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Volume 65, Number 10



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Cover Photo:

*Photo Entry, "Diving Ducks"
2008 Photo Contest*

Photographer: P. Lindy Massey, Helena

The "Duck Race" has become a favorite event during Helena's Annual Buck Creek Festival held annually in May. More than 1200 ducks were purchased at last year's event and released over the falls while spectators cheered them as they raced down Buck Creek to the Finish Line. All proceeds from the Race and Festival go to local charitable organizations.

A Message from the Editor



Azaleas, dogwoods, paperwhites and daffodils are blooming; Easter eggs have been hunted by children in lovely handmade creations; and brightly colored landscaping beckons motorists as they enter municipalities, neighborhoods, shopping centers and tourist attractions. Pollen dusts every surface, clogging our throats and coating our eyes, and allergy season is in full swing. Spring has most definitely arrived!

Spring is also prime season for bicyclists. Now that the weather is warmer and the days are longer, it's not unusual to see any number of cyclists peddling along roadways throughout the state. Organized rides can easily attract hundreds of cyclists at a time. Cycling is fantastic exercise; it fosters a unique camaraderie; and it's great fun in the great outdoors. It's also dangerous.

Unfortunately, many cyclists are negatively depicted as "impeding" traffic, and those driving motorized vehicles tend to have very little patience when it involves making room for a person (or several) peddling a bike along the roadside. Motorists seem to forget that bicycles are legal vehicles – they are *traffic* – and that encountering bicycles is no different than other slower moving traffic such as farm or construction equipment.

I'm a cyclist. So is my husband as well as many of my closest friends. Recently, while cycling single file along a semi-deserted road one weekend morning in Montgomery County, a person driving a silver Honda CRV sped past me and my cycling partner (who was riding behind me), without slowing or moving over. The Honda passed so close and so quickly that had either of us leaned left a few inches, we'd be hood ornaments. This driver had plenty of room and an unobstructed view of the roadway (nothing was coming) and yet chose to risk injury or death to us rather than proceed in a safe, lawful manner. My partner and I were riding single file even though, legally, we could have ridden beside each other. We were peddling along the edge of the correct side of the road wearing proper safety attire and brightly colored clothing. Section 32-5A-263, Code of Alabama 1975, states: (a) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction. (b) Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles. (c) Wherever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway.

Because Alabama has a large number of cyclists and a limited number of dedicated bike paths, I encourage our municipalities to use your websites and newsletters to remind the citizens of your communities to *always watch for cyclists*. Educate drivers about the laws relating to cyclists and remind them that the cyclist is the one who *always* loses in a situation involving a motorized vehicle – and that some losses can't be reversed. In the same turn, I encourage you to remind cyclists that they are accountable to the same rules and regulations as those driving motorized vehicles and that riding single file with proper safety equipment is always the safest option. This would also be an ideal time to remind your constituents of your leash laws and encourage them to keep their pets safely enclosed and not allowed to roam freely. Being chased by a snarling dog while riding a bike is every bit as frightening (and dangerous) as dealing with traffic! It's also very dangerous for the dog. Please help make our roadways safe for cyclists!

Congratulations to the six winning entries for this year's Municipal Achievement Awards: Auburn, Brewton, Flomaton, Helena, Monroeville and Selma. Each winner will be recognized during a special Awards Ceremony next month at the League's 2008 Annual Convention in Birmingham. More information on the winning entries can be found on page 22.

The League welcomes Will Strength to its Loss Control Department. Will joins the department as a Loss Control Representative after 10 years with the Prattville Fire Department. He will provide services to a 19-county territory in the central and western regions of the state. Welcome aboard, Will! (For more information on the League's Loss Control Department, see page 34.)

Once again, I remind you that the League's Annual Convention will be held May 17-20 at the Birmingham-Jefferson Convention Complex (BJCC). Please note that the program has changed from past years and *begins* on **Saturday, May 17** with registration from 8 a.m. until 5 p.m. A tentative program can be found on page 29 or by visiting www.alalm.org and clicking on the "2008 Convention" button on the left side of the screen. Next month's *Journal* will have more detailed program information.

In closing, I'd like to congratulate Carole Epstein with the City of Mountain Brook for fulfilling the requirements of the Certified Municipal Clerk Program of the International Institute of Municipal Clerks (IIMC) and earning her Certified Municipal Clerk (CMC) designation. Well done!

Carrie

The President's Report



Charles W. "Sonny" Penhale
Mayor of Helena

Rep. Frank Addressed Mortgage and Municipal Bond Crisis During NLC Congressional City Conference

In between attending hearings on the Department of Housing and Urban Development budget and insurance premiums House Financial Services, Committee Chairman Barney Frank (D-Mass.) spoke to delegates at the NLC Congressional City Conference in Washington, D.C. this past March. He expressed that the private sector is a "great thing," but has caused two major failures — the subprime mortgage crisis and the municipal bond crisis.

In part, the subprime crisis is due to a total absence of regulation in some of the mortgage markets, according to Frank. He said, when mortgages were being regulated by deposit-taking institutions, such as banks, there were no problems. The problem was caused by the wholly unregulated sector.

"The combination of non-regulated originators, using unregulated funds to make loans and then immediately selling them so that they were not responsible for getting paid directly back, that's where we got the subprime crisis," Frank explained.

The municipal bond crisis, on the other hand, occurred because many in the private sector undervalue the public sector and don't understand the solidness of full-faith in credit general obligation bonds, Frank said. This has forced some cities to buy insurance for their bonds even though, according to Frank, municipal bonds 'never fail' "That is like having a life insurance policy on a vampire because they never die so you don't pay off," Frank joked. "Except, in this case, the bloodsucking goes the other way."

Frank believes that unless there is sensible and thoughtful intervention by the public sector, partly but not entirely at the federal level, things will get worse with the dilemmas in the private sector. A strong advocate for affordable housing and reform of the housing finance system, which is a top legislative priority for NLC, Frank believes one of the problems in the U.S. is that, for several years, "we have been out of the business of helping construct affordable housing." He said, though the Section 8 voucher program is currently being used, it violates a basic economic principle. "It adds to the demand for housing in a way that cannot increase the supply because nobody increases the supply of housing built on an annual voucher," Frank said. He also pointed out that another major problem in building affordable housing is people are in favor of it in general, but don't want the housing to be in their vicinity.

Frank has worked closely with NLC in the past year on issues surrounding mortgage finance reform and the home foreclosure crisis, and he has sponsored and managed several significant housing bills to passage in the House last year that are now awaiting Senate action. During the Congressional City Conference he also spoke of new legislation that was subsequently introduced mid-March. The legislation features a couple of important mechanisms.

First, the legislation proposes to make \$10 billion available to states to buy property that has already been foreclosed — property that used to be "tax-reducing" that is

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\$10 Million Dollars



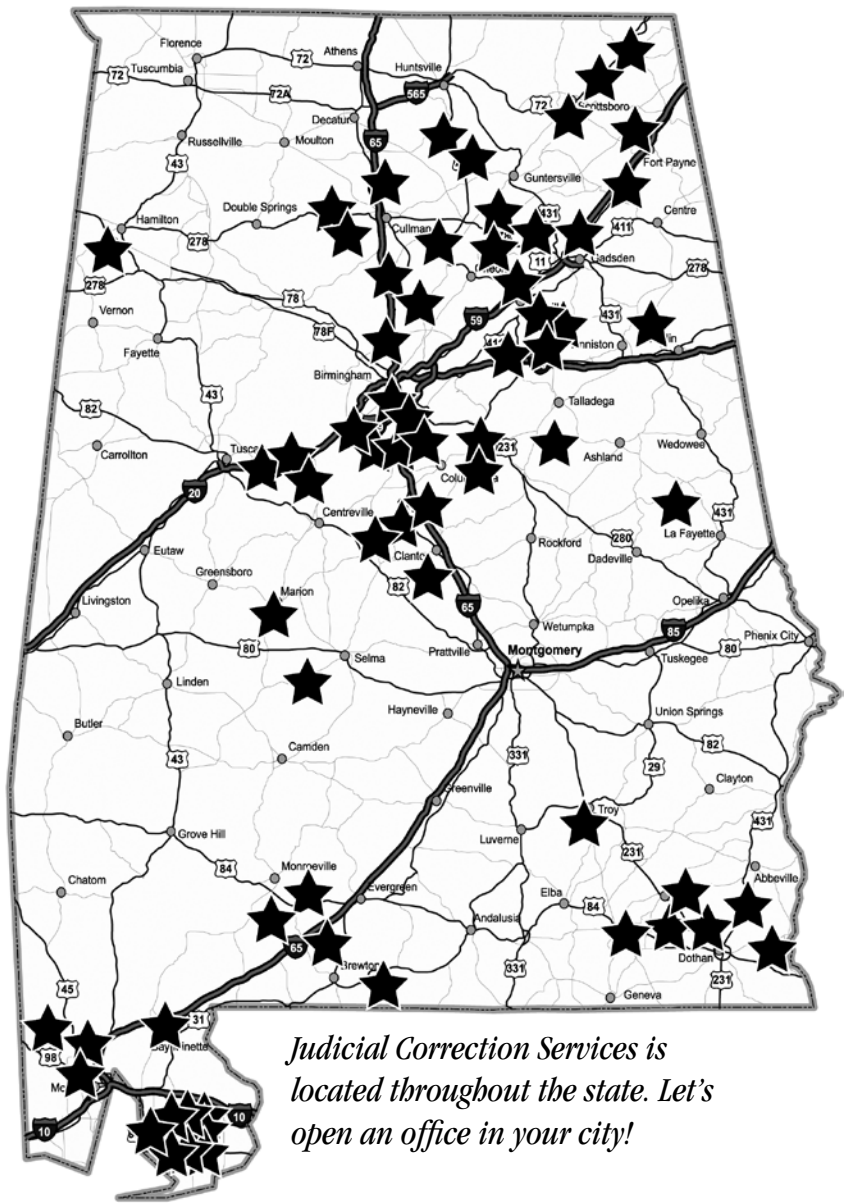
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Municipal Overview



Perry C. Roquemore, Jr.
Executive Director

2008 Congressional Cities Conference Very Successful

Approximately 200 Alabama municipal officials and their spouses and guests attended the NLC Congressional City Conference in Washington, D.C. on March 8 thru 12. The conference provided an excellent opportunity for municipal officials from across the nation to gather in Washington to educate themselves on the latest federal issues and to relay their concerns to the members of Congress.

There were several special events held during the conference for Alabama officials. The Alabama Delegate Caucus on Sunday afternoon provided an opportunity for delegates to be briefed on NLC legislative priorities by NLC's Director of Federal Relations, Carolyn Coleman. On Monday evening, delegates from each of Alabama's seven congressional districts met for dinner with their Congressmen and staffs. On Wednesday morning, Alabama delegates attended a breakfast to hear from Senators Richard Shelby and Jeff Sessions.

NLC President Cynthia McCollum, Council Member of Madison, Alabama, stressed the importance of a partnership between municipalities and the federal government during the opening general session of the Congressional City Conference in Washington, D.C.

"Being a leader means getting in front of the issues and addressing them before they become a problem too large to handle," she told more than 2,000 delegates at the conference. "Being a leader means putting aside petty bickering and, instead, hammering out solutions.

"We are here in Washington, D.C., this week to say: Yes, we are innovators; yes, we are do-ers. But we also need the federal government to recognize that we can't do it alone. We need a two-way partnership instead of the trickle-down attitude of the past," McCollum said.

McCollum offered stories of "comeback cities" — cities where determined leadership led to community revitalization. For example, in Bremerton, Washington, city leaders worked

together to reinvent its boarded-up downtown as the "Harborside District," an urban village.

Both Greensburg, Kentucky, and Newton, Iowa, had to cope with a major manufacturing closure. Greensburg developed the Heartland Regional Micro-Enterprise Park, providing opportunities for a number of small businesses to get started or expand. Newton formed the Newton Transformation Council, where 350 people from the town worked together to create a new vision for Newton.

"We need to use these great stories of innovation and leadership at the local level to change the conversation with Washington," she said. "We need to tell all the candidates running for national office that we are looking for a new partnership that builds on the innovative work happening in cities and recognizes that they can serve as national models for effective investment. We need to tell them that we are looking for a dialogue with the new President and the new Congress that respects the experience and input of those of us leading at the local level."

During the conference, NLC launched American Cities '08, a multimedia project that seeks to raise the voice of cities and towns in the national elections and work in partnership with the new Presidential administration.

"We want the candidates — for president and for Congress — to know that cities are here to help create positive change for the country — regardless of political party," McCollum said.

During the general session, she showed a video, available on the American Cities '08 website at www.Americancities08.org that offers questions to ask candidates for all levels of office.

"We are asking you to take these questions back, to go to political rallies, ask them of your local candidates, build

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President's Report continued from page 5

now “tax-eating.” This will occur by offering non-recourse loans.

Secondly, the legislation will attempt to slow down the rate of foreclosures. According to Frank, this will have to begin with telling the holders of loans that they must recognize their losses and they will have to bring them down substantially.

If holders reduce the loans to the point where buyers can pay, the legislation will then use federal mechanisms to guarantee those loans and allow them to be refinanced at a reasonable rate.

“This has got to be fixed,” Frank said. “We cannot tolerate a situation where elected officials trying to build schools and comply with federal mandates from the federal government to improve the treatment of sewage and build highways ... are charged much more than they should be charged.” ■



Municipal Overview continued from page 7

a discussion in your own community, and, most importantly, get answers,” McCollum said.

McCollum hopes that having a voice in the elections will help lead to federal elected leaders who will do more to work with cities and towns. She urged city officials to speak with their representatives in Congress about NLC’s legislative priorities, which include:

- Funding for transportation systems
- Legislation to stabilize and strengthen America’s housing finance system
- Funding for crime prevention, intervention and enforcement programs
- Funding for the new Energy Efficiency and Conservation Block Grant
- Comprehensive immigration reform

“In many ways, during the past 30 years it seems like the federal government has just forgotten about us,” she said. McCollum added, “Thirty years of benign neglect must come to an end. The future of our communities — and our country — depends on it.”

Enterprise Receives Diversity Award

The League extends congratulations to the City of Enterprise, which was one of four American cities to receive a 2008 Cultural Diversity Award March 10 in Washington, D.C., from the National League of Cities and its National Black Caucus of Local Elected Officials

The awards were presented during the annual “Celebrate

Diversity” breakfast at NLC’s Congressional City Conference. According to a National League of Cities press release, recipients were chosen from cities whose governments “implemented a variety of innovative and unique programs and events designed to help citizens recognize the impressive diversity within their own community.”

Enterprise was honored specifically for its “Sera Bella, A Beautiful Evening in Italy” program, which was a free event featuring Italian dancing, music, education and food. Tara Emmett, the city’s special projects coordinator, is credited with leading the event, and she was joined by City Clerk Steve Hicks and Mayor Kenneth Boswell to receive the award. According to Boswell, another similar event is already in the works in Enterprise. Other award recipients were Columbia, Missouri, Alexandria, Virginia and Phoenix, Arizona.

The City Cultural Diversity Award was established in 1995 to promote cultural diversity in community governance through citizen and community participation. Winning cities are selected from a pool of applicants and are grouped according to population.

The National Black Caucus of Local Elected Officials (NBC-LEO) was established in 1970. A constituency group of the National League of Cities, NBC-LEO is an advocate for the interests of African-American local elected officials. Its mission is to provide African-American municipal officials and their colleagues with forums to share ideas, discussion groups to develop strategies for improving municipal governance, debates on policy issues, and programs that contribute to the success of America’s cities and towns. ■



Municipal and Public Finance Group

(Left to Right)
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The Legal Viewpoint

By Ken Smith
Deputy Director/General Counsel



Municipal Tort Liability in a Nutshell

Lawsuits frequently cannot be avoided. These days individuals sue at the drop of a hat, often for imagined slights. Municipalities, as public agencies, have to be concerned both with lawsuits brought in state court and with those brought in federal court, mostly brought pursuant to 42 U.S.C. Section 1983 (Section 1983).

There are, however, steps that can be taken to reduce the potential of a successful suit. And, fortunately, both the courts and the Legislature have provided municipalities, their officers and employees certain immunities and protections. An awareness of these will help officials and employees work with their attorney in the event of a threatened lawsuit.

The first step in protecting yourself and the municipality is education. This article is designed to provide a brief overview of municipal liability issues, focusing specifically on immunities and limitations from suit in both state and federal court.

What is a Tort?

Balentine's Law Dictionary with Pronunciations (2nd ed. 1948) defines a tort as an "injury or wrong committed... to the person or property of another." There are three basic types of torts – intentional torts, negligent torts and strict liability torts.

Strict liability torts rarely have any application to municipalities. Instead, municipal liability in state court is usually based on negligence, pursuant to Section 11-47-190, Code of Alabama, 1975. Essentially, this Code section establishes a negligence standard for municipalities. It states that a municipality can be held liable for the torts of its officers and employees which are due to "neglect, carelessness or unskillfulness."

In its simplest terms, a negligent tort arises if the plaintiff can prove:

1. that the defendant owed (or assumed) a duty to the plaintiff to use due care;
2. that the defendant breached that duty by being negligent;

3. that the plaintiff was injured; and
4. that the defendant's negligence caused the plaintiff's injury.

All four elements must be satisfied for liability to arise. Liability for negligence may be founded upon either nonfeasance (failing to perform an assumed or required duty), malfeasance (performing an act that exceeds municipal authority), or by misfeasance (improperly doing a lawful act).

Although Section 11-47-190 creates a negligence standard of care for municipalities, because court decisions like *Neighbors v. City of Birmingham*, 384 So. 2d 113 (Ala. 1980), municipalities must also be concerned with intentional torts. An intentional tort is a willful tortious action taken by the defendant towards the plaintiff. Examples of intentional torts are assault, battery, false imprisonment, false arrest, trespass on real and personal property, etc.

Punitive damages cannot be recovered against a municipality. Section 6-11-26, Code of Alabama, 1975. This section also applies to separately incorporated utility boards. *Carson v. City of Prichard*, 709 So.2d 1199 (Ala. 1998).

Statutory Limitations and Defenses

Municipal liability for state torts dates from 1975, when the Alabama Supreme Court abolished the doctrine of municipal immunity in Alabama. *Jackson v. City of Florence*, 320 So.2d 68 (Ala. 1975). Fortunately, although the Court held that municipalities may be liable for the negligent actions of their officers and employees, the Court also noted that it was within the power of the legislature to limit municipal liability in any manner it deemed necessary.

In response to *Jackson*, the legislature enacted several statutes limiting the tort liability of municipalities. These include:

- Section 11-93-2, Code of Alabama, 1975, limits the amount of damages awardable against a municipality to \$100,000 per person and \$300,000 per occurrence for claims based on personal injuries and \$100,000 for a property loss.

This section protects municipalities from losses they incur either on their own or through indemnification of their officers or employees.

- Section 11-47-190, Code of Alabama, 1975, states that no recovery above the \$100,000/\$300,000 amount may be had against a municipality under any judgment or combination of judgments, whether direct or by way of indemnity arising out of a single occurrence. See, also, *Benson v. City of Birmingham*, 659 So.2d 82 (Ala. 1995). Unfortunately, the Alabama Supreme Court has held that these liability damage limits do not apply to property damage cases, holding that an amendment to Section 11-47-190 did not expand the protection of the caps to property damage cases. See, *City of Prattville v. Corley*, 892 So. 2d 845 (Ala. 2003). The court held that the statute “places no aggregate limit on a local governmental entity’s liability for property-damage claims payable on multiple judgments arising from the same occurrence.” The League will attempt to correct this legislatively.
- Section 11-47-23, Code of Alabama, 1975, states that in order for a plaintiff to recover damages against a municipality, he must file a claim with the municipality within six months. If he fails to do so, the claim is barred, unless the municipality waives the requirement in this section. *Downs v. City of Birmingham*, 240 Ala. 177, 198 So. 231 (1940). It is important to remember that a municipality must raise the plaintiff’s failure to comply with this section as an affirmative defense, or the court will deem it waived. *Alexander City v. Continental Insurance Co.*, 262 Ala. 515, 80 So.2d 523 (1955).
- Closely related to Section 11-47-23 is Section 11-47-192, which states that a person who has been injured by a municipality must file a sworn statement with the city clerk stating the manner in which the injury occurred, the day, time and place where the accident occurred, and the damages claimed. *Waterworks and Sewer Board v. Brown*, 268 Ala. 96, 105 So.2d 71 (1958). In *Howell v. City of Dothan*, 234 Ala. 158, 174 So. 624 (1937), the Alabama Supreme Court stated that the six-month limitation period in Section 11-47-23 must be read into this section. Therefore, written notice must be given to a municipality within six months of the accrual of a claim for personal injuries or it is barred.¹
- Section 6-3-11, Code of Alabama, 1975, restricts the venue of tort actions against municipalities to the county in which the municipality is located or the county where the cause of action accrued. Although originally held invalid, Section 6-3-11 was upheld in *Ex parte Alabama Power Co.*, 640 So.2d 921 (Ala. 1994). It was also applied favorably in *Ex parte Talladega County*, 28 ABR 1490 (Ala. 1994) and, most recently, in *Ex parte City of Greensboro*, 730 So.2d

157 (Ala. 1999).

- Section 6-5-338, Code of Alabama, 1975, extends “state-agent immunity” to police officers and the municipalities which employ them for actions taken in the line and scope of the officer’s authority. It does not, however, protect an officer who exceeds the authority given in a particular case. *Newton v. Town of Columbia*, 695 So.2d 1213 (Ala. 1997).

Section 6-5-336, Code of Alabama, 1975, grants immunity to municipal volunteers engaged in certain activities for governmental entities. However, this immunity does not protect the governmental entity from liability under the doctrine of respondent superior.

State Court Immunities

State law cloaks public officers and employees with two distinct types of immunity. First is absolute immunity. Absolute immunity generally applies only to legislative and judicial acts by officers and employees. Absolute immunity is defined as the total protection from civil liability arising out of the discharge of judicial or legislative power. Under the doctrine of absolute immunity, the actor is not subject to liability for any act committed within the exercise of a protected function; the immunity is absolute in that it applies even if the actions of the judicial officer are taken maliciously or in bad faith. *Black’s Law Dictionary* 761 (5th Ed. 1979).

But, once it is determined that absolute immunity applies to the official function being performed, how far does the protection extend? Provided that the protected official acted within the scope of his or her duties, the protection is total. Courts will not inquire into the motives behind a protected action.

It is not always easy, however, to determine whether an official is acting within the sphere of protected activities. Absolute immunity does not shield protected officers from suit for all actions, only those taken while acting in a protected capacity. As the court noted in *Bryant v. Nichols*, 712 F. Supp. 887, 890 (M.D. Ala. 1989), “It is the official function that determines the degree of immunity required, not the status of the acting officer. A court must examine the specific activity undertaken by the officials and assess whether it was performed in the course of an activity justifying absolute immunity.”

Absolute immunity, though, is rarely applied. Instead, Alabama courts in the past have followed what used to be called discretionary function immunity. This was considered sufficient to protect public defendants. Under discretionary function immunity, the good faith of the defendant became relevant. Stated simply, discretionary function immunity protected public defendants when they in good faith performed a discretionary act that was within the line and

scope of their duties.

Recent decisions, though, have made clear that municipalities and their officers and employees can no longer rely on discretionary function immunity. In *Blackwood v. City of Hanceville*, 936 So.2d 495 (2006), for example, the Alabama Supreme Court noted that Section 6-5-338 of the Code essentially replaced discretionary function immunity for municipal police officers with “state-agent” immunity as provided for in *Ex parte Cranman*, 792 So.2d 392 (2000). In *Cranman*, the Alabama Supreme Court restated the rule governing state-agent immunity, stating:

“A State agent *shall* be immune from civil liability in his or her personal capacity when the conduct made the basis of the claim against the agent is based upon the agent’s

- (1) formulating plans, policies, or designs; or
- (2) exercising his or her judgment in the administration of a department or agency of government, including, but not limited to, examples such as:
 - (a) making administrative adjudications;
 - (b) allocating resources;
 - (c) negotiating contracts;
 - (d) hiring, firing, transferring, assigning, or supervising personnel; or
- (3) discharging duties imposed on a department or agency by statute, rule, or regulation, insofar as the statute, rule, or regulation prescribes the manner for performing the duties and the State agent performs the duties in that manner; or
- (4) exercising judgment in the enforcement of the criminal laws of the State, including, but not limited to, law-enforcement officers’ arresting or attempting to arrest persons, or serving as peace officers under circumstances entitling such officers to immunity pursuant to § 6-5-338(a), Ala.Code 1975. (modified in *Hollis v. City of Brighton*, 950 So.2d 300 (Ala. 2006)); or
- (5) exercising judgment in the discharge of duties imposed by statute, rule, or regulation in releasing prisoners, counseling or releasing persons of unsound mind, or educating students.

Notwithstanding anything to the contrary in the foregoing statement of the rule, a State agent *shall not* be immune from civil liability in his or her personal capacity

- (1) when the Constitution or laws of the United States, or the Constitution of this State, or laws, rules, or regulations of this State enacted or promulgated for the purpose of regulating the activities of a governmental agency require otherwise;
- (2) when the State agent acts willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law.”

Rather than depending on discretionary function immunity, defendants must fit their actions into one of the listed *Cranman* categories in order to claim immunity. Strict reliance on these standards can lead to disturbing results. In *Blackwood*, the defendant police officer exceeded the speed limit in response to an emergency call involving a serious accident. In route, the officer’s vehicle struck another vehicle, injuring the passenger.

The Court gave the actions of the police officer an extremely narrow interpretation under the *Cranman* analysis, finding that driving to the scene of an accident does not fall within any of the listed *Cranman* categories. The closest, they stated, would be Category (4), listed above.

Despite the fact that the Court noted that this list is not intended to be exhaustive, but instead provides mere categories of immunity, the Court applied a very narrow construction to the application of these categories. They noted that Category (4) applies only to the enforcement of criminal laws and driving to the scene of an accident does not does not implicate the criminal laws. Thus, the Court stated that the officer had no immunity from suit based on Section 6-5-338. Although this decision might be different now that the Court has modified the *Cranman* standards to recognize the different immunity standard in Section 6-5-338, the Court’s narrow construction of these categories to the functions of law enforcement officers is bothersome.

Regardless, it is now clear that rather than relying on the protection of discretionary function immunity when performing their discretionary acts, municipal actors must fit their actions into one of the listed *Cranman* categories to entitle the officer or employee to claim immunity.

Craman, then, created a burden-shifting process. When a defendant raises state-agent immunity as a defense, the state/city agent bears the initial burden of showing that the plaintiff’s claims arise from a function that entitles the state/city agent to immunity. Once this is established, the burden shifts to the plaintiff to show that the law requires finding the actor liable, or that the state/city agent acted willfully, maliciously, fraudulently, in bad faith, or beyond his/her authority.

Examples of state agent immunity cases include:

- Arresting officer and police dispatcher who searched the National Crime Information Center (NCIC) 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).

- In a case involving the execution of an arrest warrant, the Alabama Supreme Court held that summary judgment was proper for issues related to the operation of the police department and courts that involved legal issues, but was premature for issues that required the development of facts. The Court also held that the city was immune from vicarious liability for the alleged acts of malice or acts of bad faith committed by its officers in the execution of the warrant. *Ex parte City of Tuskegee*, 932 So.2d 895 (Ala. 2005).
- In *City of Crossville v. Haynes*, 925 So.2d 944 (Ala. 2005), the Alabama Supreme Court held that because a police chief was immune from suit by state-agent immunity for an alleged jail suicide, the employing municipality was also immune from being sued.
- Any alleged negligence by a police officer in initiating and continuing a high-speed pursuit of a motorist did not proximately cause the motorist's wreck and resulting fatal injuries. The officer followed policies and procedures reflected in the city's police department manual. The motorist wrecked because he lost control of his vehicle as a result of his excessive speed during the pursuit. The officer was more than 200-300 yards from the motorist's vehicle when it wrecked, and the

motorist could have slowed down and stopped at any time during the chase. *Gooden v. City of Talladega*, 966 So.2d 232 (Ala.2007)

- City and the city's planning director were immune from liability to landowner for flooding of property as a result of construction of a subdivision. Immunity applies to employees of municipalities in the same manner that immunity applies to employees of the state. *City of Birmingham v. Brown*, 969 So.2d 910 (Ala.2007)

This is a developing area of law that the League will follow closely.

Municipal Liability Under Section 1983

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.”

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Municipalities and their officials have been subject to liability under 42 U.S.C. Section 1983 since 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 violations of civil rights resulting from customs or policies of the municipality, has become one of the broadest bases for challenges to municipal actions. So, liability under Section 1983 is predicated on first, finding a violation of federal statutory or constitutional rights, and two, that this deprivation was caused by an official policy or custom. These next sections discuss Section 1983 and the impact it continues to have on municipalities.

Overview of Section 1983

Section 1983 is not designed as a substitute for state court tort actions. In *Monell*, the court required that the municipality's custom or policy actually cause the alleged deprivation of civil rights. A municipality "cannot be held liable solely because it employs a tort-feasor." See also, *Cremins v. City of Montgomery*, 779 So.2d 1190, 1191 (Ala. 2000).

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 that

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 LW 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. And, in *Todd v. Kelley*, 783 So.2d 31 (Ala. Civ. App. 2000), the Alabama Supreme Court held that where a mayor has the final decision-making authority to fire a police officer under the municipality's rules, the mayor's actions may subject the municipality to liability under Section 1983.

In addition, in *Maine v. Thiboutout*, 488 U.S. 1 (1980), the U. S. Supreme Court held that successful plaintiffs under Section 1983 are entitled to recover attorneys' fees under the Civil Rights Attorneys 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 the forum. *Terrell v. City of Bessemer, supra*. The appropriate statute of limitations

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for Section 1983 claims is two years. *Owens v. Okure*, 57 LW 4065 (1989). However, in *Felder v. Casey*, 56 LW 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 claim within six months. *Morrow v. Town of Littleville*, 576 So. 2d 210 (Ala. 1991).

Section 1983 Immunities

In discussing immunities under Section 1983, it is important to draw a distinction between immunities which protect the municipality from those which protect the individual actor. In *Owen v. City of Independence*, 445 U.S. 622 (1980), the court held that municipal defendants in Section 1983 actions cannot take derivatively the good-faith immunities of their officers, who are usually co-defendants in Section 1983 actions. 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 that 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. *Bogan v. Scott-Harris*, 66 LW 4163 (1998). As under state law, whether a person is entitled to absolute immunity depends on the function he or she is performing. If it qualifies as legislative or judicial, he or she is probably entitled to absolute immunity.

The official claiming absolute immunity bears the burden of proving that such immunity is warranted. *Forrester v. White*, 484 U.S. 219 (1988). As the United States Supreme Court noted in *Burns v. Reed*, 59 LW 4536 (1991), the presumption is that qualified immunity is sufficient to protect government officials.

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 of 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 state agent immunity does in state court, however. Qualified immunity is an affirmative defense. This means that it must be pled by the official or the court will deem it to have been waived. While the degree of protection afforded by qualified immunity is not as great as that provided by absolute immunity, qualified immunity still protects official conduct in many areas.

Qualified immunity represents a balancing approach taken by the courts. On the one hand, courts are concerned with the need to provide a damages remedy to protect the rights of citizens. On the other hand, courts must protect officials who are required to exercise their discretion in the public interest. The fear is that officials subject to unbridled liability for discretionary actions, will refuse to make tough decisions that might later be second-guessed by a court.

A public official asserting that he is protected by qualified immunity from liability on a civil rights complaint must establish that he was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred. A civil rights plaintiff attempting to defeat a public official's qualified immunity defense must make two showings: (1) that official violated a constitutional right; and (2) that the illegality of the official's conduct was clearly established.

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. The court stated that:

“[r]eliance on the objective reasonableness of an official's conduct, as measured by reference to clearly established law, should avoid excessive disruption on government and permit the resolution of many insubstantial claims on summary judgment.”

Thus, the goal of the test set out in *Harlow* is to protect government officials from either the costs of trial or the

continued on page 21

LEGAL CLEARINGHOUSE

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

Courts: The trial court's failure to give required information to a pro se defendant required reversal and remand for a new trial. A defendant who seeks to represent himself in a criminal case should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with open eyes. *Barber v. City of Birmingham*, 970 So.2d 786 (Ala.Crim.App.2007)

Search and Seizure: An anonymous tip to an officer by a driver who flagged the officer to stop was held to be sufficiently reliable to warrant an investigatory stop of a car. *Cottrell v. State*, 971 So.2d 735 (Ala.Crim.App.2006)

Signs: The Department of Transportation is prohibited by statute from issuing permits for outdoor advertising signs within 500 feet of one another on the same side of a state highway, as this would be in violation of section 23-1-274, Code of Alabama, 1975. *State Dept. of Transportation v. Sanford*, 970 So.2d 784 (Ala.Civ.App.2007)

Utilities: An Electrical Power Company having a prescriptive easement over a landowners' property for the maintenance of power poles and power lines was not authorized to apportion the easement to a fiber-optic cable company for the installation of cable. A Power Company's prescriptive easement was limited in scope to the extent of the use that created it. The right to apportion typically depends on the type of easement involved and the exclusivity of that easement. *Jackson v. City of Auburn*, 971 So.2d 696 (Ala.Civ.App.2006) and *Ex parte Lightwave Technologies, L.L.C.*, 971 So.2d 712 (Ala.2007)

UNITED STATES COURT DECISIONS AFFECTING ALABAMA

Employment Discrimination: Any document filed with the Equal Employment Opportunity Commission (EEOC) that can reasonably be construed as a request for agency action to protect an employee's rights or otherwise settle a dispute with the employer constitutes a "charge" that triggers the waiting period for filing a suit under the Age Discrimination in Employment Act. *Federal Exp. Corp. v. Holowecki*, 128 S.Ct. 1147 (U.S.2008)

Fair Labor Standards Act: Firefighter/paramedics and fire medics employed by a county fire department had "responsibility to engage in fire suppression," and thus were within "employee in fire protection activities" exemption to FLSA overtime pay requirements. This was true even though the vast majority of their time was devoted to medical duties and some had never engaged in fire suppression. The paramedics' job descriptions included fire suppression, and they were assigned "turn-out" gear including breathing apparatuses, were assigned

Tracy Roberts
Assistant General Counsel



to ride in fire engines, and were required to engage in fire suppression if ordered, or face discipline. *Huff v. DeKalb County, Ga.*, --- F.3d ----, 2008 WL 398799 (11th Cir.2008)

DECISIONS FROM OTHER JURISDICTIONS

Discrimination: The facts alleged by a secretary who was transferred to another position after she accused her boss of constantly staring at her breasts supported her harassment and retaliation claims against the town for which she worked. *Billings v. Town Of Grafton*, --- F.3d ----, 2008 WL 324902 (1st Cir.2008)

First Amendment: A ‘sexually oriented businesses’ ordinance that effectively bars commingling between customers and exotic dancers on break does not violate the First Amendment free speech clause. *729, Inc. v. Kenton County Fiscal Court*, --- F.3d ----, 2008 WL 313054 (6th Cir.2008)

ATTORNEY GENERAL’S OPINIONS

Courts: Where state law requires all or a portion of a fine or court cost be remitted to a fund other than the municipal treasury, the municipality must make such remittance to that fund regardless of whether the court costs or fines are assessed for a violation of a state law misdemeanor, adopted by reference as a municipal ordinance, or for municipal ordinance violations created by the city council or other governing body. AGO 2008-054

Elections: The Baldwin County Commission may not designate multiple “places or offices” where the duties of the absentee election manager are performed. The Baldwin County Commission may not appoint assistants for the absentee election manager that have the same authority as the absentee election manager. Baldwin County personnel serving as appointed assistants of the absentee election manager are not entitled to compensation as provided for in sections 17-11-14 and 17-8-12, Code of Alabama. AGO 2008-053. **NOTE:** In the League’s opinion, this Opinion does not prevent a municipality from appointing an assistant absentee elections manager who will be supervised by the absentee elections manager, who ultimately is responsible for conducting the municipality’s absentee election.

Mayor: The City of Daphne may not establish, by ordinance, salaries for both a full-time and a part-time mayor pursuant to the provisions of section 11-43-80, Code of Alabama, which are conditioned on the certification of the results of a pending referendum as noted in section 11-44F-23 of the Code. Certification of the results of the referendum must precede the ordinance establishing the salary of the mayor and the ordinance must be in place at least six months prior to the next regularly scheduled election. AGO 2008-052 **Note:** Section 11-44F-23, Code of Alabama applies only the City of Daphne.

Rules of the Road: A golf cart is not a vehicle within the definition of sections 32-1-1.1(81) or 40-12-240(27), Code of Alabama and, therefore, may not be used to traverse the public streets of a municipality. However, a golf cart is a motor vehicle within the definition of section 32-1-1.1(32), Code of Alabama that may not be used upon the sidewalk or sidewalk area. AGO 2008-051

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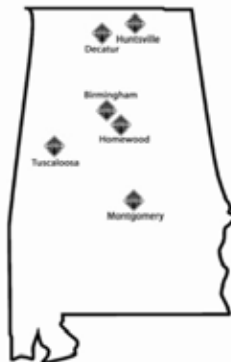
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INTRODUCING ...



Will Strength

Will Strength, Loss Control Representative, joined the League's Loss Control team this past February and is responsible for providing loss control services to a 19-county territory in the central and western regions of the state. Prior to joining the Loss Control Department, Will served 10 years with the Prattville Fire Department, first as a Fire Fighter and then as an Engine Company Sergeant where he was the recipient of several Unit Citation awards for duties performed in 2000, 2001 and 2002. His many certifications include: Haz-Mat Technician, High Angle Rope Rescue, Basic Trauma Life Support and Advanced Cardiac Life Support. He is also a state-certified paramedic and has worked and trained with the Prattville Police Department as a Tactical Medic.

Municipal Overview, continued from page 17

burdens of broad-reaching discovery. To this end, the court stated that more was needed to proceed to trial than "bare allegations of malice."

Harlow, then, established an objective method of determining the good faith of a governmental official. The court further explained this standard in *Anderson v. Creighton*, 483 U.S. 635 (1987). There, the court made clear that 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.

That is to say, would a reasonable governmental official have believed, in light of the clearly established law and all objective facts present, that the action taken was justified? In order to defeat a motion for summary judgment, a plaintiff must demonstrate that the action not only violated his or her rights but that the government official's action was unreasonable.

The Eleventh Circuit Court of Appeals defines the test like this:

"could a reasonable official have believed his or her actions to be lawful in light of clearly established law *and* the information possessed by the official at the time the conduct occurred?" *Nicholson v. Georgia Department of Human Resources*, 918 F.2d 145, 147 (11th Cir. 1990).

And,

"A governmental official proves that he acted within the purview of his discretionary authority by showing 'objective circumstances which would compel the conclusion that his actions were undertaken pursuant to the performance of his duties and within the scope of his authority.'" *Hutton v. Strickland*, 919 F.2d 1531, 1537 (11th Cir. 1990). (Citations omitted).

The reasonableness inquiry is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to underlying intent or motivation. *Hutton*, at 1540. (Citations omitted).

Thus, as long as the action taken was reasonable under the circumstances, courts will not inquire into motive. Courts anticipate that public officials will apply their own experiences when exercising their discretionary powers and are loathe to substitute their opinions for that of the governmental official. ■

Endnote

The six-month notice of claim statute does not act to bar contract actions. Nor does it apply to separately incorporated municipal boards. *Williams v. Water Works and Gas Board of the City of Ashville*, 519 So.2d 470 (Ala. 1987). The notice of claim statute does, however, apply to unincorporated municipal entities, such as the Von Braun Civic Center Authority. *Ex parte Von Braun Civic Center*, 32 ABR 1921 (Ala. 1998). Further, the notice of claim statute does not apply in Section 1983 cases. *Morrow v. Town of Littleville*, 576 So.2d 210 (Ala. 1991).



2008 Municipal

Municipal Achievement Awards Share Ideas, Highlight Municipal Success Stories

This year's Municipal Achievement Awards program had 11 entries with winners in six categories. The cities of Brewton and Helena were chosen by our panel of three outside judges as the winners for their population categories – 5,001 to 10,000 and 10,001 to 20,000, respectively. The Town of Flomaton was declared the winner in the 1,001 to 5,000 population category. Winners in the subject categories were: Auburn, Economic Development; Monroeville, Public Safety; and Selma, Public Service. Each winner will be recognized during a special Awards Ceremony at the League's 2008 Annual Convention in Birmingham.

The Municipal Achievement Awards program was designed to recognize outstanding projects in local government and to share those success stories with other municipalities. The following information highlights the 11 municipal improvement programs entered in this year's Awards program. The full text of each is available on the League's website, www.alalm.org, by clicking on the "Municipal Achievement Awards" button and then clicking on "2008 Entries."

Flomaton's Four-Laning of Highway 113 project Winner, 1,001 to 5,000 population category

The Town of Flomaton, population 1,588, is located in the center of Escambia County and borders to the north the Town of Century in Escambia County, Florida. State Highway 113, which is two-lane, is the most direct route from Interstate 65 to Northwest Florida's beaches. Flomaton is also where hurricane evacuation traffic from Florida's four-lane Highway 29 to I-65 has bottlenecked year after year.

In the town archives is a letter dated August 31, 1967 from former Alabama State Highway Director, Herman Nelson to Flomaton resident and then State Senator Ernest Jackson agreeing to four-lane the highway. The rights-of-ways were purchased by the State of Alabama in 1971; however, the project was stopped. Now, more than 30 years later – after a study was submitted to Gov. Riley and monetary pledges were made by Flomaton and Escambia Counties in Alabama and Florida – a groundbreaking was held in September 2007 and construction on the new four-lane highway has begun.

Brewton Television Winner 5,001 to 10,000 population category

Brewton Television originated in 1996 as a no-advertisement, scrolling-text government access channel on the local cable television network when the Center for Excellence in Telecommunications at Jefferson Davis Community College was established. Soon, a new edifice was constructed and the name for the Center was changed to the Alabama Technology Network. A television studio was created in the new structure and a generous donation from a private industry provided for the purchase of necessary equipment. Through the years, broadcasts evolved from a VHS system to computerized technology with the capability for live, on-site broadcasts. In 2004, when the mission of the Alabama Technology Network changed, the television operation became an exclusive task of the City of Brewton.

The service has grown from airing programming only a few hours each day to operating 24-hours daily. Streaming video of some programs is transmitted on the Internet. Future possibilities include expanded programming, strengthening the connection with the local school system to utilize and train students in videoing school activities and developing a community advisory board for input, ideas and support to improve the efforts of the television channel in the community.

Achievement Awards

Helena: Our Secret is Out

Winner, 10,001 to 20,000 population category

In August 2007, Helena was listed in *Money Magazine* among the top 100 places to live in America. More recently, *BusinessWeek.com* included Helena in its 2007 list of the “Best Places to Raise Your Kids.” Under the long-time leadership of Mayor Charles “Sonny” Penhale, Helena has managed to grow into a city offering major conveniences while maintaining the look and feel of a small, quaint town. Projects such as revitalizing Helena’s Renaissance District, reconstructing old landmarks, developing community recreational areas, placing monumental welcome signs at city boundaries, seasonal planting and manicuring and the continuous maintenance of city rights-of-ways has helped Helena enter the 21st Century with old-fashioned style and grace.

Helena’s Renaissance District, known locally as Old Town, was conceived in 1977 as part of the city’s Comprehensive Development Plan to expand and refurbish the small downtown area, developing it into a 19th-century tourist/commercial district. The project continues today with the rebuilding of a replica of Floyd and Flowers Service Station. The Renaissance District is also home to the Old Town Amphitheater Park, one of Helena’s five city parks, featuring a children’s playground, walking trails, an outdoor stage and a large grassy picnic area surrounded by woodlands and bordering a branch of the Cahaba River.

Selma’s TRUSTBuild Program

Winner, Public Service category

In an effort to build bridges between citizens in need and the agencies providing community and social services, the City of Selma implemented a strategy to build trust and promote community pride while providing a safe, secure community for all its citizens: TRUSTBuild (Teaming to Restore Unity, Safety and Trust). The objectives of this community development and outreach-based strategy are: identifying code violations and nuisances; educating citizens on city ordinances and codes; reducing crime through community policing; and connecting citizens to available community resources.

TRUSTBuild was implemented in three phases: 1. Neighborhood Sweeps; 2. Community Outreach; and 3. Operation CLEO (Community Law Enforcement and Outreach). Neighborhood Sweeps involves four teams visiting neighborhoods one week per quarter to identify code and nuisance violations. Community Outreach is a new department that involves six teams consisting of police officers and community liaisons visiting citizens in their homes and neighborhoods in assigned zones on a daily basis. Operation CLEO targets smaller, concentrated areas that may encompass more than one zone and are believed to have a high potential crime element. This strategy places a mobile police unit in the heart of the potential crime area for 30 days. Since the inception of TRUSTBuild, 3,336 code violations have been identified and teams have visited 3,410 citizens. In

Winner: 1,001 to 5,000 Pop.

Flomaton - Four Laning of Highway 113

Winner: 5,001 to 10,000 Pop.

Brewton - Television

Winner: 10,001 to 20,000 Pop.

Helena - Our Secret is Out

Winner: Public Service

Selma - TRUSTBuild Program

Winner: Public Safety

Monroeville - State Certification Training Center

Winner: Economic Development

Auburn - Northwest Village Subdivision

addition, Selma's TRUSTBuild received a Silver Award for the 2007 National League of Cities Awards for Municipal Excellence.

Monroeville's State Certification Training Center

Winner, Public Safety category

The Monroeville Volunteer Fire Department was organized in 1929 with a homemade fire engine and eight local merchants. In 1986, the department started a major building project for a training center. They cleared three acres and built a two-story, four-room burn building as well as an eight thousand gallon hazardous materials training and burning pit. A few years later the department built a four-story drill tower used for hose training, ladder training, robe rappelling and many other scenarios. In 1989, a twenty-foot deep confined space training area was added. Later, a five-thousand gallon pump test pit was constructed along with a training aids building and equipment storage building. In October 2007, this training facility was inspected by the Alabama Fire College and Personnel Standards Commission and approved as a permanent fire training center.

Thanks to the vision of a few volunteer firefighters who believed in the importance of training, the Monroeville Volunteer Fire Department now has five fulltime firefighters, 28 trained volunteer firefighters, two engine companies, a ladder company, a hazardous materials unit and a confined space rescue unit – all completely funded by the city.

Auburn's Northwest Village Subdivision Affordable Housing Project

Winner, Economic Development category

The Northwest Village Subdivision is an affordable housing subdivision funded by the Community Development Block Grant (CDBG) program sponsored by the U.S. Department of Housing and Urban Development (HUD) to benefit low to moderate-income (LMI) households (those in which incomes do not exceed 80% of the median family income). The City of Auburn started its first affordable housing program in the mid-1980s with 17 units. However, the development of an affordable housing subdivision through a Community-Based Development Organization (CBDO) is the first of its kind for Auburn.

The City's Affordable Housing Program (AHP) involves a collaboration of both the public and private sectors. Auburn

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partnered with various agencies to create an AHP and used CDBG funds as capital seed money to provide infrastructure improvements for the subdivision as well as construction financing. In addition, the City will provide a 20% mortgage subsidy of the total sales price in an effort to reach an affordable monthly payment for the homeowner. To that end, Auburn created a Revolving Loan Fund to recapture all loan proceeds to recycle funds to build additional units. Twenty-eight homes will be constructed during Phase I with a total of 60 affordable housing units in the subdivision by the completion of Phase II.

City of Brundidge Fall Festival

Located in southeast Alabama with a population of 2,341, Brundidge is home to many elderly citizens living on fixed incomes. In 2001, recognizing that many of her constituents were not physically or financially able to participate in Halloween “trick or treating”, Councilmember Isabell Boyd enlisted the help of several business owners and other citizens and began organizing a Fall Festival to be held on October 31 each year, unless the date fell on a Sunday. After some initial growing pains, the Festival is now a tremendous success, bringing community children and adults together in a fun, safe environment while relieving the elderly citizens of the burdens of the season.

Each year the Brundidge Police Department erects a haunted house, the City staff organizes games with prizes and the local business community, along with organizations such as the Red Cross, participate by furnishing treats or setting up individual tables for the children to visit for treats. Local citizens bake items to be given away and costume contests are held. Parents participate with the children and all activities are held on City Hall grounds – a much safer environment for children than going door-to-door. The Festival has been a consistent success, drawing 250 to 300 participants each year.

City of Foley’s Antique Rose Trail

Foley’s Antique Rose Trail, which started out as a walking trail, was officially opened to the public in March 2007. The idea was to spark a renaissance of roses in South Alabama, as well as a “living classroom”, through the development of a rose trail to accompany the existing walking trail at the City’s old Railroad Depot Museum. Signage was eventually added to the Trail, informing visitors of the background and history of the species of heritage roses along the way. The Trail was designed to provide a historical learning experience by incorporating many of the antique roses in chronological order into the landscape design. The City is currently working with local schools to encourage the use of the rose trail for educational purposes.

This project has brought together city workers, volunteers and citizens. The City continues to expand the Rose Trail and organizers continue to look for new and exciting ideas. Plans are currently in the works to include a rock stream and butterfly garden. Once the expansion is complete, the Trail will be over a mile long and will include more than 500 plants. An antique rose garden can be a wonderful project for any municipality and can turn an otherwise ordinary walking trail into something extraordinary. Such trails have the potential to turn any city into a favorite destination for a growing number of people who love antique roses.

Fort Payne’s Boom Days

Fort Payne has conceived and developed an annual art and music festival called Boom Days based on its unique cultural legacy. During September, many separate venues are used to present artistic, musical and historical events, culminating in the Boom Days Heritage Celebration on the third Saturday where two dozen musical acts perform on several stages and many fine artists and craftspeople demonstrate their abilities and display their wares in Union Park and along four blocks of the downtown district. In two years, Boom Days has become a vibrant and valuable asset to the community, enhancing the cultural and historical aspects of life in the area while simultaneously stimulating tourism.

For 16 years in the 1980s and 1990s, Fort Payne was home to June Jam, an annual music festival hosted by country music group Alabama to benefit local charities. Tens of thousands of visitors flocked to Fort Payne each year for the week of activities associated with the Jam. The economic impact was enormous. After June Jam ceased, numerous discussions transpired between City Hall and



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various groups and individuals interested in organizing events to help revitalize the downtown district, showcase local musical and artistic talent and educate both locals and tourists about the area's rich cultural heritage. In 2006, the Mayor and Council provided all funds necessary for the first Boom Days Festival which lasted two days. In 2007, corporate sponsorships were used to take the festival to a higher level spread out over eight days. Both festivals fostered support, cooperation and participation from a variety of groups including city departments, the public library, historical societies and museum boards, the chamber of commerce, schools system and tourist association as well as merchants and many cultural, historical and artistic groups.

Rainbow City's Vivian Lee Maddox Sports Complex Featuring Disc Golf

In 2005, Rainbow City began developing a 92-acre, city-owned recreational park called the Vivian Lee Maddox Sports Complex. Currently, this property is home to a Babe Ruth baseball field, a 2-mile recreational/nature trail, a developing softball/baseball complex and two lighted soccer fields (to be completed in 2008). One of the most unique features of the sports complex, however, is the 18-hole disc golf course completed in Spring 2007. Disc golf combines the challenges and traditions of golf with the modern recreational phenomenon of disc throwing. An activity quickly gaining in popularity, disc golf is something the entire family can enjoy. Instead of hitting a ball with a club into a hole, a flying disc is thrown in an above-ground metal basket. The object of the game is to achieve par or below by throwing a flying disc over an 18-hole course.

There is no charge to place the Disc Golf course, which was built by the city's recreational park employees who cleared approximately five to eight acres and poured two concrete tees for each hole (an amateur tee and a pro tee). Rainbow City consulted with professional disc players and course designers and spent \$6,274 on the disc baskets and \$1,800 for the concrete tees. The course has many natural obstacles and scenic landscapes, winding streams, a beautiful lake and trees of all sizes. The fairways are defined by the trees. It's also registered on the official disc golf course webpage at www.pdga.com, which details location, difficulty and other course information.

Wetumpka: Shall We Gather at the RiverWalk

Located along the banks of the Coosa River, the City of Wetumpka applied for and received a Transportation Enhancement Grant through the Alabama Department of Transportation to construct a scenic RiverWalk to capitalize on their unique natural asset. Beginning on the west side of the river at the City's Memorial Park, an eight-foot wide sidewalk winds its way through streets with vintage homes, crosses the Bibb Graves Bridge and meanders along the east side of the river adjacent to Downtown, Gold Star Park, City Hall, the Administrative Building, the newly renovated Civic Center and ends where the Poarch Band Creek Indian reservation lands begin – a total of 4,240 feet. The construction contract was awarded for \$709,592 with grant funds paying \$492,764. The City's budget also included administrative, engineering and archeological assessment expenses, adding an additional \$150,000.

The RiverWalk will enhance many activities along the riverbank, including Christmas on the Coosa, Wetumpka's largest single event and listed among the Top Twenty Attractions for the Month of December by the Southeast Tourist Association. In addition to adding to Wetumpka's tourist industry, the RiverWalk project is expected to be a catalyst to continued improvements throughout the downtown area. ■

For further information and complete project details visit www.alalm.org



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Distinguished Service Awards

Presented at 2008 Annual Convention

This year, the League will present its Distinguished Service Awards to elected municipal officials, attorneys, judges, mayors, administrative assistants and clerks who have served for 20, 30 or 40 years in municipal office. Service in multiple positions may be combined to make the required number of years. These service awards will be presented at the 2008 Annual Convention at the BJCC during the luncheon on Tuesday afternoon, May 20. Please help us prepare for the presentation of the League Distinguished Service Awards by notifying League Headquarters **before April 24, 2008** of any official who has served for 20, 30 or 40 years in municipal office and **has not previously received a service award for the number of years submitted**. Visit www.alalm.org to download the appropriate form for this purpose.

2008 ALM EXPO

MAY 18-19, 2008
BJCC, Birmingham, Alabama

**League Welcome Reception,
Sunday May 18, 2008, 5:30 -7:00 p.m.**

TENTATIVE PROGRAM: 2008 CONVENTION



IMPORTANT ANNOUNCEMENT: This year's Convention will begin on *Saturday, May 17*. Some events, such as the Ask Your Attorney/Round Table Discussions, have been moved to a new time and date. **PLEASE NOTE THESE CHANGES!** This year's convention will conclude at 2:00 Tuesday afternoon, May 20, following the Noon luncheon. Most meetings and activities will take place in the Birmingham-Jefferson Convention Complex (BJCC) unless otherwise noted. Attendees can earn CMO credits for the Certified Municipal Officials Training Program by attending sessions at the convention. The official Convention Program will contain the amount of credit hours that can be earned. Visit www.alalm.org for registration information and convention updates.

Saturday, May 17

8:00 a.m. – 5:00 p.m.	Registration for Full Convention – BJCC
11:00 a.m.	Resolutions Committee Meeting
1:00 p.m.	Alabama Municipal Insurance Corporation (AMIC) Membership Meeting
2:00 p.m. – 5:00 p.m.	Ask Your Attorneys/Roundtable Discussions
6:00 p.m.	League Welcome Party

Sunday, May 18

7:30 a.m.	2008 Annual Municipal Golf Tournament – Ballantrae Golf Club, Pelham
1:00 p.m. – 5:00 p.m.	Convention Registration
2:30 p.m. – 4:00 p.m.	General Sessions
4:00 p.m. – 5:30 p.m.	ABC-LEO Reception
5:30 p.m. – 7:00 p.m.	League Showcase and Exhibitors Reception

Monday, May 19

8:00 a.m. – 5:00 p.m.	Registration
8:30 a.m. – 9:00 a.m.	Coffee Service
9:00 a.m. – 10:30 a.m.	Opening Session
8:30 a.m. – 9:30 a.m.	Clerks Breakfast and Business Meeting
9:30 a.m. – 5:00 p.m.	Clerks Meeting
8:30 a.m. – 5:00 p.m.	Alabama Association of Public Personnel Administrators
9:30 a.m. – 11:00 a.m.	Spouse's Breakfast – Sheraton
10:30 a.m. – 4:00 p.m.	Exhibits Open
11:00 a.m. – Noon	General Session
12:15 p.m. – 1:45 p.m.	Luncheon
2:00 p.m. – 5:15 p.m.	Concurrent Workshop Sessions
6:00 p.m.	Reception
7:15 p.m.	Banquet and Entertainment

Tuesday, May 20

8:00 a.m. – 2:00 p.m.	Registration
8:00 a.m. – 8:30 a.m.	Coffee Service
8:30 a.m. – 10:30 a.m.	Annual Business Session
9:00 a.m. – 10:30 a.m.	General Session
10:45 a.m. – 11:45 a.m.	General Session
Noon – 2:00 p.m.	Luncheon and Entertainment

Meetings and/or events are subject to change.

EXHIBIT INFORMATION

For exhibit information, contact Laura Anne Whatley of the League staff at 334-262-2566. The exhibits will open on Sunday night with a reception in the Trade Show and on Monday from 10:30 a.m. to 4:00 p.m.

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CMO Policies

In early 1994, the Executive Committee of the Alabama League of Municipalities unanimously voted to appoint a subcommittee to study the feasibility of establishing a certification program for elected municipal officials. In July 1994, the Executive Committee agreed to the subcommittee's recommendation and approved the League's CMO program. The League's CMO program was the second elected municipal officials training program in the country.

The Elected Officials Education Program is voluntary and open to all elected municipal officials. The League conducts one-day training sessions at least twice a year at four regional sites. Participants earn 5 credit hours by attending these sessions. Credit hours may also be earned by attending other League or National League of Cities conferences or through service on League committees and boards. Outside credit is also awarded for attendance of approved seminars.

Any official who earns 40 credit hours in the program will be awarded the designation of Certified Municipal Official (CMO). Currently, 2823 elected municipal officials are enrolled in this program. There have been 772 elected municipal officials to complete the basic 40 hours of training required for the CMO designation. There have been 326 officials to complete their advanced hours.

In response to requests from CMO graduates, an Advanced CMO Program was established in early 1997. This program allows elected municipal officials who have achieved the basic CMO designation to obtain additional training. Several seminars are conducted each year for the Advanced CMO Program.

Graduates of the Advanced CMO program can retain their status by obtaining 10 hours of continuing CMO credit during a two year period.

For additional information on either program, contact Theresa Lloyd at 334-262-2566.

Visit Your CMO Website Online at www.alalm.org/cmo/cmo.html

OBITUARIES

John Watkins, Jr.

Councilmember John Watkins, Jr., Atmore, died January, 2008. He was 79. Watkins was a World War II veteran, serving the United States Army on the Marianas Islands in Guam. He was elected to the council in Atmore in 1992 and was named mayor pro-tem in 1996.

Donnie Nelson

Donnie Nelson, former Clanton City Councilmember, passed away in January, 2008. Nelson was an avid outdoorsman and U.S. Navy Reserve veteran, as well as serving three terms on the Clanton City Council from 1984-1996.

Betty Ziglar

Former Roanoke Mayor Betty Ziglar died January 18, 2008 at age 78. Ziglar served three terms as the first woman to run and become mayor of Roanoke. She served from 1988-1992. A few of her accomplishments while in office include: recruitment of SteelFab to the industrial park; implementation of a wide-reaching storm drainage project; opening a second fire station in the industrial park; promotion of Roanoke's identity as the home of the Ella Smith doll through relationships with the metropolitan Museum of Art, the Smithsonian, the U.S. Post Office and QVC; designation of Roanoke as a sister city to Beijing, China; city's partnership in the major renovations on the campus of Handley High School; expansion of the local public library, as well as a local observance of the National Day of Prayer. Ziglar served on many boards and committees, including: Board of Directors of East Alabama Planning and Development Commission; East Central Alabama Solid Waste Disposal Authority; Alabama League of Municipalities (executive board and Community and Economic Development Committee); committee for making Roanoke a Preferred City; committee for the Alabama Reunion; and Roanoke Schools Task Force.

Billy Ray Weathington

Billy Ray Weathington, former Southside Councilmember passed away on February 18, 2008 at the age of 73. Weathington served as Councilmember for the City of Southside from 1971-1992. Weathington was instrumental in helping to build the Southside City Hall in 1982 and helped secure grant funding for various ball fields in the city.

William "Bill" King

William "Bill" King, former Selma city councilman died Friday, February 29, 2008. He was 60. King served two terms on the Selma City Council, and was a one time president pro-tem. He was instrumental in the establishment of Martin Luther King, Jr. Street and improved lighting in Ward 6.

Windell Owens

Windell Owens, former mayor of Monroeville passed away in February, 2008. He was 85. Owens served in World War II and upon his return earned his bachelor's and juris doctor degree from the University of Alabama. He practiced law in Monroeville for 60 years. Owens served as a councilman and later as mayor from 1968-72. He was the county attorney, served on the state Democratic Executive Committee and the State Bar Association

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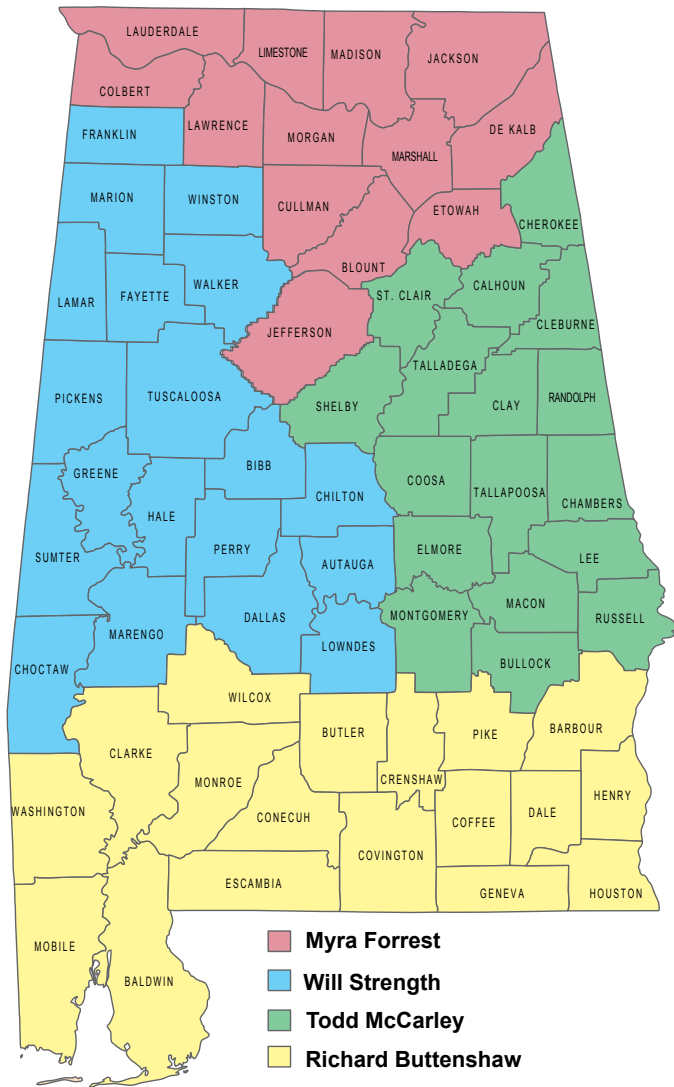


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- Training

For additional information on Loss Control services, contact the League at 334-262-2566 or visit us online at www.alalm.org.



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