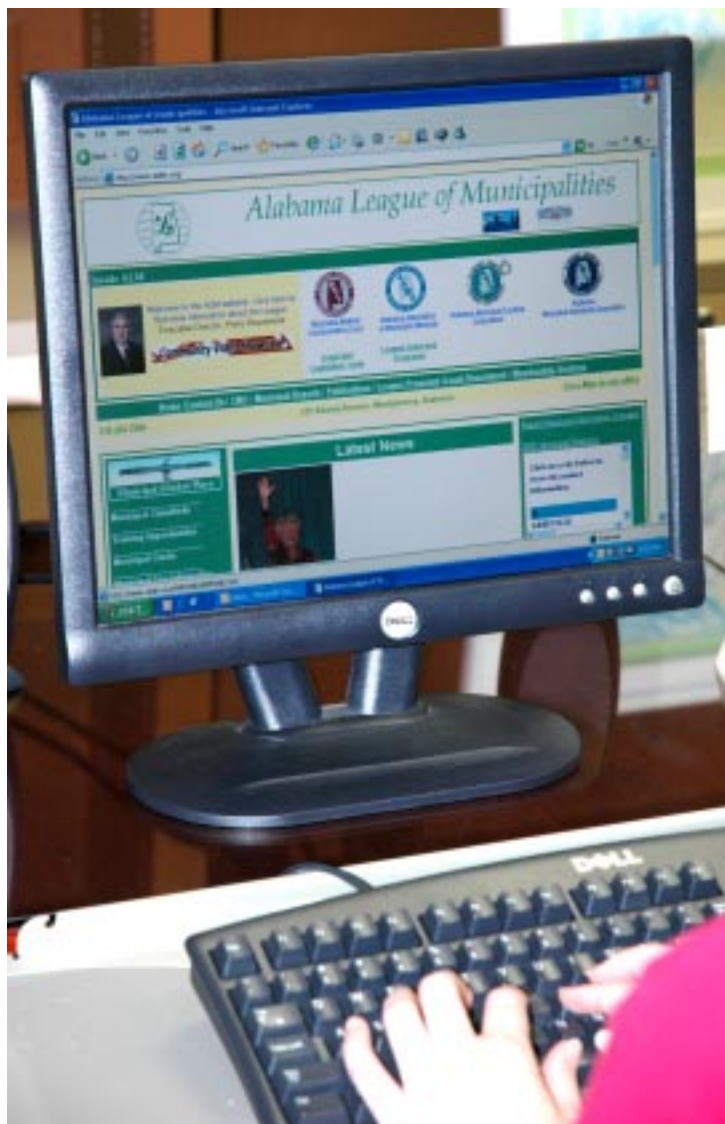


# THE ALABAMA MUNICIPAL **JOURNAL**

June 2007

Volume 64, Number 12



## **FIVE COMMON MISTAKES ON MUNICIPAL WEBSITES**

Story, page 8

### **Inside:**

- **Municipal Photography Contest**
- **Summary of FCC Franchising Report & Order**
- **“Alabama Communities of Excellence” Named**

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Official Publication, Alabama League of Municipalities

June 2007 • Volume 64, Number 12

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The Alabama League of Municipalities is holding a photo contest! The First Place winning photo will be featured on the cover of the 2008 Annual Directory! Other honorable mention photos will be used in the *Alabama Municipal Journal* throughout 2008.



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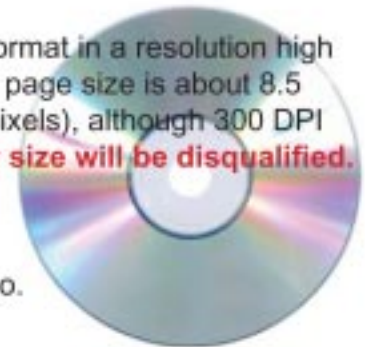
Entries should be **vertical**, color images and submitted in JPEG or TIFF format in a resolution high enough for print quality purposes. Photos must be submitted on a cd. The page size is about 8.5 x 11 and the image should be at least 150 dpi at this size (1,200 x 1,500 pixels), although 300 DPI (1800x1200 pixels) is preferred. **Submissions that are not print-quality size will be disqualified.**

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# The President's Report

Sonny Penhale  
Mayor of Helena

## FCC Media Violence Report on Target with NLC's Call for Increased Parental Controls

**NOTE: This article was written by Sherry Conway Appel and appeared in the April 30 issue of *Nation Cities Weekly*.**

The Federal Communications Commission (FCC) released last week a report on the issue of violent television programming and its impact on children. The FCC recommends that action should be taken to address violent programming in light of its finding that exposure to violence in the media can increase aggressive behavior in children, at least in the short term.

"The report just issued by the Federal Communications Commission (FCC) reinforces the importance of protecting our young people from exposure to the type of violence prevalent in most media today — from video games that engage children as active participants in the mayhem to the equally disturbing images of violent acts that come to young viewers through television, films and the Internet," said NLC President Bart Peterson, mayor of Indianapolis, in a statement about the FCC report. "I am deeply troubled by the culture of violence that pervades all forms of media readily available to youth."

Earlier this month, NLC held a summit on this issue in Indianapolis, engaging local officials, entertainment industry representatives, parents and national experts on the issue of media violence and its impact on children. NLC sought common ground and identified steps municipal leaders can take to educate parents and their communities on this issue.

Among its findings, the FCC report:

- notes that while viewer-initiated blocking and mandatory ratings would impose lesser burdens on protected speech, and is skeptical that they will fully serve the government's interests in promoting parental supervision and protecting the well-being of minors.

- believes that the V-chip is of limited effectiveness in

protecting children from violent television content.

- observes that cable operator-provided advanced parental controls do not appear to be available on a sufficient number of cable-connected television sets to be considered an effective solution at this time and believes that further action to enable viewer-initiated blocking of violent television content would serve the government's interests in protecting the well-being of children and facilitating parental supervision and would be reasonably likely to be upheld as constitutional.

- finds that studies and surveys demonstrate that the voluntary TV ratings system is of limited effectiveness in protecting children from violent television content.

- suggests that industry could on its own initiative commit itself to reducing the amount of excessively violent programming viewed by children (e.g., broadcasters could adopt a family hour at the beginning of prime time, during which they decline to air violent content).

- observes that multichannel video programming providers (MVPDs) could provide consumers greater choice in how they purchase their programming so that they could avoid violent programming.

Peterson stated, "The FCC report addresses several issues that deserve careful consideration as we move this critical debate forward, but there is one overriding theme made clear in the report: More must be done to protect our children from the harmful effects of media violence. We don't have to wait for congressional action or more regulation, however, to make a difference in protecting our kids. Mayors, neighborhood leaders, teachers and others can start now and bring this important topic front and center in their own communities."

"For the health of our communities and the safety of our children, we as parents and community leaders must act now," he said. ■

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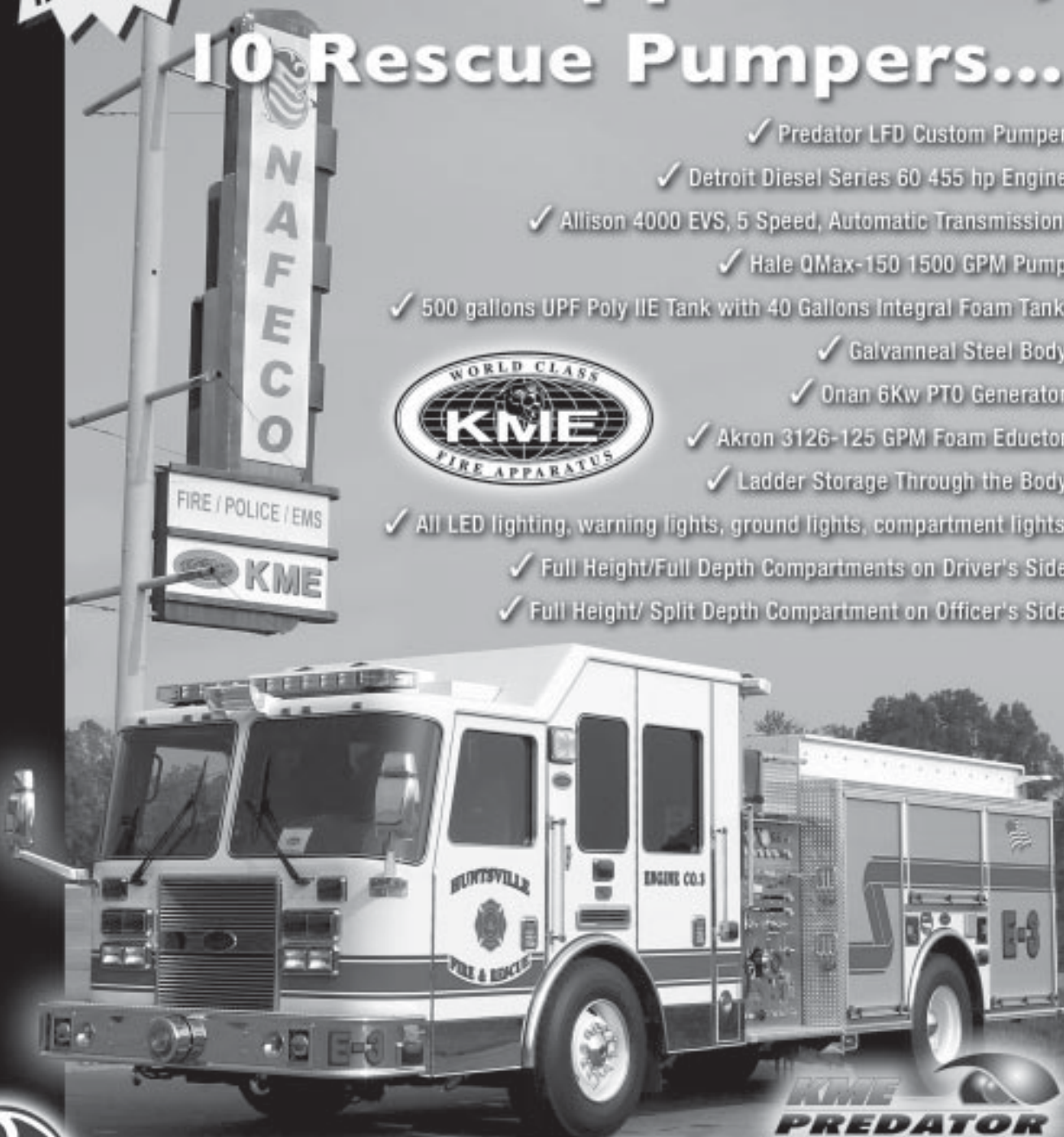
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# Municipal Overview

By  
PERRY C. ROQUEMORE, JR.  
Executive Director

## Recent Supreme Court Rulings Favorable to Local Government

On April 30th, the U.S. Supreme Court handed down two rulings favorable to local governments. The National League of Cities joined with amicus briefs in support of the prevailing parties in both cases.

In *Scott v. Harris*, the court ruled that a police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.

In this case, a Coweta, Ga., deputy sheriff flashed his lights at a motorist driving approximately 20 miles per hour over the speed limit. Rather than slow down to a stop, the motorist attempted to flee, accelerating to speeds of at least 90 miles per hour, crossing double yellow traffic control lines to pass vehicles, and driving through at least two red lights. Another deputy sheriff joined the chase, and after roadblocks failed to stop the motorist, that deputy requested permission to stop the escape by ramming his vehicle into the fleeing vehicle. After receiving permission, the deputy rammed the motorist's vehicle from behind, which caused the motorist to lose control of his vehicle and crash. The crash left the motorist a quadriplegic, and he filed suit claiming that the deputy's actions constituted excessive force resulting in an unreasonable seizure under the Fourth Amendment.

In reversing the 11th Circuit Court of Appeals, the Supreme Court concluded that the deputy's actions were reasonable under the circumstances and rejected the motorist's argument that safety could have been assured if the police had simply ceased their pursuit.

In *United Haulers Assn., Inc. v. Oneida-Herkimer Solid Waste Management Authority*, the court ruled that a flow control ordinance that required private haulers to obtain permits to collect solid waste in the counties and to deliver the waste to the counties' waste management authority's sites did not discriminate against interstate commerce in violation of the Commerce Clause. The Commerce Clause

states that only Congress can erect barriers to trade between the states.

Historically, trash collection and disposal in Oneida and Herkimer counties in upstate New York were carried out by private companies. In the late 1980s, as a result of increasing federal and state environmental regulation and enforcement, the counties changed their methods and devised a comprehensive waste management system. To assist the counties, the state enacted a law creating a combined waste management authority and both counties enacted flow control ordinances that required trash picked up in the counties to be delivered to the authority's sites for disposal. The haulers argued that the ordinances stifled competition and that without them, they could dispose of solid waste in out-of state facilities for far less money.

In writing for the majority, Chief Justice John Roberts said that disposing of waste has been a traditional government activity for years, and "compelling reasons justify treating such laws differently from laws favoring particular businesses over their competitors."

"There is no reason to step in and hand local businesses a victory they could not obtain through the political process," Roberts wrote. "It bears mentioning that the most palpable harm imposed by the ordinances – more expensive trash removal – is likely to fall upon the very people who voted for the law."

## Latest on Immigration Reform

With multiple national polls showing widespread support for comprehensive immigration reform, Congress continues to move toward a debate on immigration legislation.

Although Senate leaders have not reached bipartisan consensus on the actual bill to consider, Senate Majority Leader Harry Reid (D-Nev.) has scheduled floor time for debate beginning the week of May 14.

The House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, chaired by Rep. Zoe Lofgren (D-Calif.), will not take up any legislation until the Senate has acted.

However, the subcommittee has held a series of hearings on immigration issues to highlight past and current controversial topics. These hearings have included the shortfalls of previous legislation, problems and prospects for improving the current employment verification and worksite enforcement system, the merits of a point system for awarding visas and the impact of immigrants on the U.S. workforce.

The subcommittee expects to hold additional hearings in the next several weeks and have a bill to the House floor before the August recess.

*continued page 22*

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# FIVE COMMON MISTAKES ON MUNICIPAL WEBSITES

By Jim Hunt, former President of the NLC and founder of Amazing Cities

The Internet is a wonderful tool that has revolutionized the way we conduct our daily lives. Municipalities have also embraced this new technology and it has proven to be an effective way to communicate with citizens, visitors and prospective businesses. Cities have invested thousands of taxpayer dollars in developing city websites and the successful ones are reaping the rewards of increased efficiency, better communication and wide exposure. Unfortunately, poorly designed and managed city websites litter the Internet and frustrate citizens and visitors alike. These are five of the most common mistakes on city websites:

## **Failure of City Leaders to Monitor the Site**

As I speak around the country, I often mention something I saw on a city website and I get a blank stare from the Mayor or Councilmember. Many will admit that they very seldom visit their own city's site. In the digital world, this is as bad as failing to see a tree lying in the middle of your busiest street. The municipal website is often the first stop by many people who are visiting or doing business in your city; therefore, *you* need to visit often and note items that need attention. After all, you would never allow a police cruiser to be parked in front of City Hall with four flat tires, however, each day millions of people visit city websites with dead links and outdated information.

## **Having Technical People Solely Responsible for the Content of the Site**

This is surely not a knock on the IT department, but leaving decisions on content to the technical gurus can be a fatal mistake for your city website. The website should reflect the character and direction of the leadership and management of the city. I recommend forming a diverse committee to meet on a monthly basis to suggest ideas and improvements for the city website. Things are changing at a rapid pace and we need to stay current and provide the best content to keep the city website updated and relevant. Can we video stream the Parking Authority Meetings or add a searchable complaint system? These are things that can better communicate and inform the public. The IT department can tell us if it's possible; leadership can make it happen.

## **Failure to Realize Why it's Called the World Wide Web**

While I doubt many people will confuse Paris, Texas with Paris, France; you would be surprised at how many city websites seem to think that the only visitors will be from within their state or country. Most site selection companies use the Internet as their primary information outlet. A company from Oregon looking for a plant site should not need to get out an atlas to find out about a community. We need to think big. When you are in Richmond, tell the visitor whether it is in Indiana or Virginia! In this global economy, most visitors or companies will not be "driving into town". Give them the information they need and make it easy to find.

## **Out of Date Information**

The worst thing on a city website is to look at the Calendar of Events and see a listing for the 2002 Spring Fling. There is no excuse for having a stale website. The Internet is a dynamic, fast changing tool and we need to reflect that in our city websites. New technology makes it possible for easy updating of content. Citizens, visitors and business prospects need relevant, up-to-date information. A business will not survive with outdated price lists and inaccurate contact information and neither can we.

## **Fuzzy Contact Information**

I was looking for a mailing address to send a proposal to a city recently and I felt sure that I could get the mailing address on their city website. Wrong!!! I spent about five minutes, (an eternity on the web) and finally gave up. Not everyone is dealing in email. We need to make it easy to communicate. Email addresses, phone numbers, fax numbers, street addresses are *all* a necessity and cost us nothing to add to our site.

*Jim Hunt works with communities and organizations to achieve excellence and attain Amazing results. He is Immediate Past President of the National League of Cities and founder of Amazing Cities: [www.amazingcities.org](http://www.amazingcities.org). To contact Jim, call 304-629-1302 or email [jimhunt@amazingcities.org](mailto:jimhunt@amazingcities.org)*



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# An Update on GASB, SEA, FAF, FASB and SEC

Reprinted from the National League of Cities' May 2007 *League Letter*

In April and early May there were some interesting developments related to the municipal finance and governmental accounting issues that NLC has been following for the state leagues. In early April, the Governmental Accounting Standards Board (GASB) announced that it added a project to its current agenda that could result in suggested guidelines for government to help them effectively communicate their accomplishments to the public. The kinder, gentler GASB notes that it does not intend to require that governments report specific performance measures or achieve specific levels of performance. The GASB press release also emphasizes that the Service Efforts and Accomplishments (SEA) Reporting Project will help government officials “communicate performance results that are relevant to their expressed priorities and goals in a manner that the public will find meaningful and understandable.” The first opportunity to comment on the project is March-May 2008 when a “due process document” is released for comment. The Government Finance Officer Association (GFOA), NLC, and other groups are still opposed to this GASB project.

GASB followed up with NLC about its announcement. In his letter to Don Borut, GASB Chair Robert Attmore takes the position that significant changes have been made to the scope and approach of the project in order to address the concerns raised by the public interest group executive directors. It will take more than this to get the support of the public interest groups.

A familiar face will be at GASB in the future. Former ICMA-RC executive Girard Miller has been appointed to one of the part-time Board member positions starting in July 2007. A former city finance director, Miller brings strong local government experience to the position. Jan Sylvis, a Tennessee state government employee and President of the National Association of Auditors, Comptrollers, and Treasurers, has also been appointed. Both Sylvis and Miller have strong support from the state and local groups.

On April 20, GFOA's leadership met with the Financial Accounting Foundation (FAF) to discuss whether the Financial Accounting Standards Board (FASB) could be the new standard-setting body for governments. Among

the topics discussed were the ineffectiveness of the Governmental Accounting Standards Advisory Council (GASAC, a GASB advisory body) and duplication of effort. GFOA suggested that GASB should not have developed separate standards for derivatives and pollution remediation recently. While no commitments were made about the GFOA proposal, FAF agreed that GASB needs a strong advisory body and said it would ask the chairs of FASB and GASB what a merger would entail.

A meeting took place on Friday, May 4, with public interest group representatives, FAF, and the Chairman of the Securities and Exchange Commission (SEC) regarding the way FAF trustees are appointed. FAF has agreed to a number of procedures allowing for SEC interference in the way trustees are appointed and wants to amend its 1984 agreement with the public interest groups to allow for the same type of SEC interference in the selection of the three state and local government trustees. Specifically, FAF wants the public interest groups to agree to the following:

1. The SEC chair or any SEC commissioner could make suggestions of state or local government officials.
2. The FAF will notify the SEC of all finalist candidates and allow the SEC to provide comments on the state and local nominees.
3. Prior to appointment, the SEC chair or any commissioner could request an interview with any of the candidates.
4. The SEC will inform the FAF of any pending enforcement actions involving the candidate.
5. The FAF wants to have the ability to reject the state and local government nominee(s) and retain the final authority to select a state or local government representative of their own choosing.

NLC and the other groups representing state and local governments who attended the meeting unambiguously expressed their continued opposition to these proposed changes or any others that would replace our judgement as to whom should represent our interests on the FAF. The organizations representing state and local government do not plan to make any of the changes as suggested by the SEC or the FAF. ■



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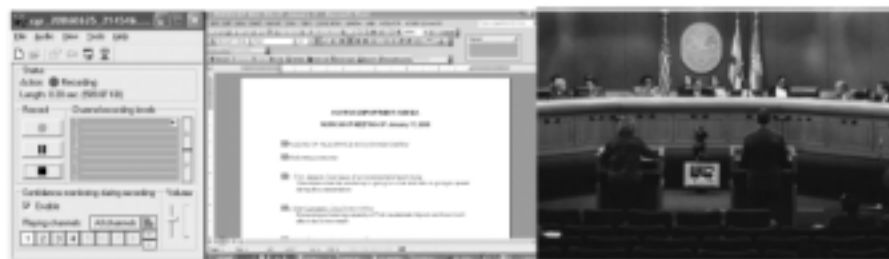
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By Ken Smith  
Deputy Director/General Counsel

# THE LEGAL VIEWPOINT

## Summary of FCC Franchising Report & Order

**NOTE:** This summary of the recent Federal Communications Commission's franchise order was prepared by Adrian Herbst, an attorney specializing in telecommunications law with the Baller Herbst Law Group in Minneapolis, Minnesota, with supplemental material by League staff. The summary is provided here with the permission of Mr. Herbst.

On March 5, 2007, the Federal Communications Commission (FCC) released its Report and Order (Order) on the cable franchising process at the local level. This Order is to become effective thirty (30) days after it is published in the Federal Register. *(NOTE: Although the FCC order was to be effective as of April 20, 2007, the Order will not go into effect for some time due to delays now necessitated by the failure of the FCC to timely forward application and information gathering requirements to the Office of Management and Budget. The Office of Management and Budget must approve the application and information collection procedures included in the FCC Order. That office must follow certain procedural requirements and, as a result, the effective date of the Order is delayed.)*

Local government organizations representing municipal and county officials across America have asked the Federal courts to reverse this order, arguing that it would severely restrict the ability of local governments to protect their citizens, rights-of-way, community channels and public safety networks. In addition, the FCC order would lead to a tremendous reduction in the revenues received by local governments for use of their rights of way, as well as loss of cable services to many governmental buildings and schools.

The repercussions of the FCC's order are far-reaching. Local governments want competition in the video marketplace, but the FCC's order ignores local interests,

provides regulatory advantages for a few of the largest telecommunications companies in the country, and is simply contrary to law in many respects. Local officials argue that the order provides little recognition of the need by local governments to protect public rights of way, and to ensure that all their citizens benefit from increased competition and advances in telecommunications technology – not just a chosen few.

This summary is not meant to be a comprehensive review of the entire Order. It specifically does not include an extensive discussion of the record developed in response to the FCC's Local Franchising Notice of Proposed Rule Making (LFNPRN), upon which the FCC decided that the current local franchising process leads to an unreasonable refusal to award franchise to competitive new entrants. Nor does this summary include discussion of the Report's findings on the FCC's authority and jurisdiction to adopt the rules and regulations of the Order. Rather, this summary is intended to provide a practical overview of how the Order is likely to impact local franchising authorities (LFAs).<sup>1</sup>

The Order specifically deals with Section 621 (a)(1) of the Communications Act of 1934, which prohibits LFAs from unreasonably refusing to award competitive franchises for the provision of cable services. The FCC concluded in the Order that it possesses sufficient authority to issue rules and regulations with respect to franchising decisions at the local level. The Order states in Paragraph 137 that "we do not purport to identify every local requirement that this Order preempts ... we merely find that local laws, regulations and agreements are preempted to the extent they conflict with this Order and the rules adopted herein."

The FCC also found that it does not have sufficient information regarding franchising decisions in which a state is directly or indirectly involved, either by issuing franchises at the state level or enacting laws governing specific aspects

*continued page 15*

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of the franchising process. Therefore, the Order only addresses decisions made by local franchising authorities (LFAs) and not state-level franchises that have recently been adopted or are likely to be adopted in the near future. Localities in states such as Hawaii, Connecticut, and Vermont, which franchise cable at the state level, are not likely to be directly affected by the Order. In addition, LFAs in states such as California, Indiana, Kansas, Michigan, North Carolina, New Jersey, South Carolina and Virginia, which recently have enacted statutes governing the franchising process, are generally not subject to the rules set forth in the Order.<sup>2</sup>

The following is a summary of the rules that preempt the local franchising process. Note that these rules do *not* apply to incumbent providers in franchise *renewals* – only to *new* competitive entrants:

**1. Time Limits**


- A deadline of ninety (90) days is imposed for an LFA to reach a final decision on an application for a new entrant that is already *authorized* to occupy the rights-of-way in the franchise area. The new entrant apparently need not already be *occupying* the rights of way.

- If a competitive applicant is not already authorized to occupy the rights-of-way in the franchise area, the time limit for the LFA to reach a final decision on the application is six (6) months.

- The time limit will begin to run from the date that the applicant first files the required application information and payment of a reasonable application fee, if applicable. Under new FCC Rule § 76.41(b), a competitive franchise applicant must include the following information in writing in its franchise application, in addition to any information currently required by applicable state and local laws:

- (1) the applicant’s name;
- (2) the names of the applicant’s officers and directors;
- (3) the business address of the applicant;
- (4) the name and contact information of a designated contact for the applicant;
- (5) a description of the geographic area that the applicant proposes to serve;
- (6) the PEG (public, educational or governmental) channel capacity and capital support proposed by the applicant;
- (7) the term of the agreement proposed by the applicant;
- (8) whether the applicant holds an existing authorization to access the public rightsof-way in the subject franchise service area as described under subsection (b)(5);
- (9) the amount of the franchise fee the applicant offers to pay; and
- (10) any additional information required by applicable state or local laws.

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• If the LFA has requested certain information and is waiting for that information, the running of the time limit is tolled until that information is received.

• If the LFA does not act within the applicable timeframe, it is deemed to be acting unreasonably, and the franchise will be deemed to have been granted by the LFA on an interim basis.

### 2. Build-Out

• The Order states that “LFAs are prohibited from refusing to award a competitive franchise because the applicant will not agree to unreasonable build-out requirements.” The Order provides examples of both “reasonable” and “unreasonable” build-out requirements but leaves much room for disagreements.

• The Order further notes that nothing in the Order is meant to encourage the practice of “redlining,” but it does not discuss specific anti-redlining practices.

### 3. Franchise Fees

• The Order attempts to clarify the calculation of gross revenues from which the five percent (5%) franchise fee is derived. Among other points, the Order states that non-cable services, specifically Internet access services, including broadband data services, should not be included in gross-revenue calculations.

• Incidental fees are limited to those listed in Section 622(G)(2)(d) of the Communications Act, i.e., “payment for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages.” Other non-incidentals fees such as attorney or consultant fees, application or processing fees that exceed the reasonable cost of processing the application, must be counted towards toward the five percent (5%) franchise fee cap.


• Payments for municipal projects requested by an LFA, but unrelated to the provision of cable services, will count toward the five percent (5%) franchise fee cap.

• Capital costs associated with building a PEG access facility are not included in the five percent (5%) cap, but costs associated with the support of a PEG access facility, such as salaries and training, are considered franchise fees and must be counted in the five percent (5%) cap.

### 4. PEG/Institutional Networks

• An LFA cannot require a new competitive entrant to provide “more burdensome PEG carriage obligations than it has imposed on the incumbent cable operator,” but an LFA is free to design PEG requirements that are not more burdensome than the incumbent’s, and non-capital costs are included in the five percent (5%) fee cap.

*continued page 19*




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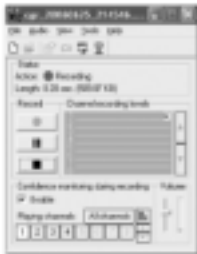
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**NOTE:** Legal summaries are provided within this column; however, additional background and/or pertinent information will be added to some of the decisions, thus calling your attention to the summaries we think are particularly significant. We caution you *not* to rely solely on a summary, or any other legal information, found in this column. You should read each case in its entirety for a better understanding.

## ALABAMA COURT DECISIONS

**Employees:** Letter from state agency employer, which informed former state employee that he was discharged from his employment due to his failure to report for work at new job site after he was ordered to do so, provided adequate notice to employee, prior to Personnel Board hearing to determine whether employee was discharged for cause, of the allegations against him and that the charges were sufficient to warrant dismissal. The law does not require that the charges filed before administrative boards be drawn with the same refinements as pleadings in court; all that is required is that the charges given be sufficient to warrant dismissal and specific enough to apprise the employee of the allegations against him. *Earl v. State Personnel Bd.*, 948 So.2d 549 (Ala.Civ.App.,2006).

**Search and Seizure:** Automobile exception to search warrant requirement applied to vehicles parked on private property without any additional exigency requirement; location of vehicle did not change inherent mobility and regulation of vehicle. *Harris v. State*, 948 So.2d 583 (Ala.Crim.App.,2006).

**Subdivisions:** Restrictions in the final plats for adjacent subdivision, which purported to prevent indefinitely the owners of other subdivision from connecting to the public sewer lines beneath the streets, prevented the city from fully integrating the other subdivision into the surrounding neighborhood and unreasonably interfered with the city's authority over its subdivision development, and, thus, the restrictions were void as repugnant to the dedication of the adjacent subdivision. *Beachcroft Properties, LLP v. City of Alabaster*, 949 So.2d 899, (Ala.,2006).

**Tort Liability:** Police officer was exercising judgment in discharge of law-enforcement duties when he ordered homeowners to vacate home during course of fire and refused to allow homeowner to remain in or return to home to extinguish fire after homeowner had already suffered extensive burns, and, thus, officer was entitled to state-agent

immunity from liability for loss of home from fire by time firefighters arrived, and city was entitled to immunity on claim of vicarious liability. *Hollis v. City of Brighton*, 950 So.2d 300 (Ala.,2006).

**Tort Liability:** Acts performed by municipal court clerk/magistrate to ensure that arrest warrants were recalled constituted a judicial function involving the exercise of judgment, and, thus, clerk/magistrate had absolute judicial immunity from negligence and wantonness claims brought by arrestee after she was arrested because one of the arrest warrants had not been put back into the National Crime Information Center computer by a third party. *Ex parte City of Greensboro*, 948 So.2d 540 (Ala.,2006).

**Zoning:** City building inspector's determination that advertiser's billboards were destroyed was reasonable, for purposes of city zoning ordinance providing that existing nonconforming billboards could remain unless removed, destroyed, or 50% or more structurally deteriorated, where each billboard had its face and horizontal supports, or "stringers," ruined, particularly in light of the building inspector's testimony that the those parts constituted 55% of the structure. *Studio 205, Inc. v. City of Brewton*, — So.2d —, 2007 WL 1098551 (Ala.,2007).

## UNITED STATES COURT DECISIONS

**Arrests:** A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death. In considering motion for summary judgment that raised factual issue of whether motorist fleeing law enforcement officials was driving in such fashion as to endanger human life at the time county deputy rammed motorist's car from behind to put end to chase, courts could not rely upon motorist's version of events, which was so utterly discredited by the record that no reasonable jury could have believed him, and instead had to view facts in the light depicted by videotape that captured events underlying motorist's excessive force claim. *Scott v. Harris*, 127 S.Ct. 1769 (U.S.,2007).

**Arrests:** Officer conducting warrantless arrest of plaintiff at his home violated plaintiff's Fourth Amendment rights by reaching through open doorway without warning and grabbing plaintiff as he stood near doorway but fully within the confines of his home. Arrest in home is plainly

*continued next page*

subject to warrant requirement; probable cause alone is insufficient. *McClish v. Nugent*, — F.3d —, 2007 WL 1063337 [C.A.11 (Fla.),2007].

**Solid Waste:** Waste disposal is typically and traditionally a local government function and courts should be particularly hesitant to interfere with local government efforts in this area under the guise of the Commerce Clause. Any incidental burden on interstate commerce that resulted from application of county flow control ordinances, which required businesses hauling waste in counties to bring waste to facilities owned and operated by public benefit corporation, was not clearly excessive in relation to public benefits provided by these ordinances, which increased recycling and conferred significant health and environmental benefits on citizens of the counties. *United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste*, 127 S.Ct. 1786 (U.S.,2007).

## ATTORNEY GENERAL'S OPINIONS

**Ad Valorem Taxes:** A homeowner that owns more than one dwelling on the same piece of property, or even a dwelling on a different parcel, may lawfully claim that the property is Class III property in accordance with section 40-8-1 of the Code of Alabama, so long as the property is used exclusively by the homeowner as a single-family dwelling for his or her family. 2007-082

**Animal Control:** Animal control officers that are not commissioned by the governing body to be law enforcement officers do not have arrest powers other than those of a private citizen pursuant to section 15-10-7 of the Code of Alabama. 2007-054

**Appropriations:** The authority of a municipality to engage in spending must either be express, implied or essential to the operation of the municipality. The appropriation of city funds for the purpose of funding a school voucher program is neither expressly nor impliedly authorized by the state, nor is the authority essential to the operation of the City of Anniston. 2007-073

**Appropriations:** The appropriation of city funds for the purpose of awarding college scholarships is neither expressly nor impliedly authorized by the state, nor is the authority essential to the operation of the city of Anniston. The city cannot make appropriations directly or indirectly to the Anniston City Schools Foundation for the purpose of awarding college scholarships to graduates of Anniston High School unless the voters in Anniston vote to levy a special tax for a scholarship program and the city council determines such a program would serve a public purpose. 2007-074

**Boards:** Under section 11-86-3 of the Code of Alabama, a Park and Recreation Board is autonomous to the extent that it has the final authority to direct, supervise and promote recreational facilities and programs that will

contribute to the general welfare of the residents of the municipality. The Board is, however, required to cooperate with local agencies for the purpose of maintaining and improving recreational services and facilities for the municipality. 2007-076

**Boards:** Section 41-16-60 of the Code of Alabama precludes a member of the Water Works and Sewer Board from having any personal or financial beneficial interest, directly or indirectly, in a contract for the provision of services to the Board. Whether a direct or indirect benefit actually exists is a question of fact for the Board to determine. 2007-078

**Competitive Bid Law:** Under the Competitive Bid and Public Works Laws, a conviction and debarment by a federal agency are factors that a county commission may use to determine if a bidder is responsible, including in the prequalification procedure. 2007-063

**Competitive Bid Law – Solid Waste Disposal:** Section 11-89A-5 of the Code of Alabama allows a county solid waste disposal authority to amend its certificate of incorporation to become a municipal solid waste disposal authority that would qualify for the exemption from the Competitive Bid Law found in section 11-89A-18. 2007-059

**Conflicts of Interest:** An officer of the state or any county, city or town within Alabama is not eligible to serve as a director of an airport authority unless the officer falls within the exception found in section 4-3-5 of the Code of Alabama. 2007-069

**Conflicts of Interest:** A City may make deposits in, and use the services of, a local bank when said bank also employs the spouse of the Mayor as a teller if a factual determination is made by the council that there is no conflict of interest. 2007-071

**Courts:** The funds collected by the clerk of the municipal court for inmate housing, maintenance and medical costs under section 14-6-22 of the Code of Alabama shall be remitted to the County, and the county may give credit to the city for payment of such funds. Amounts collected and distributed to the county directly by the municipal court clerk in accordance with section 14-6-22 should be excluded in computing any increase of costs to be assessed against all defendants under section 11-47-7.1. 2007-084

**Elections – Fair Campaign Practices Act:** Section 17-5-8 of the FCPA requires political committees to file disclosure reports that account for contributions received and expenditures made “with a view toward influencing [an] election’s result.” Alabama’s Fair Campaign Practices Act (“FCPA”) must be read in the light of the First Amendment as interpreted in *Buckley v. Valeo*, 424 U.S. 1 (1976). The FCPA, therefore, only applies to

*continued page 22*

- A pro rata cost-sharing approach for a new entrant is a reasonable approach to the requirement of providing PEG support.

- Completely duplicative PEG and I-Net requirements are unreasonable. An I-Net requirement is not duplicative if it would provide additional capability or functionality, and the FCC expects LFAs to ask competitive new entrants to provide financial support or equipment to supplement existing facilities rather than to construct new facilities. *(NOTE: I-Nets are typically infrastructure support for institutional networks that link hospitals, libraries, public safety and other municipal services. Cities rely on these networks and need them in emergencies.)*

- Requiring payment for an I-Net that will not actually be constructed is unreasonable.

### 5. Mixed-Use Networks

- An LFA has jurisdiction only over “cable services” provided over a “cable system” as these terms are defined in the Communications Act. As a result, the FCC concluded that an LFA may not require a separate cable franchise for an entity that solely seeks to upgrade non-cable facilities. The Order did not specifically address whether video services provided using Internet Protocol are, or are not, cable services.

- Additionally, the FCC said that an LFA may not use its franchising authority to regulate a new entrant’s entire network beyond the provision of cable services.

- The FCC noted that “Section 602(7)(C) excludes from the definition of ‘cable system’ a facility of a common carrier that is used solely to provide interactive ondemand services,” but it did not further address a LFAs’ authority to regulate interactive ondemand services.

### 6. Preemption of Local Laws, Regulations and Requirements

- The Order states that it does not preempt state law or state-level franchising decisions. It only preempts local franchising laws, regulations and agreements that conflict with the rules and guidance of the Order and that are not specifically authorized by state law. Thus, if a state regulates certain aspects of cable franchises but not others, the nonregulated areas are subject to the FCC’s Order. It is not clear how the Order will affect states that enact new cable franchising laws. On the one hand, one can read the Order as circumscribing any new state laws that would be inconsistent with the Order. On the other hand, one can read the Order as leaving states to enact new laws that override inconsistent provisions of the Order.

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# FCC Franchising continued from previous page

• One specific type of local requirement that the Order preempts are “level playing field” requirements that are inconsistent with the rules, guidance and findings adopted in the Order, as the FCC found that such requirements impede competitive entry by requiring a new entrant’s franchise to have substantially the same terms as an incumbent. It is not entirely clear how the Order affects local requirements (effectuated through local ordinances) that interpret and give effect to state level playing field laws.

In a Further Notice of Proposed Rulemaking, the FCC sought comment on the following issues:

- Whether, as the FCC tentatively concludes, the Order should apply to cable operators that have existing franchise agreements as they negotiate renewals of those agreements
- Whether, as the FCC tentatively concludes, the FCC has the authority to implement the above finding
- What effect, if any, the findings in the Order may have on “most favored nation” clauses in existing agreements
- Whether the FCC can preempt state or local customer service laws that exceed the FCC’s standards or prevent LFAs and cable operators from agreeing to more stringent standards.

The FCC states that it will conclude this rulemaking and release an order no later than six (6) months after release of this Order.

## (Footnotes)

<sup>1</sup> Because the FCC Order will impact local franchising authorities in different ways, depending upon whether or not a state has established franchising rules and, in addition, whether or not the cable operator is a new applicant for a franchise or an existing cable service provider with an existing franchise agreement, it is not possible for this summary to provide advice on the impact to any particular local franchising authority. A local franchising authority’s requirements and obligations based upon this Order must be determined on a case by case basis.

<sup>2</sup> Further, states with long standing statewide franchising requirements such as Minnesota and Massachusetts are not generally subject to the rules and regulations of this Order and, in addition, where long standing requirements are addressed in part by state law, for example, “level playing field” in such states as Illinois, Iowa, and Florida are also not subject to the rules and regulations of this Order to the extent of such state rule. ■

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# Municipal Overview

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Legislation introduced in the House, H.R. 1645, the Security Through Regularized Immigration and a Vibrant Economy Act of 2007 or STRIVE Act, continues to gain supporters, although Lofgren has said that will not be the bill the Judiciary Committee will consider.

Sen. Chuck Hagel (R-Neb.) introduced S. 1092, the High-Tech Worker Relief Act of 2007 which would use a points-based system to select which immigrants should be granted visas to the United States, intended to increase the number of H-1B visas and high-skilled workers.

At last week's hearing before the House Immigration subcommittee, Rep. Lofgren noted that Congress had considered and rejected such a system several times in the past two decades. Currently, immigrants are granted visas based on family ties, economic need and humanitarian concerns. A proposal developed by the White House in consultation with a group of senators leaked recently would favor high skilled workers over family reunification.

Proponents of legislation were buoyed by several recent polls showing widespread interest in passing comprehensive immigration reform among all voters. The findings of a nationwide poll conducted on behalf of the National Immigration Forum and the Manhattan Institute released last month show that 75 percent of Americans polled support a comprehensive immigration reform proposal that includes enhanced border security, tougher penalties on employers who hire illegally, allowing more foreign workers to work here temporarily, allowing illegal workers to come forward and register with the government, pay a fine and receive temporary legal work status and allowing temporary workers a multi-step, multi-year process to earn citizenship under specific conditions.

The findings from the poll, conducted by the Republican polling firm The Tarrance Group and the Democratic polling firm Lake Research Partners, were consistent with other recent polls conducted by USA Today/Gallup and Washington Post/ABC News and several others. ■

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# Legal Summaries

continued from page 18

communications that expressly advocate the election or defeat of a candidate as defined in Buckley. 2007-053

**Industrial Development:** An industrial development authority must use its discretion in determining how much weight the classification of a proposed development as "industrial" has on the determination of whether a proposed facility is deemed a "project." The determination of an authority that a proposed development is a project is conclusive. Whether a specific proposed industrial development is, in fact, a "project" is a determination of fact that must be made by the industrial development authority. 2007-070

**Schools:** Pursuant to Alabama law, rules and regulations relating to senior portraits may be promulgated by local school boards, which must follow state laws pertaining to contract awards and federal law pertaining to disclosure of personally identifiable information. 2007-057

**Search and Seizure:** Rule 3.8 of the Alabama Rules of Criminal Procedure provides a procedure for a municipal judge to issue a search warrant within the jurisdiction of the municipality by telephone or by facsimile transmission. Rule 16.2 of the Alabama Rules of Criminal Procedure authorizes a municipal judge to order the taking of blood samples from a defendant when circumstances require that the defendant be transported outside the corporate limits to properly administer the blood test. 2007-068

## ETHICS COMMISSION ADVISORY OPINIONS

**AO No. 2007-10:** A member of the Gulf Shores City Council, who has previously sold property to Colonial Properties for development, may vote and participate in a development being put together by Colonial Properties when the development is not located on the property purchased from the Council member and is in no way related to that prior transaction between the Council member and Colonial Properties.

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T500	HP 1740 17" LCD Flat Panel Monitor	\$169.00
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T500	HP 2065 20.1" LCD Flat Panel Monitor	\$429.00
T500	LG 42PC3DC 42" Integrated Plasma HDTV	\$2,239.00
T500	LG PWMT200 Wall Mount for 42-60" Plasma	\$142.00
T502	HP DC5700 Desktop Computer	\$645.00
T502	HP DC7700 Advanced Desktop Computer	\$801.00
T502	HP 6510 Laptop Computer	\$1,508.00
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# “Alabama Communities of Excellence” Named

Six Alabama communities were recently designated as “Alabama Communities of Excellence” after successfully completing the Alabama Communities of Excellence (ACE) program, a comprehensive three-phase approach to economic and community development for cities with populations between 2,000 and 12,000.

The graduation ceremony took place Monday, April 23<sup>rd</sup> during the Alabama League of Municipalities Annual Convention held in Huntsville. During the ceremony, the Cities of Atmore, Fayette, Gulf Shores, Heflin, Millbrook and Thomasville were recognized as Alabama Communities of Excellence and presented with a \$5,000 grant from ACE to be used in funding a priority economic and community development project. These checks were presented by Nisa Miranda, ACE President and Perry Roquemore, Executive Director of Alabama League of Municipalities.

“Communities with eligible populations must complete and submit an application in order to be considered for the ACE program,” said Nisa Miranda, president of ACE. “The two main criteria used in selecting ACE participants are 1) the level of local commitment to the ACE program, and 2) the community’s capacity to support the ACE program.”

“We are so proud of these three communities for successfully completing all three phases of the ACE program,” said Miranda. “Their dedication to community development should be commended.”

In addition to the grant, each community will also receive, during a local presentation, an “Alabama Community of Excellence” sign to be posted at the city’s gateway and a framed certificate signed by the Governor and the President of ACE.

During the graduation ceremony, Miranda explained ACE’s three-phase approach.

“Phase I is known as the assessment phase. During this time, a comprehensive report card detailing community assets and weaknesses is prepared and presented to the community along with recommended strategy and actions,” Miranda said.

“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,” said Miranda.

Serving as local ACE coordinators were: Celia Lambert, Atmore; Larry Pinkerton, Fayette; Lisa Kennedy, Gulf Shores; Terri Daulton, Heflin; Carol Thompson, Millbrook; and Debra Fox, Thomasville.

According to Miranda, “Phase III is the Implementation and Comprehensive Planning segment. 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.”

To maintain the Alabama Community of Excellence designation, a community must be recertified every three years. The 2007 ACE graduates will be eligible for recertification in 2010.

“Throughout each of these phases, ACE Partners work with each community to successfully achieve their goals,” Miranda stated. “The ACE program would not be possible without the funding, hard work and participation of the ACE Partner organizations.”

ACE Partner organizations include: Alabama Association of Regional Councils, Alabama Cooperative Extension System, Alabama Department of Economic and Community Affairs (ADECA), Alabama Development Office (ADO), Alabama Electric Cooperative, Alagasco, Alabama Historical Commission, Alabama Municipal Electric Authority, Alabama Power Company, Auburn University Economic & Community Development Institute, Tennessee Valley Authority, the University of Alabama Center for Economic Development, and USDA- Rural Development.

Seven communities have previously been certified as Alabama Communities of Excellence: Brewton (2006), Demopolis (2005), Guin (2005), Guntersville (2006), Haleyville (2005), Monroeville (2005), and Valley (2006).

Three other communities are currently working through Phase II of the ACE program: Headland, Jackson, and Jacksonville.

In addition, the three new communities selected for ACE’s 2007 Class of participants was also announced. These communities are: Evergreen, Graysville, and York. ■



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## **Leonard O. Allen**

Leonard O. Allen, former mayor of Russellville, died January 9, 2007. He was 83. Allen served as mayor of Russellville from 1980 to 1984. While mayor, he played a large role in the planning and opening of Sloss Lake Park and Russellville's economic development. Allen also served as the county's tax assessor and on the county's Veteran's Administration. He was a Navy veteran and a recipient of the Purple Heart.

## **Ellis Farrington**

Ellis Farrington, former Dadeville council member, died January 20, 2007 at the age of 89. Farrington was an active part of the city, serving both in the Police Department in the '60s and on the city council in the '70s. He was a dynamic supporter of his community. He possessed a wide range of abilities from manufacturing tires for military vehicles during World War II, to backhoe operator, to his biggest love, carpentry.

## **Roland "Racehouse" Johnson**

Roland "Racehouse" Johnson, former mayor of Garden City, passed away February 5, 2007. Johnson was mayor from 1964-2002.

## **Robert B. Donaldson**

Robert B. Donaldson, former mayor of Riverside, died February 7, 2007. He was 74. Donaldson served one term as mayor in 1994. During that time he was known as a good manager and an asset to the city. He served two years with the U.S. Army as a first lieutenant, was also a Mason, a member of the Scottish Rite and a Shriner. He was recognized in Who's Who for accomplishments and contributions made to the community.

## **John Alpha Lowe**

John Alpha Lowe, former mayor of Vincent, died April 5, 2007. He was 93. Lowe served three terms as mayor of Vincent, served on the Shelby County Commission from 1975-1982 and also served as a member of the Shelby County Board of Education from 1958-1968. Lowe also held several other positions in Vincent, including civil policeman, gas and water superintendent and fire chief.

## **Marvin R. Wilson**

Marvin R. Wilson, former mayor and council member of Russellville, died March 26, 2007. Wilson served on the Council from 1984 until 1986, when he was elected to serve as mayor until 1988. He was an active part of his community. In addition to his service in city hall, he served on the Board of Registrars, Community Action Board, Housing Authority Board and also through volunteer efforts with Meals on Wheel and Project Help.

## **James O'Neal Pogue**

James O'Neal Pogue, former council member of Prichard, died March 27, 2007. He was 76. Pogue began his service on the Council in 1993 to fill an unexpired term and was re-elected in 1996. During his service, Pogue stressed desires to see economic growth for Prichard.

## **James Ernest Willingham, Sr.**

James Ernest Willingham, Sr., former mayor of the Town of Collinsville, died March 28, 2007. He was 69. Willingham served 16 years as mayor from 1988-2004. He was a retired school teacher, coach and principal. He served on the Board of Directors at the Dekalb Cherokee Gas District and the Board of Directors of Top of Alabama Regional Housing Authority. In addition, Willingham was a Certified Municipal Official and president of the Dekalb County Mayor's Association for eight years.

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