

The Alabama Municipal JOURNAL

February 2008

Volume 65, Number 8



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Cover Photo:

First Runner-up, 2008 Photo Contest

**Photographer: Tom Seale,
Councilmember, Columbiana**

The Shelby County Courthouse, completed in 1908, dominates the skyline of the recently renovated historic Main Street in Columbiana.

A Message from the Editor



Yes, that's me in a wetsuit – or, as I like to call it, the great equalizer. No one looks even remotely good in a wetsuit and some look, well, decidedly *bad*. Fortunately, vanity has never been one of my issues, and so I willingly jiggle, wiggle, pull, tug and curse my way into a skin-tight rubber-like monstrosity that is unflattering, significantly constricts movement and feels like an inferno if you're gearing up in the sun. Why? Because it's FUN!

I've been an avid scuba diver for nearly 10 years and have traveled to many dive sites around the globe; however, my recent trip to the Galapagos Islands, located along the equator in the Pacific Ocean 600 miles off the coast of Ecuador, was my favorite thus far. Craig and I joined two friends and fellow dive junkies, Richard Buttenshaw of the League's Loss Control Department and his wife, Amanda, and flew to Galapagos over the Christmas/New Years holiday where we spent a week on a live-aboard dive boat touring the islands and diving with schools of hammerheads (bottom photo), lumbering sea turtles, colorful eels, a few playful sea lion pups, several showy dolphins, elusive seahorses and one very unattractive red-lipped bat fish. Our land excursions brought us face-to-face with giant tortoises, blue-footed boobie birds, lava lizards, land and marine iguanas, lots of sleepy sea lions and even a few penguins. It was like walking around in a National Geographic video.

And now we're back in the Real World. Thankfully, my vantage point isn't too shabby.

Congratulations to Councilmember Tom Seale of Columbiana whose beautiful picture of the Shelby County Courthouse was 1st Runner Up in our 2008 Photography contest and graces the cover of this issue of the *Journal*.

Mark your calendars! The League's Annual Convention will be held May 17-20 at the Birmingham-Jefferson Convention Complex (BJCC). Please make a note that our timeframe and format has been revamped from past years and the Convention will *begin* on **Saturday, May 17** with registration from 8 a.m. until 5 p.m.; Resolutions Committee at 11 a.m.; and the ever popular Ask Your Attorney/Roundtable Discussions (which were previously held on Tuesday morning) from 2:30 p.m. until 5 p.m. The golf tournament will still be held Sunday morning and general sessions will be offered Sunday afternoon from 2:30 until 4 followed by the ABC-LEO reception and then a League reception in the Exhibit Hall. Monday's schedule remains the same as last year; however, the Convention will conclude at 2 p.m. on Tuesday following a luncheon/entertainment. Also, as I mentioned, the Ask Your Attorney/Roundtable Discussions have been moved from Tuesday morning to Saturday afternoon and the Annual Business Session will now be held Tuesday morning from 8:30 until 10:30 followed by General Session topics.

Last month, Convention registration materials were mailed to all mayors, councilmembers and clerks. The deadline for convention pre-registration is **April 25, 2008**. After that date, you'll have to register on-site at the BJCC. Materials are also available on our website at www.alalm.org. Notifications for Distinguished Service Awards (20, 30 or 40 years in municipal office)



must be received by League Headquarters *before* April 24, 2008. Awards will be presented during the Tuesday afternoon luncheon on May 20.

I also wanted to remind you that the *2008 Annual Directory and Vendor Listings* (mailed in January to clerks and mayors) is an extremely valuable resource. In addition to listing the contact information for Alabama's municipalities, it also includes information on the League and our staff as well as frequently contacted state and federal agencies. A member list of the Alabama Senate and House of Representatives is also included as are a number of municipal vendors providing goods and services to Alabama's cities and towns. We encourage you to access the vendor listings in the *2008 Directory* (pages 17-29 – which are easily identifiable as they are actually yellow) when searching for suppliers.

Carrie

The President's Report



Charles W. "Sonny" Penhale
Mayor of Helena

Congressional City Conference March 8-12, Washington, D.C.

March 2008 marks the true beginning of the campaign for national offices – a campaign that has significant implications for America's cities and towns. With most of the major primaries over, both the Democratic and Republican front runners for President will emerge and the races for House and Senate seats will begin to heat up.

The 2008 National League of Cities Congressional City Conference, **March 8-12**, in Washington, D.C., offers an excellent opportunity to learn about federal issues that are important to America's cities and towns; to lobby Congress on short-term issues that will be on the Congressional agenda in 2008; and to make sure cities and towns have a clear, unified voice in the national campaign. Leadership meetings, policy discussions, and legislative briefings will begin on **Sunday, March 9**, with general sessions and workshops scheduled on **Monday, March 10** and **Tuesday, March 11**. City officials will have an opportunity to connect with members of Congress on **Wednesday, March 12**.

The Alabama Caucus is scheduled for Sunday, March 9 from 5:30 to 6:30 p.m. at the Hilton Washington Hotel and Towers, International Ballroom East (lower level). Dinners with Alabama's Congressional representatives will be scheduled separately by districts for Monday, March 10. Breakfast with Senators Shelby and Sessions will be held on Wednesday, March 12 from 8:00 to 9:30 a.m. in the Hilton Washington Hotel and Towers, Jefferson East and West.

Key issues likely to be on the federal agenda in 2008 include:

Transportation Financing and Reauthorization: The anticipated report from a special commission on the future of surface transportation will kick off a national

debate on federal transportation programs as the deadline for reauthorization looms in 2009. Congress also will have to make decisions about how to address a projected shortfall in gas tax revenues for the Highway Trust Fund that funds transportation programs, how to repair and maintain the nation's aging infrastructure, and how to address concerns over the impact of transportation on the environment.

Alternative Energy and Climate Change: Energy and environmental issues of concern to local governments continue to be an important Congressional issue. Congress has been working on an agreement and passage of a comprehensive energy package that would move this country toward greater energy independence. Renewable fuels standard, tax credits for renewable energy production, elimination of oil and gas tax incentives, energy and environmental block grants for local governments and issues related to climate change are on the forefront of Senate and House leadership.

Immigration Reform: Uncertainty over federal immigration policy continues to impact cities and towns and to mean that communities face the challenges of immigration on their own. Despite the lack of federal action, city leaders recognize that local governments cannot wait for federal action and are developing new strategies to take constructive action locally to manage growing immigrant populations.

Federal Funding for Local Activities: The federal budget continues to be under intense pressure due to war spending, the federal deficit, the economy, mandatory spending, and renewed emphasis on fiscal restraint. This means that federal programs important to cities and towns, including the Community Development Block Grant

continued on page 10

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*Fire Chief Charles Black
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Priceville, Alabama*



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Municipal Overview

Summary of 1st Session of 110th Congress



Perry C. Roquemore, Jr.
Executive Director

This month we provide NLC's summary of key federal legislative activities affecting local governments in the 1st Session of the 110th Congress. The 2nd Session commenced on January 15, 2008. The summary is organized by issue area.

Federal Funding for Local Activities: Although the House and Senate supported individual spending bills that reflected modest increases or level funding for programs important to cities and towns, Congress eventually acquiesced to the President's budgetary cap and passed an omnibus spending bill that reflected the President's overall spending goal of \$933 million. Although Congress was forced to find \$22 billion in cuts to meet the President's request, funding for many programs important to cities and towns was not cut back to the President's proposed spending.

Housing and Community Development: In the area of housing and community development, the omnibus bill included \$3.6 billion for the Community Development Block Grant program, which is \$100 million less than the program received in last year's budget but \$600 million more than the President requested. In earlier versions of spending bills passed during the session, the House and the Senate approved \$4 billion for this important program. In a continued show of support for the HOPE VI program, which is vital to local government efforts to preserve the stock of quality public housing units, Congress ignored the President's request to eliminate this program and instead funded it with \$100 million, \$1 million above the FY 2007 level.

Transportation and Infrastructure: Recognizing the need to replace aging infrastructure, the omnibus bill includes funding at the authorized level for the highway

program at \$40.2 billion, which is \$631 million more than the President proposed. The bill also includes \$3.5 billion for airport improvement grants, and an additional \$1 billion for bridge repairs and inspections. Federal transit programs would receive \$9.5 billion, more than last year's amount but less than the original conference report adopted by the House and Senate. Amtrak would receive \$1.3 billion, the same as last year but substantially above the President's request of \$800 million.

Public Safety and Crime Prevention: In response to reports that showed an increase in violent crime across the country, the House and the Senate had earlier rejected the President's proposed 94 percent decrease for the popular Community Oriented Policing Services (COPS) program. The omnibus bill includes \$587 million for the COPS program, which is \$35 million more than the FY 2007 level. However, this spending level falls short of the \$725 million for the COPS program that the House approved earlier in the session.

Immigration Reform: In June, the Senate voted 46-53 not to limit debate on bi-partisan comprehensive immigration legislation (S. 1639). This doomed the bill and the issue for the remainder of the 110th Congress. Although Congress was unable to reach agreement on a comprehensive measure, lawmakers did defeat attempts to restrict local government authority to enact immigration-related measures. The rejected provisions included efforts to prevent the use of federal funds by cities that have adopted policies involving privacy restrictions related to immigration status, restricting the use of English-only provisions, or providing rental housing for illegal immigrants. In the omnibus spending legislation, Congress did provide a nearly \$2 billion increase in funding

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Housing Finance System Reforms Receive Priority

Attention: Congress and the Administration have considered several proposals to address the crisis in the housing market; so far, one bill has become law. On Dec. 20, the President signed into law H.R. 3648, the Mortgage Forgiveness Debt Relief Act. Under current law, if the value of your house declines and your bank or lender forgives a portion of your mortgage, the tax code treats the amount forgiven as money that can be taxed as income, which can make a difficult situation even worse. This bill creates a three-year window for homeowners to refinance their mortgage and pay no taxes on the debt forgiven as a part of the transaction. Other federal initiatives to address the housing market crisis are pending and will continue to be debated in 2008. Those include:

Mortgage Reform and Anti-Predatory

Lending: Congress and the Administration have offered separate, and in some ways competing, responses to predatory lending and unsound investment practices central to the current home foreclosure crisis. This crisis and the resulting credit crunch are spreading well beyond the housing market and are now impacting the cost of credit for local government borrowing, as well as local property tax revenues. The House passed legislation, H.R.3915, would prohibit certain predatory lending practices and make it easier for consumers to renegotiate predatory mortgage loans. The Senate introduced similar legislation late last year (S.2452). Leadership in both chambers reached out to NLC for support and assistance to enact or advance their respective bills. Both chambers are expected to continue to focus efforts on this issue and the legislation in 2008. Meanwhile, the Administration proposed new lending rules, under the existing authority of the Federal Reserve, similar to key consumer protection provisions contained in the pending legislation. However, Democratic leaders have attacked the Administration's efforts as not going far enough to help as many homeowners as possible. NLC will review the proposed rules and submit comments regarding them in the first quarter of 2008.

Foreclosure Mitigation Assistance: In addition to legislation that would fix the mortgage system prospectively, the House and Senate are also considering NLC-supported measures that would help homeowners currently facing foreclosure either keep their homes or reduce the financial penalties in the event of a foreclosure. Federal Housing

Administration (FHA) modernization legislation, which passed both chambers (H.R. 1852/S. 2338), would help a larger number of homeowners refinance out from high-interest sub-prime loans and into federally-insured lower-rate conventional loans, especially in high-cost housing areas. Legislation to reform the Government Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac (H.R. 1427) also would increase the refinancing options for struggling homeowners. Although both bills enjoy varying levels of support, significant differences remain between Congressional leaders and the Administration on the level of assistance they should provide.

Affordable Housing Trust Fund Legislation Passes the House:

Last October, the House passed the National Affordable Housing Trust Fund Act (AHTF), by a vote of 264 to 148. The bill would provide more than \$1 billion in new resources annually for the production, preservation, and rehabilitation of 1 .5 million affordable homes over ten years. Sixty percent of the funds would go to cities and towns, and 40 percent would go to states. Funds could be used for construction, rehabilitation, acquisition, and preservation of affordable housing. Funding for the trust fund would come from non-budgetary sources, including the Government Sponsored Entities (GSEs), Fannie Mae and Freddie Mac, as well as interest earnings generated by the Federal Housing Administration (FHA), ensuring that AHTF funds will not be affected by the annual appropriations process and will not compete for funds with other programs, such as CDBG and HOME. The Administration opposes the legislation out of concern that it would, among other things, create an undue and counterproductive reliance on the FHA and the GSEs. In late December, Sen. John Kerry (D-MA) introduced a companion proposal in the Senate, S. 2523.

Eminent Domain Amendment Defeated: In December, NLC successfully lobbied against eminent domain legislation being considered in the Senate as an amendment to the Farm Bill, H.R. 2419. Introduced by Sen. Larry Craig (R-ID), the provision would have preempted state and local land use laws by prohibiting any state or local government from exercising eminent domain authority over any "farmland or grazing land for the purpose of a park, recreation, open space, conservation, preservation view, scenic vista or similar purpose." With opposition from NLC, state municipal leagues, elected officials, and other local government groups, the amendment failed to get the 60 votes needed to continue consideration of the amendment, and Sen. Craig withdrew it.

Collective Bargaining on Hold for Now: In December,

continued on page 20

President's Report continued from page 5

programs, public safety, and transportation, will continue to be vulnerable to attack.

Homeownership Finance: With the homeownership rate in America at a historic high of nearly 70 percent, mortgage foreclosures, predatory lending, inadequate financial literacy, and market volatility continue to threaten neighborhood stability and the national economy. Congress is taking several different approaches to preserving homeownership and neighborhoods, including stronger consumer education and protections, market intervention, and tax forgiveness.

Municipal Water Issues: Municipal water issues continue to be in the federal spotlight. The Clean Water Restoration Act, to clarify the original intent of the Clean Water Act, has drawn much support and criticism from various groups. The Water Resources Development Act would authorize approximately \$23.2 billion for more than 900 projects for navigation, environmental restoration, and hurricane, flood or storm damage reduction in 23 different states. Finally, Congress is looking at the issue of water infrastructure financing and ways to close the gap between needed and available funds.

Community Development and Affordable Housing: For the first time in years, a National Affordable Housing Trust Fund (AHTF) could become a reality. Is your city ready for it? If enacted, the AHTF would provide federal funds to localities solely for the purpose of construction and

preservation of affordable housing. Sessions will focus on the trust fund and other federal funding programs that cities can use to reinvigorate struggling neighborhoods.

Telecommunications: Local government authority to offer municipal broadband services to citizens, to control rights of way, and to collect franchise fees and taxes continues to be under attack in federal regulatory and legislative arenas. Municipal officials must be knowledgeable about emerging technologies and be prepared to refute industry arguments that local governments are an impediment to competition.

Education Reform: Discussions are underway in Congress regarding the reauthorization of No Child Left Behind. An NLC Task Force has already developed a set of recommendations for reforming the Act to close the gap between its requirements and feasible implementation. Local government officials – many of whom have little control over schools but are often blamed when they fail – must be prepared to advocate for needed reforms and for the funding that will be required to meet the Act's requirements.

There is a lot at stake for our cities and towns in the 110th Congress. Join with your colleagues to demand a renewed federal-local partnership to address the issues critical to our municipalities. I look forward to seeing everyone in Washington, where we will come together on behalf of the people we represent to be sure the issues affecting their lives are heard. ■

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The Legal Viewpoint

By Ken Smith
Deputy Director/General Counsel



What Every Candidate Should Know About Municipal Government

This article is not intended as a guide for qualifying and running for municipal office. The League publishes a manual called *Procedures for Holding Elections in Mayor-Council Municipalities* which covers issues related to campaigning and holding the election. Rather, the goal of this article is to inform potential candidates as to the structure of municipal governments in Alabama as well as to the limitations and restrictions on municipal power. Potential candidates must understand the extent of the authority a municipality may exercise before making the decision to run for office. Also, an understanding of these laws and functions can help candidates avoid future embarrassment upon discovering that a campaign promise can't legally be fulfilled.

Potential municipal candidates must be aware of the laws governing the municipality in which they choose to run for office. The provisions discussed in this article apply generally to any municipality with a mayor/council form of government. Many state laws, however, apply to only certain municipalities. It is up to the candidate to be sure that the rules and regulations set out in this article govern their municipality.

The League encourages municipal clerks to make copies of this article to make potential candidates aware of the regulations that will govern their actions as municipal officials. This article may also serve as a refresher for elected officials who are presently in office.

What is a Municipality?

In Alabama, a municipality is a form of local government created by the citizens within a defined area. First, the local government must meet the requirements of state law to incorporate. If so, and the citizens themselves determine to incorporate by voting, the municipality is created.

Historians disagree regarding the reasons municipalities first came into existence. Some reasons include the promotion of commerce, protection from invading armies, convenience, or even just the desire of humans to share time with each other. Regardless of the historical reasons, municipalities today provide many services to their citizens,

such as fire and police, utility services, parks and recreation, and historical preservation among others. They also help protect their citizens through these services. These are the reasons most municipalities today decide to incorporate. All are designed to provide their citizens with the services and protections that are deemed important to a better life-style.

Municipalities provide an element of convenience by performing many services which individuals themselves may not be willing to perform, such as construction and maintenance of roads, disposal of garbage and promotion of the arts.

Local governments provide a means for citizens to have a direct say in which services are needed and how those services should be provided through the process of electing representatives. Representatives, who are chosen from the pool of willing citizens, meet and discuss how the municipality can best meet the needs and desires of their citizens.

When these elected officials meet, however, it is important for all parties to understand that in Alabama, all municipal powers flow directly from the state legislature. Alabama operates under what is known as the Dillon rule. This rule provides that municipalities have no powers beyond those that are given to them by the state. The authorization must be either explicit or clearly implied from the language of a state statute or constitutional provision.

Briefly, Alabama is governed by a document that was first passed in 1901, although it has been amended many times since. This is the Alabama Constitution. Laws in the Constitution are passed by the legislature, but only become effective following a vote of the public. The Constitution provides a framework for the adoption of laws by the legislature. Legislative acts cannot conflict with constitutional provisions. If there is a conflict, a new constitutional amendment must be adopted and approved by a vote of the people.

In addition to the Constitution, the legislature meets at least annually--more often if special sessions are needed--

to pass general and local laws. Many of these laws apply directly to the operation of municipal governments. Actions taken by a municipal government cannot conflict with state legislation. Beyond that rule, however, is a further limitation on municipal powers. Not only do municipal actions have to comply with these statutes and the Alabama Constitution; under the Dillon rule, there must be legislative authority for the municipality to take the specific action in question.

So, when a potential candidate decides that some action needs to be taken, he or she must examine the laws to ensure that the municipality has the power to act in the way desired. If not, the municipal official may first have to obtain authority from the state legislature. Depending on what the official wants to do, this may require a local act, a general act or possibly even the adoption of a constitutional amendment.

The Extent of Municipal Power

Municipalities are established by incorporation through the procedures set out in the Code. Municipalities grow through annexations. The methods of annexing property are also provided for in the Code.

Municipalities are divided into cities and towns on the basis of population. If the municipality has less than 2,000 citizens, it is a town. Once the population reaches 2,000, however, the municipality is defined as a city.

Municipalities may exercise two types of power: legislative and corporate. Legislative powers affect the public generally. In exercising these powers, the municipality acts very much as an arm of the state. Corporate powers are more comparable to those of a private corporation and are exercised to benefit the municipality in its proprietary capacity.

Municipalities also have authority to exercise certain powers within their police jurisdictions. The police jurisdiction is a legislatively created area outside the corporate limits of a municipality. The size of the police jurisdiction is either a mile-and-a-half, or three miles, depending on the population of the municipality. It ensures orderly development beyond the municipal limits and allows the municipality to protect persons who live within these areas.

Municipalities can levy certain types of taxes in the police jurisdiction in order to pay for services which are provided in the area. Additionally, municipalities can enforce criminal ordinances in the police jurisdiction. Construction and development can be regulated through the application of municipal building codes and subdivision regulations. Municipalities can also provide a wide range of services to citizens within the police jurisdiction, and if the municipalities licenses businesses within the police jurisdiction, it must spend those funds to provide services within the police jurisdiction.

Appropriations

Frequently, potential candidates for municipal office make promises to voters that will require some type of appropriation from the municipal treasury. The use of public funds is, of course, of central concern to the voters. Many taxpayers, understandably, want to have a direct say in how their tax money is spent. However, citizens must understand that municipal expenditures are limited by state law.

Perhaps the most common barrier to municipal spending is Section 94 of the Alabama Constitution of 1901. This Section is commonly referred to simply as Section 94. It prohibits municipalities from giving anything of value to any private individual or group of individuals. The prohibition also bars donations to private, nonprofit corporations, even if these organizations benefit the public. Section 94 is the reason municipalities cannot pave driveways or parking lots on private property. The rule is also why government property cannot be given away, unless the use of those funds serves a recognized public purpose.

Section 94 is a frequent source of friction for elected officials, especially for those who are new to the operations of public entities. This is because often the groups requesting financial help from the municipality do provide a valid community service, and there is an inherent desire to assist them. Many are charitable organizations. For the purposes of Section 94, though, it is crucial to distinguish between the public and private nature of the group, and many traditional entities are considered private, not public. It doesn't matter under Section 94 that the group is non-profit. If it is private (which generally means that it was not directly created by a public organization), the municipality may not donate funds to it without finding a public purpose behind the donation. Courts have created a four-part test for determining if an expenditure serves a public purpose:

“The Court should *first* determine the ultimate goal or benefit to the public intended by the project. *Second*, the Court should analyze whether public or private parties will be the primary beneficiaries. *Third*, the speculative nature of the project must be considered. *Fourth*, the Court must analyze and balance the probability that the public interest will be ultimately served and to what degree.”

In *Slawson v. Alabama Forestry Commission*, 631 So. 2d 953 (Ala. 1994), the Alabama Supreme Court stated that, “The paramount test should be whether the expenditure confers a direct public benefit of a reasonably general character, that is to say, to a significant part of the public, as distinguished from a remote and theoretical benefit ...”

Section 94, though, does not prohibit municipalities from contracting with private companies and individuals for services. For example, although a municipality cannot give money to the Girl Scouts of America, the municipality

may compensate the Girl Scouts for legitimate services they can perform for the municipality. Bear in mind that the service being performed generally must be a service that the municipality could perform itself.

Similarly, Section 94 does not ban appropriations to public organizations which serve the municipality. For instance, municipalities may contribute funds to public schools their citizens attend. However, municipalities may not make donations to band booster clubs or other private clubs organized by students or parents because these are private groups.

Municipalities must also comply with the State bid law. The bid law prohibits expenditures (with certain exceptions which are listed in the Code) of more than \$7,500.00 (\$50,000 for public works contracts) without first soliciting competitive bids. However, cities and towns may contract with other public agencies or purchase items through a state contract without first obtaining bids.

There are, of course, other provisions governing municipal expenditures that are too numerous to discuss here. What is important is for potential candidates to understand that they must examine expenditures to ensure that what he or she wants to do is legal.

Citizen Petitions

Citizens often draft and circulate petitions to be presented to the municipal governing body. What is the legal effect of these petitions?

Of course, in some cases the Code requires the council to act on petitions which contain a certain percentage of citizen signatures. In these cases, the council must follow through on all statutory requirements. These situations, though, are rare. Usually, the council is not required to act on, or even debate, requests submitted by petition. At best, a petition serves as a means of bringing the issue before the council.

Certainly, citizens have the right to make requests of the governing body. And, just as clearly, the number of signatures on a petition has a practical political effect. In most cases, however, a council may deny a petitioner's request, or refuse to even consider it.

Even where a municipal council will consider a citizen petition, it is important that candidates realize that they cannot delegate the authority to make legislative decisions to the citizens themselves. Frequently, elected officials want to allow citizens to vote on issues. While it may be admirable to seek approval of those who will become subject to a municipal action, the legislative power of a municipality, though, cannot be delegated to the citizens. For instance, in Opinion No. 91-00262, the Attorney General held that a city council may not make zoning in a particular district subject to a referendum of the residents.

The prohibition on delegation of municipal powers

is particularly applicable to taxation. The municipality cannot hold a referendum for the voters to approve most tax increases. Ad valorem taxes are the notable exception. Most other taxes must be approved by the council by passage of a general and permanent ordinance. The city may hold a public hearing to obtain input, but it cannot delegate approval of the tax or tax increase to the citizens.

In fact, a city may not sponsor and hold a non-binding referendum using city employees and officials to work on the election, even if the cost of the referendum is paid for with private funds. 94-00001. But, a private group may conduct a non-binding referendum for a municipality, although the municipality may not participate other than as private citizens and the council cannot agree to be bound by the referendum. 97-00257. Of course, under state law the municipality must submit some questions to the voters to make the final decision. A candidate must be sure whether a referendum is required, or even allowed, prior to agreeing to allow the public to vote on specific issues.

The Division of Duties Between Elected Officials

One of the most misunderstood aspects of municipal government is the separation of powers between the mayor and the council. Like government on the state and federal levels, municipal government is divided into three separate but equal branches: executive, legislative and judicial. Each of these branches has distinct duties, powers and restrictions on how far it can intrude into the affairs of the other branches.

At the municipal level, the mayor serves as the head of the executive branch. As such, the mayor is responsible for overseeing the day-to-day operations of the municipality. He or she oversees municipal employees, makes sure that bills are paid on time, executes municipal contracts and, in general, performs many of the same functions as a C.E.O. of a private corporation.

In municipalities of less than 12,000 inhabitants, the mayor also presides over council meetings and serves as a member of the council. In these cities and towns, the mayor may vote on any issue before the council, introduce measures and participate in debates to the same extent as members of the council.

In cities with populations of more than 12,000, the mayor is not a member of the council. However, he or she has a veto over any permanent action taken by the council. The council can override the veto by a two-thirds votes.

The council is the legislative branch. Candidates must understand that individual councilmembers, acting alone, have no greater power or authority than any other citizen of the municipality. The council can only act as a body at a legally convened meeting.

The council has authority over the finances and property

continued on page 17

\$10 Million Dollars



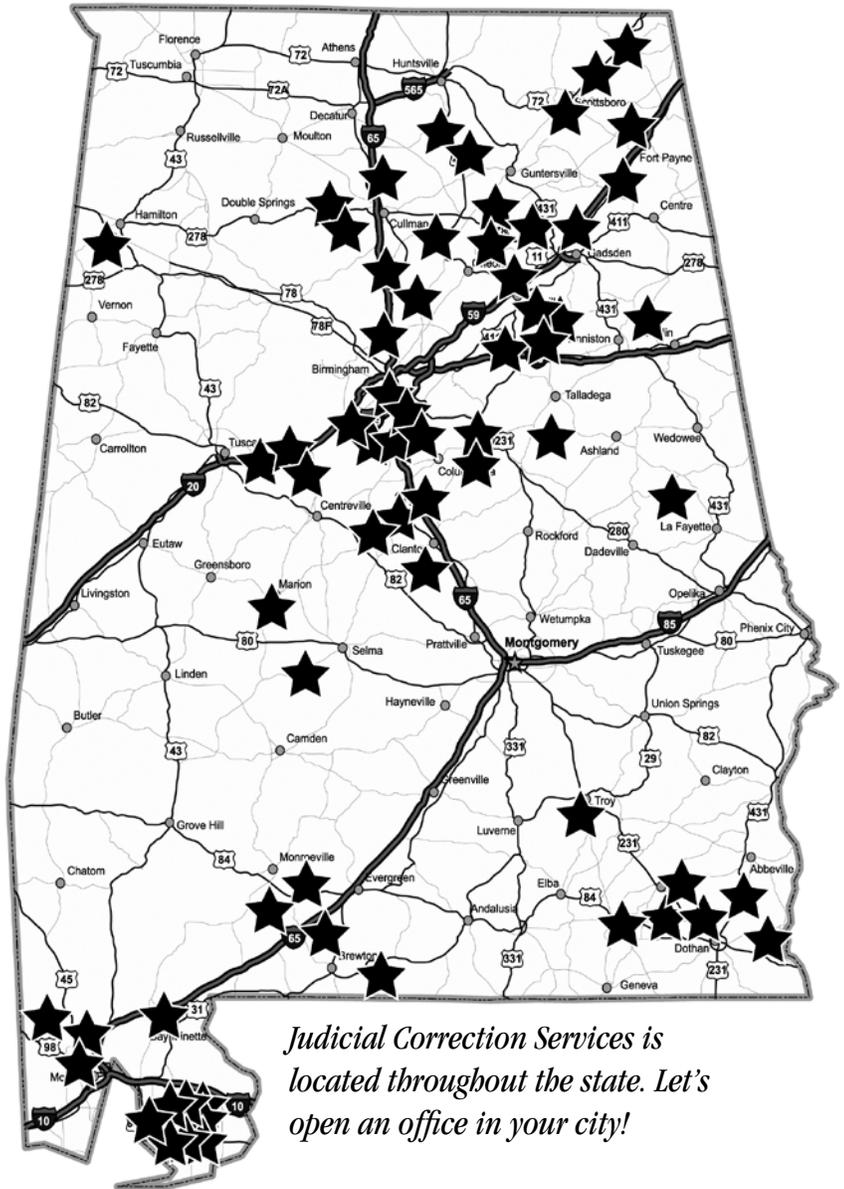
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Cities Say Alabama League of Municipalities Program Makes Borrowing Cheaper, Simpler

By: Mike Cason, News Staff Writer, *The Birmingham News*, Sunday, Jan. 6, 2008
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The city of Calera expects to save money when it borrows \$14 million for road work and other projects by taking advantage of a two-year-old program available to all Alabama cities and towns.

The Alabama League of Municipalities has a program called AMFund that is designed to help cities save some of the fees, insurance and other costs on a bond issue, the conventional way for cities to borrow money. It's also designed to allow cities to better control their debt by borrowing as needed rather than in lump sums.

"There's a substantial savings in up-front fees because of the way AMFund is designed," said Mike Hinson, finance director for the city of Calera.

Hinson said the savings on a \$14 million debt could be as much as \$70,000 a year.

Gregory Cochran, who markets the program for the League of Municipalities, said AMFund saves money by allowing cities and towns to share the fees and other costs associated with a \$50 million pool of bond money instead of paying the fees and costs of their own bond issues.

"We went out and we secured \$50 million to create the pool," Cochran said. "We spread out the cost to administer the pool over the whole \$50 million."

So far, 17 cities have borrowed a total of about \$35 million. The amounts ranged from \$220,000 for debt consolidation in Hayneville to \$11.5 million for capital projects in Foley.

Cochran said that when the \$50 million is exhausted, the AMFund will secure another \$50 million pool of bond money.

Each city that taps into the pool pays a proportionate share of the fees and other costs of the pool, an amount that equals just less than 1 percent of the amount borrowed, Cochran said. In most cases, he said, those costs would be higher for a city doing its own bond issue.

Both Cochran and Hinson said conventional bond issues would still be the best option in some cases, especially on large bond issues.

"If you were looking to do a \$20 million deal, AMFund is not going to be as competitive," Cochran said. "Anything under \$6 million, we're very competitive."

For Calera's \$14 million in projects, the city won't borrow all the money from AMFund initially; it will do so in installments over about two years, probably starting in March, Hinson said. That means the city won't pay interest

on the full \$14 million from the outset, as it would with a conventional bond issue, he said.

"With AMFund, we're able to structure this so we're able to do quarterly bond issues," Hinson said.

Cochran said the League of Municipalities got the idea for AMFund from similar programs in about 10 other states. He said the program can be helpful to small cities because of its simplicity.

"The process is streamlined, and it's easy for cities to procure the money," Cochran said.

Loxley Mayor Billy Middleton said his town was approved for as much as \$3.5 million from AMFund last year and is drawing the money as needed. It has borrowed about \$1.6 million for water and sewer facilities and \$560,000 for automatic meter reading equipment.

Middleton said the process is easier than a bond issue. "I compare it to like a construction loan," Middleton said. "You just get it when you need it." ■

AAMCA ELECTS NEW OFFICERS

The Alabama Association of Municipal Clerks and Associates held its 42nd annual conference on November 28-30, 2007, in Orange Beach. The conference included educational sessions, a business meeting and a banquet. Region III Director Glenda Morgan (Mobile) attended and represented the International Institute of Municipal Clerks.

Mary Lynn Williams (Spanish Fort) presided over the banquet on Thursday night. Past presidents of the association were honored and a plaque was presented to Education Committee chair Cathy Constantino (Orange Beach). The oath of office was administered by Martha Elrod (retired, Gadsden) to incoming officers: Iva Nelson (Gadsden), President; Lynnette Ogden (Millport), Secretary; Lois Williams (Selma), Treasurer. Karen Duncan (Pleasant Grove), who was not present, will serve as President-Elect.

We congratulate the new officers and extend best wishes as the AAMCA continues its work in providing educational opportunities and support to municipal clerks throughout the state in 2008.

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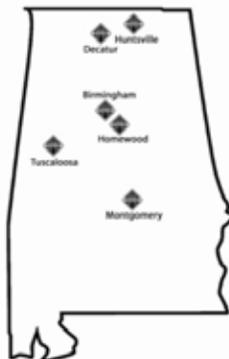
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of the municipality. The council establishes policies, passes ordinances, sets tax levels, determines what sorts of services the municipality will offer and has authority over all other legislative aspects of municipal government.

Council Meetings

Problems frequently arise over public participation in council meetings. This is probably due to the misconception of a council meeting as a public hearing. It is not. A council meeting is intended as a gathering of elected officials brought together to conduct the affairs of the municipality. The meeting is open to the public not so much to obtain citizen input, but to allow the public to observe the affairs of government to ensure appropriate and legal representation by their elected officials. Although most councils do set aside a time for public comment, Alabama law does not guarantee citizens the right to speak at a council meeting. The Open Meetings Act grants citizens the right to be present at public meetings, but does not grant them an absolute right to express their views at the meeting. And, the municipality may establish reasonable guidelines governing public participation in the meeting. 98-00134.

Potential candidates must also be aware that problems often arise over public records. Clearly, most records maintained by a municipality are public. However, controversies over what this means are common. Everyone is not entitled to see public records any time they wish. The municipality is entitled to establish reasonable procedures governing access to public records. Citizens who wish to view public records must follow these procedures. The custodian of records may ask for a reason for viewing the records, and must be convinced that the reason is legitimate. Also, the municipality may charge for making copies.

Additionally, not all records are public. Some records, such as on-going police investigation files, some material in personnel records, confidential tax information and similar records containing information not for public consumption, are not open to the public.

For potential candidates, it is important to note that individual councilmembers and the mayor generally have no greater right to inspect municipal records than do any other members of the public.

Relationships with Boards

Not all municipal services are provided by the municipality itself. Many are provided by municipal boards. Some of these boards are separately incorporated, while others are not. Municipalities have the authority to create a broad range of boards to control particular functions. Perhaps utility boards provide the most common example.

Boards are usually created when the governing body takes on the duty of performing so many functions that its needs to give the responsibility to another entity so that it

can adequately provide for the other needs of the citizens. Once a board is created, its powers are specified by the statute under which it was organized. The council may not change the duties of the board from those set out in the statute. Nor can a council create boards that are not authorized by the legislature. Although a council may create an advisory board, it cannot delegate power over any municipal function in its control unless the legislature has given them that authority. An advisory board can only make recommendations to the council. The council must determine whether or not to act on those recommendations.

Frequently, municipal officials are asked to remove board members or to order the board to take certain actions. Candidates must understand that once a board is created, it has the sole power to act and the council has no power to make demands on the members of the board. Members of these boards are appointed for terms and generally they cannot be removed until their terms expire. This is especially true for separately incorporated boards.

It is important to understand the difference between an incorporated and an unincorporated board. Incorporated boards usually cannot be dissolved until some event defined in the Code occurs. Frequently this is the payment of the debts of the board. Therefore, members of incorporated boards are totally independent from council members. Unincorporated boards are different. They generally can be dissolved by a governing body. The council will then either establish a new board or assume control over the functions themselves. However, the council may not leave the board in existence and change the duties of the board from those set out in the Code.

Conclusion

This article does not answer every conceivable question regarding municipal government, nor could it. Municipal government is multifaceted. It is difficult to even list all the functions performed by municipalities, and even harder to explain the laws which govern their operation. Multi-volume sets of books have been written which provide only a brief overview.

However, what is often overlooked is the community nature of a municipality. Although municipal governments are legally recognized entities with a certain amount of control over the affairs of their citizens, municipalities are still communities. They are organized by citizens who feel a need for the services and protection the government provides. In order to make the government effective, elected officials, and the citizens they represent, must work together in a spirit of cooperation, cooperation based on an understanding of what the municipality is permitted to do under state law. The League hopes this article will help foster this spirit of cooperation. ■



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.

Municipal Overview *continued from page 9*

NLC successfully defeated efforts in the Senate to attach mandatory collective bargaining legislation to the Farm Bill, H.R. 2419. Early in the year, the House passed legislation that would require state and local governments to enter into collective bargaining agreements with public safety employee unions and essentially “federalize” the traditional employment relationship between local governments and their respective public safety employees. On Dec. 13, in response to opposition from NLC, other public interest groups, state municipal leagues, and others -- without a vote -- Sen. Harry Reid (D-NV) withdrew the amendment that would have added the mandatory collective bargaining language to the Farm Bill (H.R.2419). During Sen. Reid’s floor speech, he expressed his intention to take up the legislation in the future. NLC will continue to oppose the legislation on the grounds that it interferes with states laws, violates federalism principles, and may be unconstitutional.

Permanent Ban on Internet Taxes Defeated: Faced with the expiration of the Internet Tax Freedom Act (ITFA), members of Congress introduced several bills that would have made the ITFA permanent. The ITFA, or “Internet Tax Moratorium,” prohibits state and local governments from taxing “Internet access” charges. As an alternative to legislation that was gaining momentum, NLC and several of its state and local partners pushed for a temporary extension of the ITFA, rather than the permanent one favored by many in the business community. Congress and the President eventually rejected a permanent moratorium and enacted the Internet Tax Freedom Act Amendments Act of 2007, H.R. 3678, which extended the ITFA for seven years, clarified the definition of Internet access and retained the grandfather protections for states and local governments that taxed “Internet access” prior to 1998.

Repeal of the Three Percent Withholding Requirement Still Possible: NLC lobbied in support of two efforts by Congress to delay from 2011 to 2012 the implementation of a new unfunded mandate that requires federal, state, and local governments, who spend more than \$100 million on goods and services, to withhold three percent of all payments to contractors and vendors and to remit those monies to the Internal Revenue Service (IRS). Although the legislation did not pass, House leaders continue to support the delay and are likely to move this legislation in 2008. NLC will continue to lobby for the repeal of this onerous requirement that would force local governments to become collection agents for the IRS.

Oral Arguments in Video Franchise Lawsuit Scheduled for February: After NLC successfully defeated attempts in the 109th Congress to pass a national cable franchise

law, the Federal Communications Commission (FCC) stepped in to fill the void. In 2007, the FCC issued its First Order preempting local government’s jurisdiction over the franchising process with respect to new entrants in a local cable market. NLC and several partner organizations are challenging the decision in a lawsuit that is pending in the Sixth Circuit Court of Appeals. The case has been fully briefed with the Court, and oral arguments are scheduled for February 2008 with a decision expected no later than June 2008. In November 2008, the FCC issued a Second Order to address the franchising process with respect to incumbent cable providers. NLC also opposed this order for similar reasons as the First Order and has asked the FCC to reconsider its decision and to block implementation of the Second Order; that request is pending.

Energy Legislation Becomes Law: With NLC’s support, Congress and the President enacted historic comprehensive energy reform legislation aimed at moving the U.S. toward greater energy independence and security, increasing the production of clean renewable fuels, and increasing the energy efficiency of products, buildings and vehicles. The Energy Independence and Security Act (H.R. 6) authorizes a new \$10 billion Energy Efficiency and Conservation Block Grant program to provide grants to cities, counties and states for innovative practices to achieve greater energy efficiency and lower energy usage. The legislation also raises the Corporate Average Fuel Economy (CAFE) standards for cars, light trucks, and SUVs sold in the United States for the first time in 32 years to a fleet average of 35 miles per gallon.

Climate Change Proposals Receive Attention in the Senate: Congress considered several similar climate change bills last year. America’s Climate and Security Act (S. 2191), which passed the Senate Environment and Public Works Committee last year, would limit greenhouse gas emissions from power plants, manufacturers, petroleum refiners, and other sectors of the economy. The bill also would reduce total domestic emissions by 18 to 25 percent below 2005 levels by 2020, and by 62 to 66 percent by 2050. The Global Change Research Improvement Act of 2007 (S. 2307) is aimed at helping federal, state, and local officials adapt to the possible consequences of global warming. The bill, which passed the Senate Commerce, Science and Technology Committee in December, would establish a “national climate service” within the National Oceanic and Atmospheric Administration to assess the impacts of climate change at state and local levels. Both climate change bills could see action on the Senate floor early next year.

Authorization for Water Projects Becomes Law Over

President's Veto: With NLC support, Congress overrode the President's veto of the Water Resources Development Act (H.R. 1495). This bill authorizes more than \$23 billion for Army Corps of Engineers water projects, including over 900 projects for navigation, environmental restoration, and hurricane, flood or storm damage reduction in 23 states.

Amtrak Reauthorization Passes the Senate: The Passenger Rail Investment and Improvement Act of 2007 (PRIIA), which passed the Senate in November, would reauthorize Amtrak through 2012 and provide \$1.4 billion for the rail system over the next six years. This six-year authorization, which NLC supports, would provide Amtrak, whose last authorization expired in 2002, with stability and allow for long-term planning. The bill proposes \$3.3 billion for operation subsidies and \$4.9 billion for capital improvements, plus \$1.4 billion for upgrades of other urban rail systems. Over the life of the bill, Amtrak's operating subsidy would be reduced by 40 percent through cost cutting, restructuring, and reform, while capital funding to Amtrak and the states for intercity passenger rail projects would be increased. The bill features a new funding source, the Intercity Passenger Rail Grant Program. The purpose of the grant program is to grow Amtrak rider-ship while allowing states to take a more active role in designing their own specific rail solutions and bearing a greater share of the cost. The House will likely introduce a bill early next year that builds upon the Senate version.

Federal Aviation Administration Reauthorization: Congress was unable to reach agreement on a reauthorization of federal airport programs in time for the September 2007 expiration of the program. However, Congress currently extended the program, as well as the taxes that support it, in the omnibus appropriations bill. The Administration had sought major changes in the program, including a change in the tax structure supported by commercial airlines, reduction of general revenues for airport programs, and elimination of programs for small airports. Congress rejected most of the changes in the reauthorization bills but was unsuccessful in reaching agreement on the imposition of new fees on private jets. The reauthorization bill approved by the House did include an increase in the ceiling for passenger facility charges from the current \$4.50 to \$7.00, an increase supported by NLC. The Senate has yet to reach agreement on a proposal.

Surface Transportation Reauthorization: Aging infrastructure and congested highways will continue to keep transportation funding on the Congressional agenda as debate on the future of the federal surface transportation program gets underway. Concern over shortfalls in revenue from the Highway Trust Fund, the inadequacy of current financing methods to keep up with demand, and the bridge

collapse in Minneapolis has renewed attention on the safety of crumbling roads, bridges and tunnels. While Congress has maintained spending on roads, highways, bridges, and transit programs, the calls for an updated national vision for transportation that includes the connection between transportation and energy will begin with the release of the National Surface Transportation Revenue Study Commission findings early in the second session of the 110th Congress. Congress remains skeptical of the administration's reliance on public private partnerships as the answer to national surface transportation needs, and the debate will intensify as the September 2009 expiration date for the current surface transportation program approaches.

State Children's Health Insurance Program Expansion Defeated: Congress twice sent legislation to reauthorize the State Children's Health Insurance Program (SCHIP) to the President for signature, and twice he vetoed it. Both bills, which NLC supported, would increase funding substantially for this program and provide health insurance for 10 million currently uninsured children. The President's objections to both measures include: (1) the overall cost of the program, (2) eligibility standards, (3) access to insurance by children of undocumented workers, and (4) adult enrollment in the program. Before concluding the session, Congress extended the current authorization until March 2009, and increased funding slightly to ensure that all children currently eligible would continue to receive SCHIP benefits.

Terrorism Risk Insurance Act Extended: On behalf of NLC-RISC, NLC lobbied in support of an extension of the Terrorism Risk Insurance Act (TRIA). TRIA provides insurance coverage for terrorism events, which private policies widely exclude from coverage. The bill which became law, the Terrorism Risk Insurance Program Reauthorization Act of 2007, H.R. 4299, includes a seven-year extension of the program and retains the current \$100 million trigger for coverage.

One-Year Alternative Minimum Tax Fix Approved: After House and Senate wrangling over solutions to the alternative minimum tax (AMT), the House adopted the Senate version of a one year fix that would provide relief for up to 21 million taxpayers who would have otherwise been subject to this tax. House Democrats initially resisted the Senate's removal of revenue-raising offsets, but gave in when it became clear that the President would not support the House bill. When Congress considers retroactive relief for some expiring tax credits and deductions in 2008, it is expected that House Democrats will revive the AMT one-year patch debate and again propose offsets for this \$50 billion tax-relief measure.

continued on page 23

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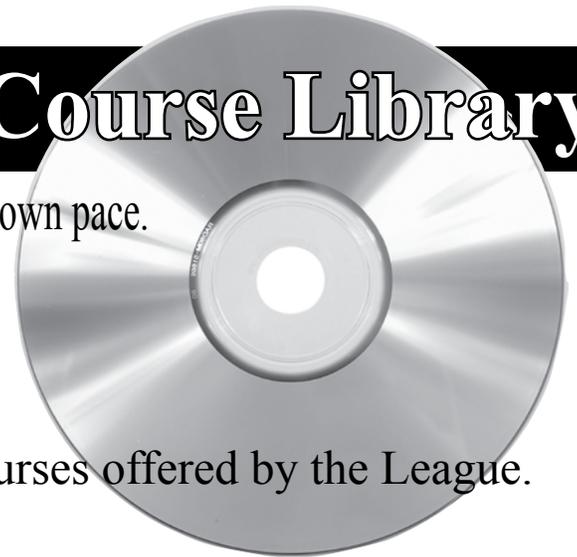
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Municipal Overview *continued from page 21*

Streamlined Sales Tax Proposals Introduced: The Sales Tax Fairness and Simplification Act (S. 34/H.R. 3396) would grant states that have complied with the Streamlined Sales and Use Tax Agreement (SSUTA) the authority to require out-of-state sellers to collect sales tax on remote sales. While NLC supports simplification of the sales and use tax system, we have serious concerns that the bills require states to administer and collect local telecommunication taxes and fees. It is unlikely that these bills will gain momentum in 2008, as collection of sales taxes on Internet purchases would be viewed by many citizens as a tax increase, a perception that neither political party would want to be associated with during a presidential campaign year.

Education Legislation Stalled in House and Senate: Despite efforts by committee chairs in both the House and Senate to reauthorize No Child Left Behind (NCLB), both the House and Senate failed to make any headway. The House held hearings on draft reauthorization language, and the Senate had listening sessions. But neither the House nor the Senate committee chairs formally introduced legislation, and efforts to address NCLB reauthorization are not likely to be considered until after the presidential election.

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Workforce Investment Act Reauthorization: Efforts to reauthorize the Workforce Investment Act (WIA) stalled completely due to demands from organized labor to substantially alter the governance structure and redirect the program away from dislocated workers toward economically disadvantaged youth and adults. While reauthorization bills that would retain the governance structure have support in the House and Senate, action is unlikely until after the presidential election. ■

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NLC's Top Ten Reasons to Be a Local Elected Official in 2008

As we enter the new calendar year, the National League of Cities would like to offer a lighthearted look at the serious job facing local elected officials every day.

1) You have to be able to add two and two together (and the answer must always be four). One of the most important tasks local officials must undertake is to develop and implement a budget that accurately reflects both the needs of their communities and their ability to financially support those needs. Unlike the federal government where there seems to be no worries over deficits, local governments must have a balanced budget – including a solid rainy day fund to ensure strong bond ratings. Sounds like a lot of Wall Street speak? Yes, but to be an elected official, you have to know all the financial buzz words and, yes, know what they mean, too!

2) You can never have a bad hair day. Now that most council sessions are televised and the Internet has become the great sounding board for issues, you must be on your toes and ready to roll at a moment's notice. Public hearings, media interviews and community meetings help involve the public in the workings of government. When you go out the door in the morning, the next person you'll see will be a constituent – including your next-door neighbor!

3) Everyone knows what you buy at the grocery. Accessibility is critical to good governing. Most of your constituents don't see the difference between cornering you in your office or in the produce aisle. Leadership is not just about giving speeches at the rotary club, it's about listening. So you had better put away the junk food and stick with yogurt and healthy pretzels.

4) Everyone (almost) knows your name. Many people don't know the name of the vice president of the United States; few can name even one of their state senators, but just about everyone in your city knows who you are. A good bunch of them also think they know what you stand for and how you vote, even if they couldn't pick you out of a crowd! Although it's good to be recognized and have your work acknowledged, sometimes it's nice to be a bit anonymous. Unfortunately, anonymity is not one of the perks to this job!

5) Someone is always awake at midnight. Those elected officials brave enough to have their home phone listed (and most do), know that someone is always ready to call you to discuss anything – the land use proposal for that empty field down the street, Johnny's homework, even the noise the neighborhood cat is making in the middle of the night. Local government is a 24/7 operation, and being a local official is just about the same thing.

6) You have an intimate knowledge of your sewer systems. Making sure the sewer pipes run freely, the snow is plowed on time and the traffic light down at the corner is working are critical responsibilities of local government and as an elected

official, you need to know how they work, or better yet, who is in charge of fixing them! Local government is all about service – trash pickup, libraries that are open and have the latest books and technology, keeping the streets safe – are all the mainstays of daily life. Knowing the systems to get the power back on during a cold winter's night can make a difference in someone's life – and it's usually your job to ensure it happens.

7) You get to ride on the back of a fire truck on the 4th of July. Being the face of your community can be fun. Participating in parades, ceremonies, school events and other community gatherings are every-day occurrences, regardless of whether it's raining cats and dogs or it's a sunny afternoon. As every local elected official knows, the job requirements don't change for bad weather or tough situations. Despite everything else that might be happening in your life, when duty calls, you must answer – rain or shine.

8) School kids want to be you – but maybe just for a day. As the recognized leader of your community, it's no secret that kids and adults alike look to you for guidance and support. But with great respect comes great responsibility. Your words and actions not only reflect your beliefs and values, they reflect the perceived point of view for an entire community. Let's face it ... it's not easy having the expectations of your neighbors and friends, not to mention the citizens you may not even know, on your shoulders.

9) Someone will always disagree with you about something. That's the great thing about America and our form of government – everyone gets a chance to speak their mind, even if they are wrong! Since it's closest to the people, local government is the most open form of government – where everyone can have their say. It's also the best place to forge consensus over tough issues and to work toward building strong communities.

10) You are able to create small miracles. Local officials can truly make a difference in people's lives. They can bring communities together around a shared vision; bring a program that helps needy people back to life; marshal resources to support their local school or boys and girls clubs. True leaders know when to use their influence to benefit the entire community – not for their own satisfaction, but for the people they represent.

The National League of Cities is the nation's oldest and largest organization devoted to strengthening and promoting cities as centers of opportunity, leadership and governance. NLC is a resource and advocate for 19,000 cities, towns and villages, representing more than 218 million Americans. www.nlc.org.

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 a defendant an allocution or obtain a waiver of allocution rendered the sentence erroneous, despite the lack of harm to the defendant. An allocution is the court's formal inquiry of the defendant on conviction as to whether he has any legal cause to show why judgment should not be pronounced against him, or whether he would like to make a statement on his behalf and present any information in mitigation of sentence. *Webb v. State*, 967 So.2d 727 (Ala.Crim.App.2005)

Courts: The Court of Criminal Appeals does not have jurisdiction to consider an appeal from an action in which a defendant seeks to purge, modify or supplement criminal records. Jurisdiction for such an appeal is proper in the Court of Civil Appeals, rather than the Court of Criminal Appeals. *Ex parte Teasley*, 967 So.2d 732 (Ala.Crim.App.2007)

Evidence: Communications an attorney had with a client in the presence of a third party were not privileged and, thus, the attorney could testify about those conversations during trial. Rule 510 of the Alabama Rules of Evidence provides that the client may waive the privilege: "A person upon whom these rules confer a privilege against disclosure waives the privilege if the person ... voluntarily discloses or consents to disclosure of any significant part of the privileged matter." *Lynn v. Hamrick*, 968 So.2d 11 (Ala.2007)

Tort Liability: 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)

Zoning: A city building inspector's determination that an advertiser's billboards were destroyed and no longer "grandfathered" was reasonable for purposes of a 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. The building inspector's testimony was that those parts constituted 55% of the structure. *Studio 205, Inc. v. City of Brewton*, 967 So.2d 86 (Ala.2007)

UNITED STATES COURT DECISIONS AFFECTING ALABAMA

Drugs: A person who trades his drugs for a gun does not "use" a firearm during and in relation to a drug trafficking crime within the meaning of the statute demanding a mandatory minimum sentence. *Watson v. U.S.*, 128 S.Ct. 579 (U.S.2007)

DECISIONS FROM OTHER JURISDICTIONS

First Amendment: Non-legislators have no First Amendment right to address sessions of deliberating legislative bodies. A town meeting moderator did not engage in viewpoint discrimination, in violation of the First Amendment, by

Tracy Roberts
Assistant General Counsel



granting different speaking rights to registered voters and non-voters. The distinction between registered voters and non-voters was content-neutral. *Curnin v. Town of Egremont*, --- F.3d ----, 2007 WL 4201051 (C.A.1, 2007)

First Amendment: A protester who belongs to a church that believes that war casualties are God's punishment of America for tolerance of homosexuality and who pickets at military funerals is entitled, under the First Amendment, to a preliminary injunction against Missouri statutes prohibiting picketing at a funeral site within an hour before or after the scheduled service. *Phelps-Roper v. Nixon*, --- F.3d ----, 2007 WL 4258633 (C.A.8, 2007)

Zoning: A city did not violate a church's rights under the 2000 Religious Land Use and Institutionalized Persons Act or the free exercise clause by excluding it from a redevelopment zone where some secular assemblies and institutions are allowed. The city's redevelopment plan, in preventing religious organizations from locating in the downtown area, was neutral and generally applicable, and thus was subject to a rational-basis rather than strict-scrutiny standard in a free exercise challenge. It was not developed with the aim of infringing on religious practices. Although it allowed certain categories of secular assemblies, it applied evenly to all uses that were not likely to further the city's goal of revitalized downtown. *Lighthouse Institute for Evangelism, Inc. v. City of Long Branch*, --- F.3d ----, 2007 WL 4166239 (C.A.3, 2007)

ATTORNEY GENERAL'S OPINIONS

Ad Valorem Taxes: The county tax collector is required to collect for any municipal or county liens according to statute. The purchaser of a tax certificate at a tax sale is required to pay any liens or assessments that accrue during his or her time of ownership of the tax certificate. AGO 2008-034

Elections: Public funds cannot be used to pay legal fees incurred by an elected official in the defense of an election. Since a candidate who is an incumbent is not acting in his official capacity when he runs for re-election, a city does not have a proper interest in an election contest between the incumbent and his opponent. AGO 2008-020

Jails: A county is not responsible for the medical costs of an indigent municipal prisoner simply because the county has agreed to house municipal prisoners. AGO 2008-029

Licenses and Business Regulations: A pharmacist or apothecary is not a person "engaged in the practice of medicine" under section 40-12-126 of the Code of Alabama. Therefore, a municipal or county government is not limited by this statute in the amount the governing body may charge an apothecary or pharmacist for a business license. AGO 2008-028

Officers and Offices: Infamous crimes under Alabama law have been defined by the courts of this state to specifically include convictions of treason, conspiracy, embezzlement of the public money, bribery, perjury and voting fraud, as well as all other felony convictions. AGO 2008-037

Parks and Recreation: A municipality may charge a higher fee to nonresidents for the use of municipally owned parks and other municipal recreation facilities. AGO 2008-026

Expenses: A \$100 per diem provided to members of a board that is in addition to the reimbursement for travel expenses is considered a salary or compensation. An expense allowance, however, is not compensation. AGO 2008-038

Public Records: The criminal complaint supporting an unexecuted arrest warrant is not subject to disclosure under the Open Records Act. Once the warrant has been executed, the complaint supporting the same becomes public record. A custodian of public records may recoup reasonable costs incurred in providing documents to a citizen including, where necessary, costs for retrieving and preparing the records and the actual cost of copying the records. AGO 2008-030

Streets and Roads: Any agreement that would allow the City of Montgomery to handle road maintenance responsibilities for annexed property before the city is eligible to assess ad valorem taxes would not be permitted by Act

Legal Clearinghouse *continued from previous page*

78-386. AGO 2008-031 **Note:** Act 78-386 applies only to the City of Montgomery.

Telecommunications: A telecommunications service provider that obtained a statewide franchise under the predecessor of section 23-1-85 of the Code of Alabama and prior to the enactment of the 1901 Alabama Constitution, may, under state law, use and/or modify its existing transmission facilities or install new transmission facilities within a municipality's rights-of-way (absent municipal approval) for the purpose of providing new services, such as high speed internet access, video services, video programming, voice-over-internet services or like services, that are technological advancements of communication services and which facilitate the transmission of intelligence and are consistent with the existing servitude.

AGO 2008-021

Ordinances: Passage of a resolution of a permanent nature may not occur at the meeting in which the resolution or ordinance is introduced unless there is unanimous consent of those present for the resolution or ordinance to receive immediate consideration. In municipalities with less than 12,000 inhabitants, an affirmative vote of a majority of the entire governing body, including the mayor, is necessary to pass a resolution of a permanent nature. AGO 2008-022 ■

OBITUARIES

Joseph Edward McCarron, Jr.

Joseph Edward McCarron, Jr., former Orange Beach councilmember, has died. He was 69. McCarron's public career began in 1998 when he was appointed by then-Gov. Fob James to fill a vacancy on Orange Beach's City Council. McCarron was re-elected in 2000. He also held a post on the city's Planning Commission and championed the development of the young city's recreational facilities.

Dr. Gordon A. Rodgers, Jr.

Dr. Gordon A. Rodgers, Jr., former Anniston councilmember, has died. He was 92. Rodgers was first elected in 1969 as the first black councilmember for the City of Anniston. He served as councilmember from 1969 through 1976. In 2002, Rodgers received special recognition from the local chapter of the Southern Christian Leadership Conference for his willingness to step out in front and make his world a better place.

John A. Sewell

Former Glencoe Mayor John A. Sewell has died. He was 83. Sewell began his first term as mayor filling an unexpired term and then was elected for a second term. He was instrumental in securing the Glencoe Senior Citizens Center during his tenure as mayor and was a strong supporter of Glencoe High Athletics.

Chester Weeks, Jr.

Chester Weeks, Jr., former Anniston councilmember died December 6, 2007. He was 66. Weeks served on the Anniston city council from 1983-1995. Weeks also served as an assistant administrator of the ABC Board and was a former president of the Committee of Unified Leadership of the Calhoun County NAACP and the Alabama New South Coalition. He had served on the Community Action Agency of Calhoun, Cleburne and Cherokee Counties, Inc., was chief of the community services division of the state Department of Economic and Community Affairs and worked with the West 15th Street Revitalization Project.

R.R. "Bud" Johnson

R.R. "Bud" Johnson, mayor of Dozier, died December 23, 2007 at the age of 80. One of Alabama's longest serving mayors, he had served as mayor since 1957. Johnson served in the latter part of World War II in the Navy. He was a member of the Covington Electric Cooperative Board of Trustees for approximately 40 years, served as director of the First National Bank of Dozier since 1968 and as director of the South Alabama Rural Health Association out of Troy for many years.

Ernest Gene "Curley" Mooney

Ernest Gene "Curley" Mooney, councilmember for the Town of Geraldine, died in early January 2008 at age 74. A Korean War veteran, Mooney was retired from the Colonial Banking Company where he worked for 45 years.



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