored her questions about her husband and stuck his finger in her face, making contact with her skin.

Search and Seizure

Normally, questions of improper search and seizure arise only where a defendant in a criminal case seeks to prevent his or her conviction by alleging a piece of evidence was improperly obtained. However, an officer may become liable if, subsequent to seizing evidence, he misuses it. *Yeager v. Hurt*, 433 So.2d 1176 (Ala. 1983). If the property is lost, damaged or destroyed, the officer will be liable if the loss is the proximate result of his failure to exercise due care preserve it. *Yeager, supra*.

While *Yeager* dealt solely with the officer's individual liability, a municipality might be found liable if it can be

determined the officer acted negligently or carelessly in the course of his or her duties. In addition, if he or she acted pursuant to a policy or custom, the municipality might be liable under Section 1983. For instance, the Court of Civil Appeals held in *Campbell v. Sims*, 686 So.2d 1227 (Ala. Civ. App. 1996), that a motorist's claim that she was stopped and searched without probable cause stated a sufficient claim against the police officer and the city. And, in *Lightfoot v. Floyd*, 29 ABR 3183 (Ala. 1995), the Alabama Supreme Court held that a police officer was not entitled to qualified immunity after improperly seizing and retaining cash and a vehicle for several months.

Other Causes of Action

While this article has covered only some of the major areas of liability for municipalities which provide police protection, there are many others such as malicious prosecution, improper arrest, mistreatment of prisoners and negligent driving. Any aspect of police protection can result in municipal liability in the proper circumstances. In any of these areas, the tort principles discussed above will apply in determining whether the municipality is liable for the officer's actions in either state court or federal court.

Avoiding Liability

The first step toward avoiding liability for the actions of police officers is training. The better trained an officer is, the less likely he or she is to perform negligently. Officers should know how to respond in specific situations to avoid charges against themselves as individuals or against the municipality.

In Alabama, all officers are required to complete training in a recognized police training school in order to comply with the Peace Officers' Standards and Training Act. In addition to this training, the municipality should promulgate a proper written policy which deals with the numerous situations facing a police officer daily and which explains to the officer how he or she should be required to be familiar with this policy.

Much research and study is necessary to formulate this type policy. It will be necessary to examine each potential area of liability exposure and develop ways in which to handle the problems. Every aspect of police operations should be investigated, from personnel rules to the operation of vehicles. It may be necessary to appoint a committee to ensure all police department operations are covered. The municipality must be honest about problems it has and thorough in its resolutions. ■

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CALERA'S GROWTH ENHANCED BY NEW TREATMENT PLANTS

The phenomenal growth of the City of Calera was assured of the necessary infrastructures to support the growth by the completion of two wastewater treatment plants. The project included doubling of the capacity of Calera's existing plant to a capacity of 1.5 MGD and a new plant rated at 3.5 MGD.

Carr & Associates Engineers, Inc. (CAE), under the project direction of Mr. Ben Carr, provided the engineering for the project from preliminary project concept through design, construction and startup. Those services included preparation of the two volumes of the Preliminary Engineering Report and Environmental Impact Report to qualify the City to receive a construction loan and grant totaling \$11,300,000 from the USDA.

The treatment plants utilize the Sequential Batch Reactor process with U.V. disinfection, and tertiary filtration to achieve consistent effluent quality, well below their permit limitations.

The Camp Branch Plant, located on five acres of a 20 acre wooded site, was designed by CAE with a compact, cost and space efficient arrangement to effectively utilize the site, and provide green space isolation for the plant.

The efficient site utilization and cost effectiveness of the plant has drawn the attention of engineers from throughout the state and many have visited the plant.

The project is the result of a long-term working relationship between Carr Engineers and the City's administration, characterized by long range planning and a willingness to study the latest in technology.

As a part of the planning process, CAE and the City's operating personnel visited plants in Alabama, Florida and Georgia to study the competing processes to determine the best process for Calera's plants.

Carr & Associates Engineers, Inc. has appreciated the opportunity to have provided the engineering to the City of Calera as a continuation of its long relationship with the City and takes pride in this accomplishment so vital to the City's healthy growth.

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Decatur Considers Extending Bike Trail

Decatur city officials are considering extending a city bike trail across the Tennessee River to Calhoun. Kim Pritchard, chairman of the Decatur-Morgan County Chamber of Commerce, says the bike trail could be an advantageous link between Calhoun and downtown Decatur. According to Pritchard, people will use the trail if given a safe pedestrian/bike passage across the river.

Tuscaloosa to Get 311 Phone Service

A 311 telephone service may be available in Tuscaloosa as early as June 2007. The 311 service would assist residents with non-emergency problems by directly connecting them to the city. Residents would have only one number to call for city information and services. The city is also talking with cellular phone companies to allow people to dial 311 from their cell phones. The project is part of Mayor Walt Maddox's campaign to improve customer service in the city.

The city council purchased the 311 number from BellSouth in March. The service is estimated to cost \$175,000 in computer equipment, software and specialized phones. Initially, the service would be available Monday through Friday during the day and on a limited basis at night. It would eventually become available 24 hours a day. The service will be temporarily located on the second floor of the municipal court building.

Madison Embarks on Capital Improvement Plan

The Madison City Council recently adopted a list of capital improvements it will undertake. The 18 projects listed are to be completed by May 2007 and will cost \$3,434,020. Replacing city hall's central heating and air system, extending Gillespie Rd. and building a railroad "quiet zone" on Portal Lane in the Pine Ridge subdivision are a few of the projects on the list. City employees will handle most of the projects.

Residents Urge City to Keep Green Spaces

Florence residents are urging the city to protect green spaces when it adopts its new strategic plan. Developers have had their eyes on heavily-wooded areas like those around Wildwood Park, and some citizens want assurance those areas will remain green. Darrell C. Meyer, a consultant for

KPC Group, said green spaces should be accessible to existing and future neighborhoods. He also said green areas, like pocket parks, should be built into new developments. Additionally, Meyer said the city master plan should keep in mind the need for traffic development and the development of adjoining land.

Alabaster Considers Downtown Revitalization Plan

Alabaster city officials are considering moving forward with plans to revitalize the city's downtown area. City Administrator Tony Rivera, City Planner Harry Still and Shelby County planners presented their proposal to the city council. The proposal covered the area around the Bruno's shopping center off Alabama Highway 119. Under their plan, the city would create green spaces in roundabouts and seek the development of retail-residential buildings in some of the larger strip mall parking lots. Rivera said the city could also bring in some form of entertainment to the downtown area. ■

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“§41-16-54.

“(a) All proposed purchases in excess of seven thousand five hundred dollars (\$7,500) shall be advertised by posting notice thereof on a bulletin board maintained outside the purchasing office and in any other manner and for any length of time as may be determined. Sealed bids or bids to be submitted by a reverse auction procedure shall also be solicited by sending notice by mail to all persons, firms, or corporations who have filed a request in writing that they be listed for solicitation on bids for the particular items that are set forth in the request. If any person, firm, or corporation whose name is listed fails to respond to any solicitation for bids after the receipt of three solicitations, the listing may be cancelled.

“(b) Except as provided in subsection (d), all bids shall be sealed when received, shall be opened in public at the hour stated in the notice.

“(c) If the purchase or contract will involve an amount of seven thousand five hundred dollars (\$7,500) or less, the purchases or contracts may be made upon the basis of sealed bids, a reverse auction procedure, or in the open market.

“(d) For purposes of this article, a reverse auction procedure includes either of the following:

“(1) A real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location, in which multiple anonymous suppliers submit bids to provide the designated goods or services.

“(2) A bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled Internet location, in which multiple anonymous suppliers submit bids to provide the designated goods or services.

“(e) All original bids together with all documents pertaining to the award of the contract shall be retained for a period of seven years from the date the bids were opened and shall be open to public inspection.

“(f) No purchase or contract involving professional services shall be subject to the requirements of this article and no purchase or contract involving an amount in excess of seven thousand five hundred dollars (\$7,500) shall be

divided into parts involving amounts of seven thousand five hundred dollars (\$7,500) or less for the purpose of avoiding the requirements of this article. All such partial contracts involving seven thousand five hundred dollars (\$7,500) or less shall be void.”

Section 2. The reverse auction process shall not be used to procure professional services of architects, landscape architects, engineers, land surveyors, geoscience and other professions, as described in Section 41-16-51(3), Code of Alabama 1975, or contracts for construction, repairs, renovation, or maintenance of public works.

Section 3. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law. ■

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