

The Alabama Municipal JOURNAL

January 2009

Volume 66, Number 7

In this issue:

- NLC Awards for Municipal Excellence
- 2009 League Legislative Package
- Municipal Fire Protection
- SEEA Launches City Energy Alliance Competition



RBC Centura Bank, Tuscaloosa
By Jeff Motz
Winner, 2009 ALM Photo Contest

Write or Call TODAY:

Steve Martin
Municipal Workers Compensation Fund, Inc.
P.O. Box 1270
Montgomery, AL 36102
334-262-2566

Millennium Risk Managers
P.O. Box 26159
Birmingham, AL 35260
1-888-736-0210

The Municipal Worker's Compensation Fund has been serving Alabama's municipalities since 1976. Just celebrating our 30th year, the MWCF is the 2nd oldest league insurance pool in the nation!

- Discounts Available
- Accident Analysis
- Personalized Service
- Monthly Status Reports
- Directed by Veteran Municipal Officials from Alabama
- Over 625 Municipal Entities Participating
- Loss Control Services Including:
 - Skid Car Training Courses
 - Fire Arms Training System (FATS)

ADD PEACE OF MIND



The Alabama Municipal JOURNAL

Official Publication, Alabama League of Municipalities

January 2009 • Volume 66, Number 7

OFFICERS

MELVIN DURAN, Mayor, Priceville, President
ROY H. DOBBS, Mayor, Berry, Vice President
PERRY C. ROQUEMORE, JR., Montgomery, Executive Director

CHAIRS OF THE LEAGUE'S STANDING COMMITTEES

Committee on State and Federal Legislation

Open, Chair
Open, Vice Chair

Committee on Finance, Administration and Intergovernmental Relations

DEBBIE QUINN, Councilmember, Fairhope, Chair
GARY FULLER, Mayor, Opelika, Vice Chair

Committee on Energy, Environment and Natural Resources

HOWARD SHELL, Mayor, Atmore, Chair
DEAN ARGO, Councilmember, Prattville, Vice Chair

Committee on Community and Economic Development

BEN REED, Council President, Gadsden, Chair
Open, Vice Chair

Committee on Transportation, Public Safety and Communication

MARVA GIPSON, Councilmember, Aliceville, Chair
Open, Vice Chair

Committee on Human Development

GEORGE EVANS, Mayor, Selma, Chair
Open, Vice Chair

The Alabama Municipal Journal is published monthly by the Alabama League of Municipalities, 535 Adams Avenue, Montgomery, Alabama 36104, telephone (334) 262-2566. Website: www.alalm.org. Single copies, \$2.00. By subscription, \$24.00 per year. Advertising rates and circulation statement available at www.alalm.org or by calling the above number. Statements or expressions of opinions appearing within this publication are those of the authors and not necessarily those of the Alabama League of Municipalities. Publication of any advertisement should not be considered an endorsement of the product or service involved. Material from this publication may not be reprinted without permission.

Editor: CARRIE BANKS

Staff Writers: TRACY L. ROBERTS

Graphic Design: LAURA WHATLEY

For a complete list of the ALM staff, visit www.alalm.org.

Active Members (442)

Abbeville, Adamsville, Addison, Akron, Alabaster, Albertville, Alexander City, Aliceville, Allgood, Altoona, Andalusia, Anderson, Anniston, Arab, Ardmore, Argo, Arlton, Arley, Ashford, Ashland, Ashville, Athens, Atmore, Attalla, Auburn, Autaugaville, Avon, Babbie, Baileyton, Baker Hill, Banks, Bay Minette, Bayou La Batre, Bear Creek, Beatrice, Beaverton, Belk, Benton, Berry, Bessemer, Billingsley, Birmingham, Black, Blountsville, Blue Springs, Boaz, Boligee, Bon Air, Brantley, Brent, Brewton, Bridgeport, Brighton, Brilliant, Brookside, Brookwood, Brundidge, Butler, Calera, Camden, Camp Hill, Carbon Hill, Carrollton, Castleberry, Cedar Bluff, Center Point, Centre, Centreville, Chatom, Chelsea, Cherokee, Chickasaw, Childersburg, Citronelle, Clanton, Clay, Clayhatchee, Clayton, Cleveland, Clio, Coaling, Coffee Springs, Coffeeville, Coker, Collinsville, Colony, Columbia, Columbiana, Coosada, Cordova, Cottonwood, County Line, Courtland, Cowarts, Creola, Crossville, Cuba, Cullman, Dadeville, Daleville, Daphne, Dauphin Island, Daviston, Dayton, Deatsville, Decatur, Demopolis, Detroit, Dodge City, Dora, Dothan, Double Springs, Douglas, Dozier, Dutton, East Brewton, Eclectic, Edwardsville, Elba, Elberta, Eldridge, Elkmont, Elmore, Emelle, Enterprise, Epes, Eufaula, Eutaw, Eva, Evergreen, Excel, Fairfield, Fairhope, Fairview, Falkville, Fausndale, Fayette, Five Points, Flomaton, Florala, Florence, Foley, Forkland, Fort Deposit, Fort Payne, Franklin, Frisco City, Fulton, Fultondale, Fyffe, Gadsden, Gainesville, Gantt, Garden City, Gardendale, Gaylesville, Geiger, Geneva, Georgiana, Geraldine, Gilbertown, Glen Allen, Glencoe, Goldville, Good Hope, Goodwater, Gordo, Gordon, Gordonville, Goshen, Grant, Graysville, Greensboro, Greenville, Grove Hill, Gu-Win, Guin, Gulf Shores, Guntersville, Gurley, Hackleburg, Haleyville, Hamilton, Hammondville, Hanceville, Harpersville, Hartford, Hartselle, Hayden, Hayneville, Headland, Heath, Heflin, Helena, Henagar, Highland Lake, Hillsboro, Hobson City, Hodges, Hokes Bluff, Holly Pond, Hollywood, Homewood, Hoover, Hueytown, Huntsville, Hurtsboro, HyTop, Ider, Indian Springs, Irondale, Jackson, Jackson's Gap, Jacksonville, Jasper, Jemison, Kansas, Kellyton, Kennedy, Killen, Kimberly, Kinsey, Kinston, Lafayette, Lake-view, Lanett, Langston, Leeds, Leesburg, Leighton, Lester, Level Plains, Lexington, Lincoln, Linden, Lineville, Lipscomb, Lisman, Littleville, Livingston, Loachapoka, Lockhart, Locust Fork, Louisville, Lowndesboro, Loxley, Luverne, Lynn, McIntosh, McKenzie, Madison, Madrid, Magnolia Springs, Malvern, Maplesville, Margaret, Marion, Maytown, Mentone, Midfield, Midland City, Midway, Millbrook, Millport, Millry, Mobile, Monroeville, Montevallo, Montgomery, Moody, Mooresville, Morris, Mosses, Moulton, Moundville, Mount Vernon, Mountain Brook, Mountainboro, Mulga, Munford, Muscle Shoals, Myrtlewood, Napier Field, Natural Bridge, Nauvoo, Nectar, Needham, Newbern, New Brockton, New Hope, New Site, Newton, Newville, North Courtland, Northport, Notasulga, Oak Grove, Oak Hill, Oakman, Odenville, Ohatchee, Oneonta, Onycha, Opelika, Opp, Orange Beach, Orrville, Owens Cross Roads, Oxford, Ozark, Paint Rock, Parrish, Pelham, Pell City, Pennington, Phenix City, Phil Campbell, Pickensville, Piedmont, Pike Road, Pinckard, Pine Apple, Pine Hill, Pine Ridge, Pinson, Pisgah, Pleasant Grove, Pleasant Groves, Pollard, Powell, Prattville, Priceville, Prichard, Providence, Ragland, Rainbow City, Rainsville, Rانبume, Red Bay, Red Level, Reece City, Reform, Rehobeth, Repton, Ridgeville, Riverside, Riverview, Roanoke, Robertsdale, Rockford, Rogersville, Rosa, Russellville, Rutledge, Saint Florian, Samson, Sand Rock, Sanford, Saraland, Sardis City, Satsuma, Scotsboro, Section, Selma, Sheffield, Shorter, Silas, Silverhill, Sipsy, Skyline, Slocomb, Smiths Station, Snead, Somerville, South Vinemont, Southside, Spanish Fort, Springville, Steele, Stevenson, Sulligent, Sumiton, Summerdale, Susan Moore, Sweet Water, Sylacauga, Sylvan Springs, Sylvania, Talladega, Talladega Springs, Tallassee, Tarrant, Taylor, Thomaston, Thomasville, Thorsby, Town Creek, Toxey, Trafford, Triana, Trinity, Troy, Tusculloosa, Tusculloosa, Tuskegee, Twin, Union, Union Grove, Union Springs, Uniontown, Valley, Valley Grande, Valley Head, Vance, Vernon, Vestavia Hills, Vina, Vincent, Vredenburgh, Wadley, Waldo, Walnut Grove, Warrior, Waterloo, Waverly, Weaver, Webb, Wedowee, West Blocton, West Jefferson, West Point, Westover, Wetumpka, Wilsonville, Wilton, Winfield, Woodland, Woodstock, Woodville, Yellow Bluff, York.

Contents

A Message from the Editor	4
The Presidents's Report	5
NLC Awards for Municipal Excellence	
Municipal Overview	7
2009 League Legislative Package	
The Legal Viewpoint	9
Municipal Fire Protection	
Introducing Jonathan Katan	16
Obituaries	19
Legal Clearinghouse	20
SEEA Launches City Energy	22
Alliance Competition	

**Cover Photo: RBC Centura Bank
Winner, 2009 Photo Contest
Photographer: Jeff Motz, Tuscaloosa**

First known as Merchants Bank and Trust building, the ten-story structure at 2300 University Blvd. is a classical revival skyscraper completed in 1925 by architect D.O. Willdin and is the tallest building in downtown Tuscaloosa. It has hosted a number of banks over the years and is currently home to RBC Centura Bank.

A Message from the Editor



“Happy New Year” just doesn’t seem appropriate as we begin 12 months of what will most certainly be a cycle of significant challenges for municipalities throughout the country. The National League of Cities is leading the charge on behalf of America’s cities and towns to urge the federal government to fund an economic recovery package accelerating municipal infrastructure investments through programs like federal highway and public transit programs, Amtrak, the Airport Improvement Program, the Community Development Block Grant Program, the Energy Efficiency and Conservation Block Grant Program and the state clean water and drinking water programs. Investment in ready-to-go infrastructure projects – including funds for airports, housing, highways, bridges, transit, clean water, sewer, communications technology and schools – creates jobs and stimulates the economy. Please be ready to support NLC in this effort when asked. Your participation will be important as our state struggles to find the necessary dollars to ensure services to your citizens remain intact.

Despite the country’s economic woes, your League continues to provide important resources and develop new programs to further the success of Alabama’s municipalities. In early October we welcomed Pell City native Jonathan Katan as the newest addition to our staff. Jonathan graduated from the Community College of the Air Force with a degree in Information Systems Administration and works in the League’s IT Department as the Information Systems Specialist (see page 16). His skills are, of course, critical to our daily operations and we look forward to folding him into the League family!

Congratulations to **Jeff Motz**, GIS Coordinator for the City of Tuscaloosa, who won the League’s 2009 Photo Contest and whose photograph of the RBC Centura Bank Building (originally Merchants Banks and Trust, built in the early 1920s) appears on the cover of this issue of the *Journal* as well as the *2009 Directory and Vendor Listings* (a copy of which will be sent to all mayors and clerks in late February). Congratulations also to 1st Runner-Up Graphic Designer **Beth Rogers** of Rutledge for her striking “Water Tower at Sunset” photo and 2nd Runner-Up Court Clerk **Terri Dennis** of Guin for “Train Overpass” – a wistful image that takes the viewer back in time. I’d also like to thank everyone who shared their municipal photos for our Second Annual contest. With more than 35 entries we are now on our way to establishing a wonderful pictorial database. Several images are already gracing the opening page of our website at www.alalm.org. Be sure to visit when you have a chance.

Back to the *2009 Directory* ... keep in mind that this annual publication 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 *2009 Directory* (which are easily identifiable as they are actually yellow) when searching for suppliers.

Congratulations to **Rita S. Lee**, Hartselle City Clerk/Controller and **Victoria Southern**, Foley Assistant City Clerk for earning the prestigious Certified Municipal Clerk (CMC) designation from the International Institute of Municipal Clerks (IIMC). Well done!

Closing thoughts. I’ve often thought I could learn valuable lessons from my cat, Bentley (above), such as: Naps are healthy; they preserve strength for when one needs to spring into action. Being still is not indicative of being lazy. Dignity and honor have nothing to do with bloodlines. Personal hygiene makes a difference. Time spent in the sun improves your attitude. Silence is golden. Claws should only come out as a last resort. Be appreciative of your adopted family; after all, they *chose* you. And, probably one of the most important lessons of all, never let ’em see you sweat!

Carrie



Melvin Duran
Mayor of Priceville

NLC Awards for Municipal Excellence Celebrates its 20th Year

The National League of Cities (NLC) and CH2M HILL are pleased to announce the 20th anniversary of the Awards for Municipal Excellence program in 2009! Since 1989, this prestigious award has honored outstanding programs across the country that improve the quality of life in America's communities.

You are invited to celebrate the 20th anniversary of the Awards for Municipal Excellence by nominating an innovative program in your city that has improved the quality of life for its residents, by forming successful and productive partnerships or collaborations, effectively managing resources, creating innovative government policies, or implementing projects with tangible positive results.

Cities of all sizes are welcome to submit nominations beginning in February 2009, and two winners will be selected in each of four population categories. **The deadline for all submissions is May 1, 2009.**

The eight winning programs will receive awards of \$1,000 or \$2,000 and have the honor of being publicly recognized for their outstanding achievements at a ceremony at NLC's Congress of Cities Conference and Exposition in San Antonio, Texas on November 10-14, 2009. To learn more about how you can recognize an innovative program in your city, and to obtain a copy

of the 2009 nomination packet, please email awards@nlc.org, or visit the NLC website at www.nlc.org.

In 2007, the city of Selma won a Municipal Excellence Silver Award for municipalities with populations under 50,000 for its *TRUSTBuild* program. Selma's unique *TRUSTBuild* program was also selected as a Municipal Achievement Award winner with the Alabama League in 2008. (That awards program was revamped this year and is now titled Quality of Life Awards).

League's Quality of Life Awards Program Receives Nine Entries

Nine entries were received last month for the League's revamped "Quality of Life Awards". Judges will be reading through the entries over the next few weeks and winners announced in time for videos to be produced for the 2009 Annual Convention this May.

Many thanks to the following municipalities for taking the time and putting forth the effort to enter their unique programs for consideration of a Quality of Life Award: Athens, Auburn, Cullman, Dutton, Guin, Hodges, Jasper, Midway and Rogersville. I've no doubt each of your entries has, indeed, improved the quality of life for the citizens in your communities! ■



Thermal Imaging

For the Fire and Police Service



State of the Art Technology

- Ultra-High Resolution 320 x 240 detector
- Oversized, 4.3" widescreen, digital LCD display
- Super Red Hot colorization details high heat
- Electronic Thermal Throttle isolates heat source
- Over 1100 degree F saturation temperature
- 16 x 9 aspect ration
- 50 degree horizontal field of view
- 80 degree display viewing angle
- 2xd and 4x digital zoom
- Zoom in for hazardous materials, wildfire or search & rescue
- Zoom works with Electronic Thermal Throttle & Super Red Hot
- Small lightweight design for easy handling



Higher Resolution & One-Button Simplicity

- "Back to Basics" single button operation
- 320 x 240 resolution
- Super Red Hot colorization details high heat
- Relative Heat Indicator



OWN The Night Police Officer Safety : Fugitive Searches

- Optics Selection & Display Dimming
- Electronic Threat Tagging™
- 16 x 120 detector resolution
- Extreme durability
- One-Button Operation
- 4x digital zoom
- Switchable polarity
- Variable focus
- Interoperable with thousands of Bullard Thermal Imagers and accessories



**Fire Rescue
Help Group**

EXCLUSIVE ALABAMA DEALER

120 LaFayette Hwy . Roanoke, Alabama

334-863-7222

www.firerescuehelp.com

Jeff and Cindy Tubbs Monroe—owners

Municipal Overview



Perry C. Roquemore, Jr.
Executive Director

2009 League Legislative Package

The Alabama League of Municipalities Committee on State and Federal Legislation met at League Headquarters on Thursday, December 4, 2008. The committee, which is composed of elected municipal officials from throughout the state, considered a multitude of legislative recommendations from the League's five policy committees, member municipalities, and the League staff. At the conclusion of their meeting, the committee unanimously approved the following package of bills (in no particular order of priority) to be introduced during the 2009 Regular Session.

Publication of Municipal Ordinances

State law requires municipalities to publish ordinances of general and permanent operation. In some instances, the costs of publication can be extremely high even though only a few minor changes are made to the ordinance. In an effort to protect both the public's right to know and the public's money, the League will propose permissive legislation to authorize an alternate method of publishing license, zoning and planning ordinances by means of a synopsis published in the newspaper.

Pre-zoning of Territory Proposed for Annexation

Municipalities have the legal authority to zone territory within their corporate limits. Currently, newly-annexed territory comes into the municipality either "unzoned" or temporarily zoned for a classification as set out in the zoning ordinance for newly-annexed territory. The League will offer legislation to authorize municipalities to establish a permanent zoning classification for territory proposed to be annexed prior to the actual annexation. The zoning action would only become effective upon annexation of the land to the municipality.

Clarification of Mayor's Voting Powers

An Alabama Supreme Court decision has created confusion as to the ability of the mayor of a municipality of less than 12,000 inhabitants to vote on all issues coming before the council. The League will offer a bill to amend Section 11-43-160 of the Code of Alabama 1975 to clearly provide

that in municipalities with a population of less than 12,000 inhabitants, the Mayor is a voting member of the council whose vote may be included in the required two-thirds vote of the council needed to discipline or terminate employees.

Alternates on Municipal Planning Commission

Current Alabama law provides that a municipality may establish a municipal planning commission composed of nine members. There have been numerous instances over the years where several members are absent from a meeting thus causing a lack of a quorum. This bill would give the mayor permissive authority to appoint two alternate members to the planning commission to serve only in the absence of regular members.

Residency of Industrial Development Board Members

Many Alabama cities and towns have established industrial development boards which exercise authority both within and without the city or town that created the board. Under current law, the board members are appointed by the council and must be residents of the municipality. The League will propose legislation to amend Section 11-54-80, Code of Alabama 1975, which relates to the appointment of board members to an incorporated industrial development board,



LOCAL GOVERNMENT CORPORATION

Providing Hardware and Software to Local Governments for over 30 years!

Financial Management ~ Revenue Management ~
Document Management ~ City Court Management ~
Hardware and Networking Solutions ~ Software
Support and Training Solutions

714 Armstrong Lane ~ Columbia, TN 38401
Phone: 800-381-4540 Fax: 931-381-0678
Email: marketing@localgovcorp.com
www.localgovcorp.com

continued on page 17



RDS... The Perfect Fit For Local Government.

CLIENT SALES:

Yolanda Watkins
334.272.9995
ywatkins@revds.com

Pete Yonce
205.423.4110
pyonce@revds.com

CLIENT SUPPORT:

Connie Taylor
205.423.4144
ctaylor@revds.com

Shundala Cox
205.423.4146
scox@revds.com

RDS
revenue discovery systems

2317 Third Ave. No., Suite 200
Birmingham, Alabama 35203
800.556.7274 • Fax 205.423.4099
www.revds.com



Municipal and Public Finance Group

(Left to Right)
Haskins Jones
Alston Ray
Willis Meziwether, IV
Russell Irby, III

Johnston Barton Proctor & Rose LLP

Colonial Brookwood Center
569 Brookwood Village, Suite 901
Birmingham, Alabama 35209

Telephone: (205) 458-9400 • Facsimile: (205) 458-9500

www.johnstonbarton.com

In accordance with Alabama State Bar requirements, no representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.

Johnston Barton ATTORNEYS

Salutes the
Alabama League of Municipalities

Public Finance Legal Services to State and Local Governments:

- Governmental Services
- Infrastructure
- Education
- Industrial Development
- Economic Development Incentives
- Housing
- Utilities
- Privatization
- Structured and Pool Financings
- Rate Swaps and Derivatives
- Arbitrage Rebate



The Legal Viewpoint

By Tracy L. Roberts
Assistant General Counsel



Municipal Fire Protection

Fire protection is one of the oldest functions performed by municipal corporations. The need for fire protection in closely developed communities has often stimulated inhabitants to incorporate a town or city. While tremendous strides have been made in firefighting through the improvement of equipment, scientific training and constant research, the fact remains that hostile fires continue to be a fearsome and dreaded threat to homes and businesses. It would seem that problems connected with the municipal fire protection function would have been solved during the long history of the service. However, as old problems are solved, new problems appear.

Fire departments may be either paid or volunteer. They may be established either as a municipal department or a totally separate organization. The relationship between the municipality and the fire department differs based on how the department was established and whether it is considered a municipal department.

Municipal volunteer fire departments should not be confused with fire districts or community fire departments. Fire districts are authorized by state statute and are manned by either paid or volunteer firefighters. Community fire departments operate as private organizations and are supported by donations or by contracts with property owners. A municipal volunteer fire department, on the other hand, is a branch of the municipal government. Operating funds are appropriated by the governing body, and firefighters are volunteers who receive little or no reimbursement above actual expenses for their services.

The League has prepared a special report entitled *The Municipal Volunteer Fire Department* which answers basic organizational questions regarding volunteer fire departments. Copies may be obtained by writing to League headquarters.

Basic Authority

The creation of a fire department is at the discretion of

the municipality. The basic authority for municipalities to provide fire protection services within the corporate limits is found in Section 11-43-140, Code of Alabama 1975. This statute is permissive rather than mandatory.

Section 11-43-5, Code of Alabama 1975, authorizes the municipal governing body to appoint a chief of the fire department and to prescribe the duties of the chief. The courts have ruled that this section also authorizes the governing body to fix the salary of the fire chief. *See, Beasley v. McCorkle*, 184 So. 904 (Ala. 1938).

The chief of the fire department, the chief of police or marshal of every incorporated city or town in which a fire department is established, the mayor of each incorporated town in which no fire department exists and the sheriffs of the several counties of the state shall be, by virtue of such offices so held by them, assistants to the Fire Marshal, shall be subject to the duties and obligations imposed by this article and subject to the direction of the Fire Marshal in the execution of the provisions of this article. Section 36-19-3, Code of Alabama 1975. The chief of a municipal fire department or a municipally sanctioned volunteer fire department, who has complied with APOST standards may, if directed by the State Fire Marshall, issue a citation for the violation of a state law related to the matters set forth in Section 36-19-2 of the Code of Alabama 1975, relating to fire protection. AGO 2005-198. A person under the age of 18 is prohibited from serving as a firefighter in a volunteer fire department. Section 25-8-43, Code of Alabama 1975.

In the case of *State v. Baumbauer*, 12 So. 2d 326 at 330 (1942), the Supreme Court of Alabama observed that the law does not impose a duty upon a municipality to establish and maintain a fire department. Once a city or town organizes and provides for a professional fire department, however, a duty is owed to the citizens of the city or town and the municipality may be liable for negligent acts committed in the performance of that duty. *See, Williams v. Tuscumbia*, 426 So.2d 824 (Ala. 1983) and *Zeigler v. Millbrook*, 514 So.2d 1275 (Ala. 1987). However, if a city creates a volunteer fire department, the municipality does not have a legally enforceable duty to provide skillful fire protection

“The present and future of

Carr, Riggs & Ingram embraces

professionalism, integrity,

compassion, and a passion

for our profession.”

Carr, Riggs & Ingram, LLC



 CRI + You
= a brighter future

ACCOUNTING & AUDITING | PERSONAL FINANCIAL PLANNING | LITIGATION SUPPORT
TECHNOLOGY CONSULTING | PEER REVIEW | HR SERVICES | TAX SERVICES

Contact

Hilton Galloway – Enterprise
334.347.0088

Brian Barksdale – Birmingham
205.933.7822



Alabama | Florida | Georgia | Mississippi

www.cricpa.com

The Strategic Procurement Source for Public Agencies

Think of
US first
for PROVIDING SOLUTIONS

www.uscommunities.org



U.S. COMMUNITIES

Government Purchasers Saving You Money

Founding Co-Sponsors



for the purposes of imposing municipal liability. *Hollis v. Brighton*, 885 So. 2d 135, 140 (Ala. 2004) (emphasis added). Municipalities should carefully consider their ability to provide adequate fire protection prior to organizing a department or agreeing to provide protection outside the municipal limits.

Since the decision of the Alabama Supreme Court in the case of *Jackson v. Florence*, 320 So.2d 68 (1975), which abolished governmental immunity for municipalities, cities and towns have been liable for negligent actions of their employees, including firefighters, which happen in the exercise of governmental functions such as firefighting. Municipalities are not required to pay medical expenses incurred by firefighters in the exercise of their duties. However, all municipalities over 2,000 in population must provide workers compensation coverage for their employees. Municipalities of less than 2,000 in population **may** provide workers compensation coverage. Section 25-5-13, Code of Alabama 1975.

No direct authority exists for a municipality to provide fire protection within the police jurisdiction. This authority is implied by, and is necessarily incident to, the power of a municipality to provide for the health, welfare and sanitation in the police jurisdiction. Section 11-40-10, Code of Alabama 1975. In addition, the power to levy license taxes in the police jurisdiction under the police power implies the authority of the municipality to provide protection services. Section 11-51-91, Code of Alabama 1975. And, the Attorney General has ruled that a municipality may expend public funds to equip and maintain a fire station in its police jurisdiction. AGO 1997-234.

While the power exists, it is not imposed as a mandatory duty upon a municipality. For instance, in AGO 1999-019, the Attorney General held that unless there is a contract, if a municipality does not receive any tax revenue from the police jurisdiction, the municipal fire department has no obligation to provide fire protection in the police jurisdiction. Municipalities have adopted a variety of policies for fire protection services in the police jurisdiction.

Firefighter Training

In 1975 the state Legislature created the Firefighters' Personnel Standards and Education Commission to govern the paid employees of each municipal firefighting agency. The law, codified at Sections 36-32-1 through 36-32-12, Code of Alabama 1975, as amended, requires all appointees as firefighters to meet certain minimum standards for firefighters as prescribed by the commission. Volunteer firefighters may be certified by the Commission, although certification is not mandatory. Candidates for volunteer firefighter certification must complete 160 hours of training within a 24-month period at a training center approved by

the Commission. This training does not have to be taken during continuous sessions. The cost of such training is paid by the municipality.

Any entity that hires a firefighter, within two years of the completion of the required training, shall reimburse the amount expended on the training to the governmental entity that paid for the training. Section 36-21-7, Code of Alabama 1975.

Firefighter Organizations

Section 11-43-143, Code of Alabama 1975, forbids strikes by firefighters. However, firefighters are given the authority to present proposals on working conditions to their employers by any representative of their own choosing.

Beyond the Police Jurisdiction

At the discretion of the governing body, a municipality may contract with other municipalities, counties, industries and residential and business areas to provide fire protection. The 1955 Legislature adopted a law authorizing municipalities to send firefighting equipment to areas beyond the boundaries of the police jurisdiction. This law is found in Sections 11-43-141 and 11-43-142, Code of Alabama 1975. Section 11-43-141 states in part: "Whenever the necessity arises during any emergency resulting from fire or other public disaster, the firemen of any city or town, may, together with all necessary equipment, lawfully go or be sent beyond the corporate limits and police jurisdiction of such city or town to any point within the State of Alabama, to assist in meeting such emergency."

Citing this section, the Attorney General has ruled that a municipality may assist in fighting fires which occur beyond its corporate limits and police jurisdiction without reference to a definition of the word "emergency." AGO to Hon. Frank Amberson, September 4, 1963. In another opinion, the Attorney General ruled this section authorizes a municipality to send its firefighters and equipment beyond the corporate limits and police jurisdiction without compensation to the municipality. AGO to Mayor V. H. Albright, March 8, 1963.

However, a municipality may charge a fee for providing fire protection outside the corporate limits. AGO 1995-160. Section 11-43-142, Code of Alabama 1975, states "the governing body of any city or town may, in its discretion, authorize or require the fire department thereof to render aid in cases of fire occurring beyond their corporate limits and police jurisdiction, and may prescribe the conditions on which such aid may be rendered and may enter into a contract or contracts with other cities and towns, with counties or county boards, manufacturing or industrial concerns, or residential and business areas for rendering fire protection in such places on such terms as may be agreed upon..."

~~\$14~~ Million Dollars



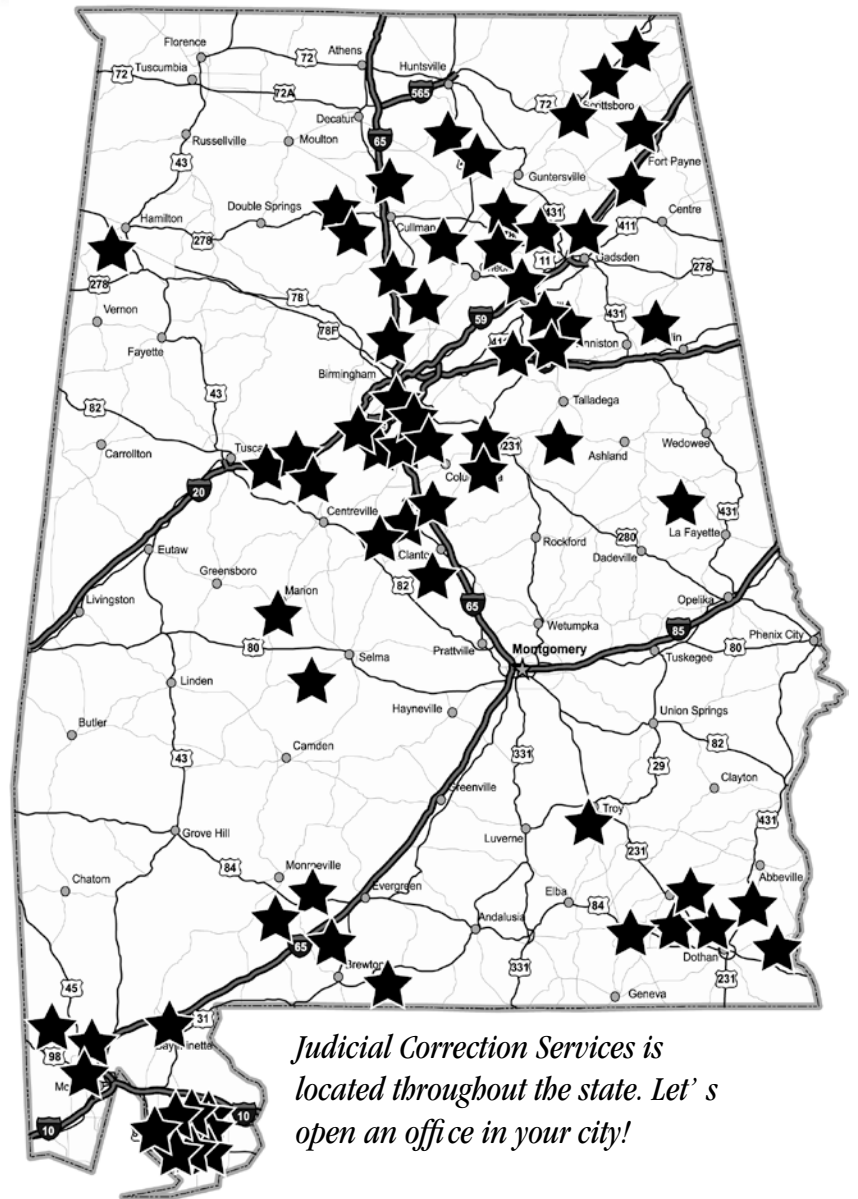
Last year we sent over 14 million dollars to Alabama Municipal Courts in fine collections. The cost to the cities was zero.

That's right, not a dime!

More than 80 Alabama municipalities rely on Judicial Correction Services. JCS ensures court fines are paid quickly and completely, court docket sizes are reduced & jail population is kept small.

City budgeting becomes easier with increased revenue and reduced expense. Unpaid fines are nearly eliminated.

Let's meet and discuss how we can help your city. Call today!



Judicial Correction Services is located throughout the state. Let's open an office in your city!



Kevin Egan
Judicial Correction Services
www.judicialservices.com
1.888.527.3911

Municipalities also have the authority, under Sections 11-102-1 through 11-102-8, Code of Alabama 1975, to extend fire protection under joint contracts with other municipalities and counties.

While these are useful statutes which expressly authorize mutual aid agreements between municipalities, a municipal governing body should be extremely cautious about entering agreements to protect areas beyond the police jurisdiction. Before entering such an agreement, the governing body should consult ISO Commercial Risk of Atlanta, to determine possible effects on the insurance rating of the municipality. Furthermore, the contract or agreement should be worded so that the municipality cannot be held liable for breach of contract.

Rural Protection

Fire protection to unincorporated areas is provided by fire districts organized by state statute and by private volunteer fire departments. Local emergency management units also provide some services in this area. Fire protection authorities formed pursuant to Section 11-88-1, et seq., of the Code of Alabama are not required to provide services to their entire defined service territory. Residents within the territory who receive such services by virtue of a municipal fire department or a volunteer fire department should not be charged by the authority. Section 11-88-7(a)(24) allows fire protection authorities to charge reasonable rates, fees, and other charges for fire protection services. The determination of whether a particular rate or fee is reasonable must be made by the authority. AGO 2008-008.

Establishing and Funding Volunteer Departments

A municipality may establish a municipal volunteer fire department by adopting an ordinance of general and permanent operation. Final control of a municipal volunteer fire department should be left in the hands of the municipal governing body.

Municipal volunteer fire departments can be funded by municipal appropriations, grants and/or donations. All expenditures for fire department purposes should be made through appropriation by the governing body. Municipal funds cannot be used to purchase equipment or supplies for a volunteer fire department without the knowledge and consent of the municipal governing body, or council. AGO to Hon. Christine Clifton, September 20, 1955.

A city may donate training funds under Section 9-3-18, Code of Alabama 1975, to a volunteer fire department that is not part of the municipal government without regard to the residence of its volunteers; however, it is highly suggested that the city enter into a contract with the volunteer fire department for the services in return for money donated, if such an agreement is intended. AGO 1982-036 (to Hon. Jack A. Higgins, October 27, 1981).

If a volunteer fire department is recognized or sanctioned by a city, funds collected by that agency become city funds and should be included in the written financial mayor's report to the council and should be audited with other city funds. The city council has final authority on the expenditure of these funds. If the funds are solicited by a group of volunteers not directly tied to the city, then these funds belong to that organization. *See*, AGO 1985-129 (to Ms. C. Eleanor Byrd, December 18, 1984), and AGO 1994-063.

If a volunteer fire department is sanctioned by a municipality, funds received by the department must be audited along with all other municipal funds. AGO 1995-050 and AGO 1994-083.

Also, volunteer fire departments are not exempt from paying their prorated share of the cost of programs for the equalization of ad valorem taxes. AGO 1995-287.

Compensation for Volunteer Firefighters

The Fair Labor Standards Act (FLSA) recognizes the generosity and public benefits of volunteering, and does not seek to pose unnecessary obstacles to *bona fide* volunteer efforts for charitable and public purposes. In this spirit, in enacting the 1985 FLSA Amendments, Congress sought to ensure that true volunteer activities are neither impeded nor discouraged. Congress, however, also wanted to minimize the potential for abuse or manipulation of the FLSA's minimum wage and overtime requirements in "volunteer" situations.

Section 3(e)(4)(A) of the FLSA and 29 C.F.R. §§ 553.101 and 553.103 indicate that an individual is a volunteer, not an employee of a public agency, when the individual meets the following criteria:

- (1) Performs hours of service for a public agency for civic, charitable or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered. Although a volunteer can receive no compensation, a volunteer can be paid expenses, reasonable benefits or a nominal fee to perform such services;
- (2) Offers services freely and without pressure or coercion, direct or implied, from an employer; and
- (3) Is not otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer.

When a public agency employee volunteers, the Department of Labor will presume the fee paid is nominal as long as the fee does not exceed 20 percent of what the public agency would otherwise pay to hire a full-time employee for the same services. This 20 percent rule is derived from the FLSA and implementing regulations. *See*, Wage and Hour Opinion Letter FLSA 2005-51. A willingness to volunteer for 20 percent of the prevailing wage for the job is also a

likely indication of the spirit of volunteerism contemplated by the 1985 amendments to the FLSA. *See*, Wage and Hour Opinion Letter FLSA 2006-28.

A councilmember may serve on the volunteer fire department, provided they get no compensation for services. All municipal officers may be provided reimbursement for their expenses incurred in the performance of municipal duties. AGO to Hon. Paul Shipes, February 8, 1974.

Municipalities are not required to secure medical insurance for their employees. Cities and towns can provide such coverage for their employees including volunteer firefighters. AGO 1983-337 (to Hon. Robert S. Milner, May 30, 1983). A city or town may not purchase disability insurance for members of the volunteer fire department unless a contractual relationship exists between the two entities. If a councilperson serves as a volunteer, he may receive such coverage provided he did not vote on it. AGO 1979-282 (to Hon. J. Frank Lanier, September 10, 1979).

Municipalities may provide workers compensation coverage for volunteer firefighters. Each municipality should contact its insurance carrier about this coverage. Beneficiaries of volunteer firefighters are entitled to the death benefit provided by the state if the firefighter died while engaged in the performance of duties as a volunteer firefighter. AGO to Hon. William H. McDermott, February 26, 1975. In addition, the State of Alabama provides benefits to volunteer firefighters who are killed or disabled in the line of duty. *See*, Section 11-43-144, Code of Alabama 1975.

Fire Insurance Rating

The fire insurance rating of a municipality is the grade assigned to it by fire insurance underwriters. The rating is based on the fire defenses of a city and on the physical conditions which pertain to fire insurance. Depending on the insurance company, the rate assigned to a municipality may directly affect the fire insurance premiums paid for coverage of properties situated within the corporate limits of the municipality. Rating engineers from ISO Commercial Risk periodically visit each municipality in the state to inspect the fire defense system. From such visits, a municipality may receive a better rating, retain its current rating, or receive a lower rating. Municipalities should consult with rating engineers to determine what is needed to improve ratings. In some instances, minor changes can result in a better rating to save property owners large sums in fire insurance premiums.

Under the fire insurance rating system, the highest classification designates the least fire protection and, therefore, results in higher insurance premiums. A lower classification brings with it a reduction in premiums.

The rating is determined by scores on items in fire protection defenses – water supply, fire department, fire alarm system, police department, fire prevention activities, building department and structural conditions.

Generally, the fire insurance rating of a municipality is applied to all properties located within the corporate limits of the municipality for fire insurance premiums. Different types of property within the municipality take different

PUT OUR EXPERIENCE TO WORK FOR YOU

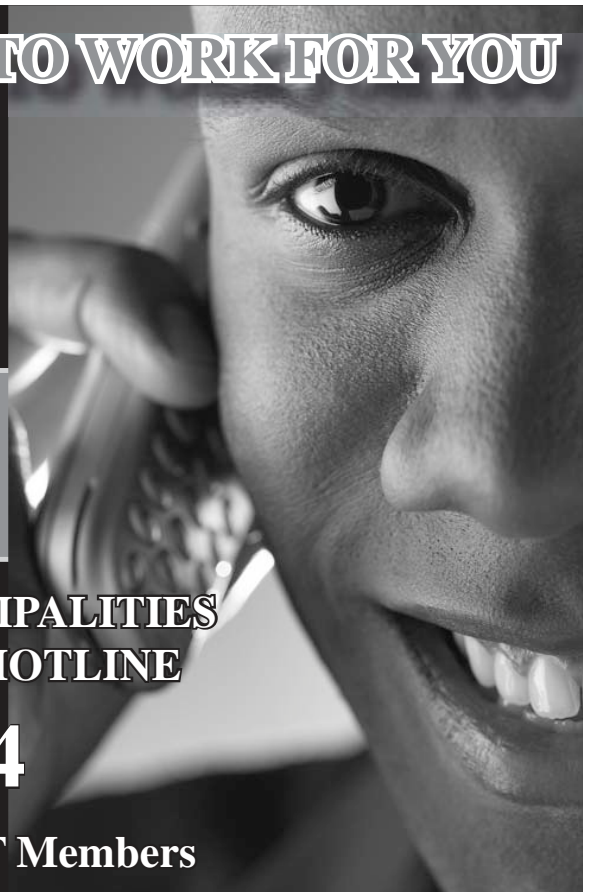
The League's Employment Practices
Hotline Offers Free 30-Minute
Consultations on Personnel and
Employment Practices.

Contact us today and let our proven
professionals advise you efficiently
and effectively.

**ALABAMA LEAGUE OF MUNICIPALITIES
EMPLOYMENT PRACTICES HOTLINE**

800-864-5324

Available to all AMIC and MWCF Members



individual rates under the overall rate assigned to the city or town. It is possible, however, for a municipality to have a split rate.

Some years ago, the City of Huntsville annexed approximately 10 square miles of territory. Rather than rate the whole city down because of the dissipation of city fire defenses to cover the new territory, the rating engineers allowed the area within the old city limits to retain its existing classification while the newly-annexed area was given the highest classification in the protection grading system. In so doing, the city established a plan to upgrade the classification in the annexed area on a year-to-year basis until it was as good as the rating within the old corporate limits.

Effect of Outside Service

The problem of confining the firefighting service to the corporate limits of a municipality involves moral, economic, political and organizational considerations. Municipal officials are often reluctant to establish a firm policy on the question of whether to send firefighters and equipment beyond the corporate limits.

The debate usually begins with the question "Is it wrong to allow property to burn without sending assistance when equipment and firefighters are available?" Then it is pointed out that citizens of the municipality incorporated the area for protection and the citizens pay the costs of maintaining the services. Similarly, the question is raised about dissipating the available forces for protection inside the corporate limits. Then the argument is advanced that businesses in the police jurisdiction pay license taxes to the city based on the police power which includes protection services rendered in the area by the municipality. All the while there lingers the question of if the municipality extends services freely in the police jurisdiction and the areas beyond, what are the advantages of incorporation and what reason would the inhabitants of the fringe areas have for annexing to the municipality? Last, and probably most controlling, is the question of economic costs and the effect which the extraterritorial fire service policy has on the insurance rating of the city or town.

Unlimited free service to all residences and businesses in the police jurisdiction and areas beyond would probably result in a higher, less desirable, fire insurance rating for a municipality. Conversely, if a municipality has sufficient equipment and firefighters to fight limited fires in areas beyond while still maintaining forces to fight fires within the corporate limits, the rating might not be affected. This is a matter which varies between municipalities. Care should be taken by the municipal governing body to consult with ISO officials before going too far in establishing an extraterritorial service policy.

Alternative Policies

Numerous policies could be adopted by municipalities

to answer the question of extending fire services beyond the corporate limits. A municipality may flatly refuse to send any firefighters and equipment outside the corporate limits. Or, services may be extended to all businesses and residences in recognition of the taxes paid by such businesses. Or, services may be extended beyond the corporate limits on the basis of a contract or agreement with extraterritorial property owners who reimburse the municipality for services rendered. Another factor which might enter into the determination of the fire service policy is the willingness of extraterritorial residents to pay for a rider on fire insurance policies which carry an agreement on the part of the insurer to pay the city for calls actually answered to the property and not exceeding a stipulated amount.

If a municipality adopts a policy to provide protection to extraterritorial areas within three miles of its firefighting units and the municipal forces meet certain minimums in equipment and personnel and alarm facilities, the extraterritorial property so protected enjoys what is known as a protected suburban rate, which lowers the cost of insurance premiums. This is a factor which the municipal governing body should take into consideration when deciding whether to extend free firefighting services to nontaxable properties beyond the corporate limits.

Another policy option should be mentioned. Should a municipality enter into mutual aid agreements with neighboring municipalities? ISO smiles upon such

continued on page 23



FULL SERVICE MAINTENANCE PROGRAMS
GASB 34 Compliant
Interior and Exterior Painting, Repairs, Safety Accessories
Inspections, Washouts, Disinfections

WIRELESS COMMUNICATIONS SERVICES
Antenna Site Management • Antenna Installations
Design Reviews/Project Management

TAX EXEMPT FINANCING
Asset Acquisition and Infrastructure Growth
Extremely Competitive Rates
No "Red Tape"

NEW TANK SALES
Expedited Delivery
Any Style, Design, Capacity

Utility Service Co.
I N C O R P O R A T E D

CONTACT:
R. Michael Szabo, Jr.,
6529 Big Oak Court
Columbus, GA 31909
Phone: 706-575-1456
Fax: 706-563-4888
mszabo@utilityservice.com

CORPORATE OFFICE:
P.O. Box 1350
Perry, GA 31069
Phone: 800.223.3695
Fax: 478.987.2991

www.utilityservice.com

INTRODUCING ...

Jonathan Katan



The League welcomes Jonathan Katan, who joined the League staff in October as Information System Specialist where he works directly with the Director of Information Systems and is responsible for a variety of technical support duties related to the League's technology/telecommunication systems including installation, maintenance, troubleshooting and upgrades. Jonathan also assists with network administration activities and system security; assesses user training needs; provides necessary user training; and performs database management.

Originally from Pell City, Alabama, Jonathan served in the Air Force for seven years before joining the civilian world. He graduated from Community College of the Air Force with a degree in Information Systems Administration.

Jonathan has two children and currently resides in Prattville. ■

ion

Interactive Video Technologies

SEE. HEAR. PREVENT.



pro • ac • tive

(adjective)

serving to **prepare** for, **intervene** in, or **control** an expected occurrence or situation

ION Interactive provides state-of-the-art solutions to help keep cities, public-access areas and government facilities safe, secure and protected...24 – 7! The integration of our video surveillance systems into existing security plans facilitates quicker response to any situation and greatly improves the ability to resolve potential problems promptly and effectively.

Our cost efficient surveillance options provide: Video verification surveillance, video tours, 2-way call down and trained professional monitoring agents. ION Interactive's cutting edge technology can provide a solution that will meet your needs and budget.

www.ion247.com | 205.639.5260 | 3003 2nd Avenue South | Birmingham, Alabama 35233

so as to provide that the municipal governing body of a Class 6, 7 or 8 municipality may, in its discretion, appoint up to two persons who reside outside the corporate limits of the municipality but within the boundaries of the board's jurisdiction to serve on the board.

Planning Commission Jurisdiction

Current Alabama law states that a municipal planning commission can enforce subdivision regulations in the corporate limits of the municipality and in any territory located within five miles of the corporate limits. The League proposes legislation to make it clear that a municipal governing body may adopt an ordinance to limit the enforceability of subdivision regulations to an area less than the five-mile limit established by law.

Municipal Approval of Beer and Wine Licenses

Currently, municipal consent is required before the State Alcoholic Beverage Control Board can grant a liquor or wine license. The League will offer legislation to place the same condition on the granting of beer licenses by the State ABC Board.

Appropriation for Wastewater Treatment SRF and the Alabama Drinking Water Finance Authority

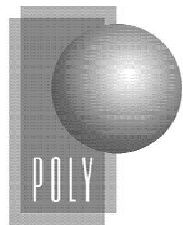
Many years ago, the Alabama Legislature established a State Revolving Loan Fund for Wastewater Treatment (SRF) and the Alabama Drinking Water Finance Authority. The purpose of these programs was to take state funds and match them with federal dollars to create a loan fund to offer low interest loans to governmental entities for wastewater treatment and drinking water projects. Each year, the League seeks additional matching funds from the legislature to continue these nationally recognized programs.

Election Law Amendments

Most Alabama cities and towns conducted municipal elections in 2008. During the elections process, it became apparent that certain amendments to the election laws were needed. The League will seek legislation to make these needed amendments to the municipal election laws.

Conclusion

The Committee on State and Federal Legislation has adopted an ambitious Legislative Package for 2009. The Regular Session will begin on February 3, 2009, and all municipal officials are encouraged to get behind this package and push for its passage during the session. ■



POLYENGINEERING, INC.
ARCHITECTURE. ENGINEERING. SOLUTIONS.

*Serving Alabama's Municipalities
for Over 49 Years*



www.polyengineering.com

- Architecture
- Electrical Design & Inspection
- HVAC Design & Inspection
- Industrial Wastewater Treatment
- Industrial Water Supply
- Military Training Ranges
- Government Facilities
- Municipal Planning
- Parks & Recreation
- Paving & Drainage
- Solid Waste Disposal
- Storm Water Management
- Storm Water Retention & Treatment
- Urban Revitalization
- Utility Relocation
- Wastewater Collection & Transmission
- Wastewater Treatment & Disposal
- Water Treatment & Supply
- Water Storage & Distribution

Become a Certified Municipal Official!

Contact Theresa Lloyd
CMO Program Administrator
334-262-2566
or via e-mail at
theresal@alalm.org

www.alalm.org/CMO/CMO.html

CMO Credit By CD Course Library

Earn CMO credit when it is convenient for you, at your own pace.

Driving in your car ...

In the comfort of your own home ...

OR While you are out for a jog!

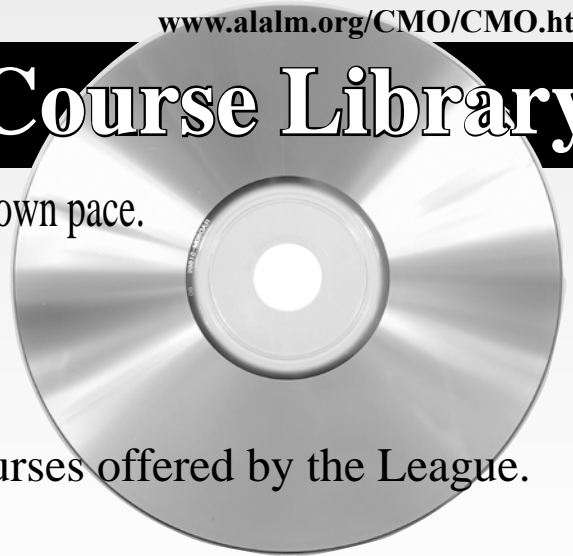
EARN CMO credits by ordering CD Courses offered by the League.

The Correspondence Program works like this:

1. Order the courses you wish to take by printing and completing the Order Form found on the ALM web site. Mail the completed Order Form together with the payment, either by check or credit card to the address on order form.
2. You will receive the CD(s) ordered and a true/false test for each course ordered. Listen to each course and complete the test as you listen. Return the completed test(s) to the League Headquarters. The CD(s) are yours to keep.
3. The League will grade your test(s). If you receive a grade of 70 or above, you will be awarded the appropriate credit hours in the CMO Program.

To order from the list of courses, visit

www.alalm.org/CMO/CMO.html



ALABAMA MUNICIPAL ELECTRIC AUTHORITY

804 South Perry Street • Montgomery, Alabama 36104
P.O. Box 5220 • Montgomery, Alabama 36103-5220
(334) 262-1126 • (800) 239-2632



Power That Works For You!®

www.amea.com

Alexander City
Dothan
Fairhope
LaFayette
Lanett
Luverne
Opelika
Piedmont
Riviera Utilities, Foley
Sylacauga
Tuskegee

AMEA is Alabama Sales Affiliate for Hometown Connections®

OBITUARIES

Edward Lamar Turner, Jr.

Edward Lamar Turner, Jr., former Luverne mayor and councilmember passed away November 13, 2008. He was 91. Turner was a naval veteran of WWII. During his time as mayor, Luverne's municipal park was developed and subsequently named in his honor.

Lambert Mims

Lambert Mims, former Mobile mayor has died. He was 78. Lambert served two decades in office.

Charles H. Couch

Charles H. Couch, longtime mayor of Union Grove died at age 68. Couch, who was recently re-elected, had served as mayor for about 30 years.

Walter Byrd Buie

Walter Byrd Buie passed away at age 72. He was completing his second term as mayor for the Town of Webb.

Julia Mae Bence

Julia Mae Bence, former mayor pro-tem and councilmember of Abbeville has passed away. Bence began her service as a councilmember in 1978 upon the death of her husband, Claud Christopher Bence, Sr. She completed his unexpired term and became the first woman to serve on the Abbeville City Council. Bence went on to serve three terms on the Council and served as the mayor pro-tem from 1984-1995.

Eugene Shannon

Eugene Shannon, longtime mayor of Ardmore, has passed away. He was 72. Shannon was elected to the Ardmore City Council in 1972 and served until 1979, when he was elected mayor. He resigned after serving one year due to illness, but was re-elected in 1984 and served until his passing.

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: Offenses of speeding and reckless driving, which occurred on different dates, were not of the same or similar character so as to be subject to joinder, to be tried in the same trial, where evidence of either offense would not have been admissible at a separate trial of the other. *Ex parte Tisdale*, 990 So.2d 280 (Ala.2007)

Courts: After two people who had pledged their real property to secure a defendant's appearance bond were allowed to withdraw as sureties, the defendant could be taken back into custody until sufficient surety was provided. However, the court did not have authority to increase the amount of the bond or impose additional conditions upon the defendant's release. *Ex parte Earnest Stokes*, 990 So.2d 852 (Ala.2008)

Drug Forfeiture: The mandate in the forfeiture statute (Section 20-2-23 of the Code of Alabama) that forfeiture proceedings be instituted "promptly" is necessary to the statute's constitutionality. A forfeiture proceeding that is not instituted "promptly" is ineffectual. Whether a forfeiture action is "prompt," as required by statute, is governed by the facts and circumstances of that particular case. *Cowart v. State*, 991 So.2d 245 (Ala.Civ.App.2008)

DUI: A defendant prosecuted for felony DUI was not entitled to take advantage of a statutory amendment limiting the time within which a DUI conviction could be considered for sentencing purposes, where the amendment had not taken effect at the time defendant committed the offense for which he was being prosecuted. There was no clear expression that the Legislature intended that the amendment be applied to offenses occurring before the amendment took effect on April 28, 2006. *Stewart v. State*, 990 So.2d 441 (Ala.Crim.App.2008)

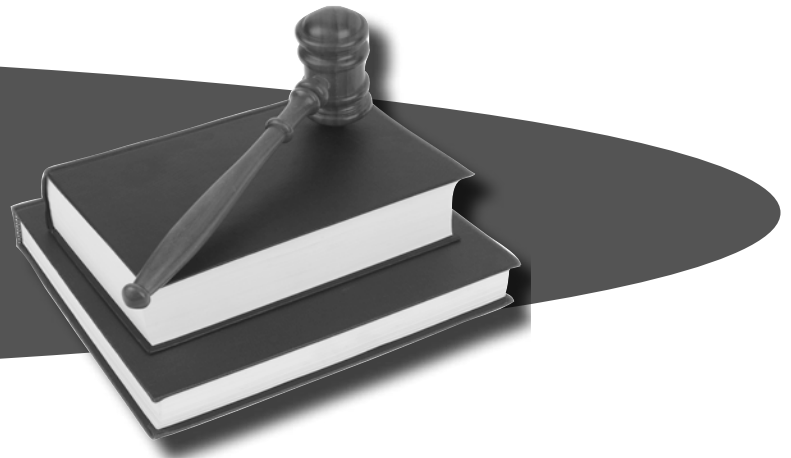
Elections: Once the time for filing a contest of a general election had expired without any such filing by a voter, the trial court lost any subject-matter jurisdiction it had over the voter's claim. While the Fair Campaign Practices Act provided the basis for the substantive remedy sought by the voter, it did not provide the procedure for obtaining that remedy, which was instead stated in statutes governing contests of a general election. *Wood v. Booth*, 990 So.2d 314 (Ala.2008)

Employees: The federal district court's determination that a terminated county employee could not maintain his procedural-due-process claim in federal court due to the availability of an adequate post-deprivation remedy did not preclude, as a matter of res judicata, the state court's consideration of the employee's claim, upon petition for common-law writ of certiorari, that the termination procedures violated due process. Evidence that an employee of the county department of public works made an unauthorized repair of his driveway using county materials, in violation of the personnel handbook, supported the county commission's decision to terminate the employee. *Hicks v. Jackson County Com'n*, 990 So.2d 904 (Ala.Civ.App.2008)

Personnel Board: A Jefferson County Personnel Board rule providing that the hearing officer's report and recommendation will become an order of the Board if the Board fails to take any action on the report within 30 days after receipt, did not impermissibly conflict with the statute providing that the Jefferson County Personnel Board consider the report and modify, alter, set aside, or affirm the report and recommendation, in that rule did not deprive the Board of its authority to act. *Ex parte City of Birmingham*, 992 So.2d 30 (Ala.Civ.App.2008)

Public Records: The purpose of the Open Records Act is to allow private citizens to monitor the manner in which public officers discharge their public duties. Once a citizen expresses a legitimate reason for seeking public records of a governmental body that have not been deemed confidential, neither the governmental body nor its employee has discretion with regard to whether they will produce the document. By statute, the only discretion vested in the governmental body at that point is the discretion to promulgate regulations controlling the time and manner of the production. Any production by the governmental body of non-confidential documents requested under the Open Records Act would be considered a ministerial act that a circuit court could properly compel by a writ of mandamus because that statute unequivocally directs the governmental body to produce such documents. The rule-of-reason test, as applied to requests under the Open Records Act, adequately balances privacy interests against the need for disclosure of public documents by allowing the courts to protect from disclosure confidential information, sensitive personnel records, records pertaining to pending criminal investigations, and records which if disclosed would be detrimental to the best interests of the public, as well as other categories of information that may not be appropriate for public disclosure. *Graham v. Alabama State Employees Ass'n.*, 991

Tracy L. Roberts
Assistant General Counsel



So.2d 710 (Ala.Civ.App.2007)

Searches and Seizures: A police officer may make a brief investigatory stop of an individual based upon a reasonable suspicion of criminal activity. In reaching a well-founded suspicion to stop a vehicle based on a police dispatch, a police officer should consider several factors, including: (1) the length of time since the offense, (2) the distance from the offense, (3) the route of flight, (4) the specificity of the description of the vehicle and its occupants, and (5) the source of the dispatch information. *State v. Green*, 992 So.2d 82 (Ala.Crim.App.2008)

Searches and Seizures: An anonymous call to police, in which the caller reported that a black male wearing a sleeveless basketball jersey, khaki pants, and a black hat was carrying a firearm on a certain street, was not sufficient to justify a police officer's stop and frisk of a juvenile, who was walking down the street and matched the description provided by the anonymous caller. The anonymous call concerning the juvenile provided no predictive information and therefore left the officer without a means to test the informant's knowledge or credibility, regardless of the fact that the juvenile was ultimately found to possess a firearm. *B.J.C. v. State*, 992 So.2d 90 (Ala.Crim.App.2008)

Searches and Seizures: A police officer who stopped a driver for a traffic violation did not have probable cause to search his vehicle where no evidence indicated that the driver was furtive, nervous, or attempting to flee, no evidence indicated that officer believed any criminal activity was afoot, and nothing indicated that officer had an "actual suspicion" that weapons were present in the vehicle. A defendant's act in refusing to give the officers the key to his car or otherwise consent to a search of the car cannot provide the basis for probable cause to search the car. *J.T.C. v. State*, 990 So.2d 444 (Ala.Crim.App.2008)

Tort Liability: Actions that do not come within the prohibition of the sovereign-immunity provision of the Alabama Constitution include: (1) actions brought to compel officials to perform their legal duties; (2) actions brought to enjoin officials from enforcing an unconstitutional law; (3) actions to compel officials to perform ministerial acts; (4) actions brought under the Declaratory Judgments Act seeking construction of a statute and its application in a given situation; (5) valid inverse-condemnation actions brought against officials in their representative capacity; and (6) actions for injunction or damages brought against officials in their representative capacity and individually where it was alleged that they had acted fraudulently, in bad faith, beyond their authority, or in a mistaken interpretation of law. *Alabama Dept. of Transp. v. Harbert Intern., Inc.*, 990 So.2d 831 (Ala.2008)

Youthful Offenders: A defendant's sentence of one year based on his adjudication as youthful offender for third-degree assault exceeded the maximum authorized by the city ordinance. Third-degree assault was a Class A misdemeanor, and the maximum sentence allowed by the city ordinance was six months. *A.H. v. City of Montgomery*, 992 So.2d 80 (Ala.Crim.App.2007) **Note:** The city ordinance also limited the fine to \$500, though section 13A-5-12.1 of the Code of Alabama authorizes a maximum fine of \$1,000 for this offense.

UNITED STATES COURT DECISIONS AFFECTING ALABAMA

First Amendment: A municipal taxpayer has standing to challenge an alleged violation of the Establishment Clause by a municipality, where the taxpayer is a resident who can establish that tax expenditures were used for the offensive practice. Starting a county commission meeting with prayer by various local religious leaders representing different religious traditions does not violate the First

continued from page 24



Southeast Local Government Technology Conference

February 10, 2009 | Gwinnett Center, Duluth, GA

www.atlantaregional.com/techconference

Technology is constantly transforming local government and may have an even greater impact in the near future. The conference offers an exciting opportunity for local government staff, elected officials, technology managers and others to explore the issues and ideas that will maximize effectiveness and efficiency in service delivery.

Topics include:

- Green Building and Data Centers
- Public Safety and Emergency Management
- Customer Service Technologies and Web 2.0 Integration
- Keynote Speaker Best-Selling Author Jack Ulldrich

Cost \$100 one person and \$200 for four people

Register online at <http://arctechconference.eventbrite.com/>



agreements in most cases, provided the firefighting forces do not leave the municipality unprotected when aid is sent to a city or town covered by the agreement. Such agreements are recommended for, and suited to, municipalities located in close proximity to each other. Again, the municipal governing body should seek the advice of the rating engineer before making a firm commitment with another municipality.

The Effect of Annexation

When property is annexed to a municipality it usually enjoys the insurance rating given to the municipality. A municipality is generally committed to protect all property within the corporate limits; therefore, an annexation automatically dissipates the strength of the firefighting forces of the municipality. For this reason, ISO maintains a close watch for annexations and, if a very large area is annexed to a municipality, engineers are sent in immediately to re-evaluate the fire defenses available to the whole area of the city or town.

The rating bureau has been most cooperative with municipalities in this respect. A municipality is rarely graded down because of an annexation, especially when the municipal governing body agrees to increase its fire defenses in a planned manner over future years and then follows the plan. As noted above, the old corporate limits of Huntsville maintained its rating when the city annexed 10 square miles while the newly-annexed area was given a different rating. The annexation did bring a better rate to the annexed area than it enjoyed prior to the annexation. Therefore, annexation

does not automatically mean a change for the worse in the municipal insurance rate. Property annexed will generally enjoy a better rate, but care should be exercised when the annexation of a very large area is contemplated.

Accepting Subdivisions

New subdivisions can strain existing fire defenses. Most municipalities now have subdivision regulations which state that plats will not receive final approval until a minimum of public utilities and public improvements have been installed and approved by proper municipal officials or until the subdivider provides a bond payable to the municipality to ensure proper installation of such facilities.

Most subdividers are primarily interested in economic return for their efforts and investment. Therefore, it is vitally important for a municipality to ensure that permanent installations which affect the fire insurance rating of the municipality meet the standards required by ISO. For instance, minimum-sized water mains and adequately-spaced regulation fire hydrants should be installed. A municipality should ensure that such installations will be made within rating requirements at least as restrictive as those needed to meet the existing rate enjoyed by the municipality.

Opinions and Cases

- Departments may provide standby fire protection for brush fires and controlled agricultural burns, but equipment cannot be used to fill swimming pools and ponds for residences. AGO 1995-085.

SEEA Launches City Energy Alliance Competition

The Southeast Energy Efficiency Alliance (SEEA) will be awarding a Southeastern city half a million dollars to design a program that reduces energy and water use by consumers and businesses. Modeled on programs being developed in Cambridge, Mass., and Cincinnati, Ohio, the competition is open to any city in SEEA's 11-state region, which includes Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.

The competition, dubbed the Southern Energy Alliance, seeks to replicate the Cambridge Energy Alliance, a private, nonprofit program established by the City of Cambridge that is helping thousands of residential and business customers identify and arrange financing for cost-effective energy efficiency and renewable energy measures. The Cambridge Energy Alliance expects that participants will repay project financing with the money they save in reduced energy bills, thanks to the efficiency upgrades.

Beginning now, cities can submit to SEEA a letter of intent to apply for the award in advance of the January 2009 release of the official Request for Proposals, which will include specific guidelines and eligibility requirements. Proposals will be due back to SEEA in April 2009. A blue ribbon panel will judge the proposals, and SEEA will announce a winner within a few weeks of the April deadline.

• Sections 36-19-1 through -3, Code of Alabama 1975, do not authorize deputies and assistant fire marshals to issue citations for municipal ordinance violations. Citations may only be issued by municipal police officers. AGO 1997-221.

• The proceeds of a local tax which provides that the funds shall be used “for fire protection and rescue services” may be used to establish an ambulance service within a municipal fire department. AGO 1998-222.

• In *Rainsville v. State Farm Insurance Co.*, 716 So.2d 710 (Ala. Civ. App. 1998), the Alabama Court of Civil Appeals held that the city insurance policy did not cover the city or the firefighter who had an accident while driving his own car to the fire station.

• Volunteer, nonprofit fire departments that act gratuitously and in good faith are entitled to immunity provided by Section 6-5-335 of the Code. Whether the immunity applies in other situations can only be determined by a court of competent jurisdiction. AGO 1999-045.

• A councilmember may serve as a volunteer firefighter and be reimbursed for expenses or receive an expense allowance. The councilmember may drive a fire department vehicle home if the officials in charge of the department authorize it. The ethics commission should also address this question. AGO 1999-165.

• Funds of volunteer fire departments sanctioned by a municipality are under the control of the municipal governing body. AGO 2001-059.

• Pursuant to their authority to protect the health, safety and welfare of the public, volunteer fire departments may enter private property to extinguish a fire. Volunteer, nonprofit fire departments acting gratuitously and in good faith are entitled to immunity provided in Section 6-5-335 of the Code of Alabama. However, the liability of firefighters, fire departments and municipalities, in general, can only be determined by a court of competent jurisdiction. AGO 2001-151.

• The requirements of membership and payment of dues are valid requirements for eligibility to vote on matters before a volunteer fire department if the bylaws require membership and payment of dues in order to vote. AGO 2001-138.

• A volunteer fire department is exempt from building inspection fees levied by the county. AGO 2004-044.

• The following persons may enter into any school to inspect and enforce state fire prevention and protection laws: the State Fire Marshal; employees of the State Fire Marshal’s office;

the chiefs of police and fire departments; the mayor, if there is no fire department; the sheriff; and those persons acting under the authority of these officials as assistants to the fire marshal. AGO 2005-183.

• A volunteer fire department certified by the Alabama Forestry Commission is subject to the Open Meetings Law. AGO 2006-108.

• National Fire Incident Reporting System forms are public records except when specific records or portions thereof can be demonstrated by a municipal fire department to fall within a recognized exception. AGO 2006-134.

• A volunteer search and rescue squad that is not associated with the state or a political subdivision is not a public safety agency for purposes of an emergency communications district. The commissioners of the Emergency Communications District have the authority to determine if volunteer fire departments and rescue squads are to be dispatched as primary responders to a request for emergency services. AGO 2007-021

• Current law does not specifically prohibit persons 16 years of age and older from riding in fire trucks to the scene of a fire. If the Alabama Department of Labor determines that such activities are a danger to life and limb, they may promulgate rules and regulations that regulate or restrict the ability of persons who are under 18 years of age. AGO 2007-104. ■

2009 CALL FOR NOMINATIONS

AWARDS for MUNICIPAL EXCELLENCE

20th Anniversary Co-sponsored by:
The National League of Cities and
CH2M HILL in recognition of James C. Howland

Recognizing outstanding programs that improve the quality of life in America’s communities.

- Nominations open in **February 2009**.
- For more information, go to www.nlc.org, email awards@nlc.org, or call (202) 626-3130.
Nominated cities must be members of NLC.
- Nominations must be postmarked by **May 1, 2009**.

Legal Clearinghouse

continued from page 21

Amendment's Establishment Clause as long as the prayers did not advance or disparage a belief or affiliate the government with a specific faith. *Pelphrey v. Cobb County, Ga.*, --- F.3d ---, 2008 WL 4710693 (11th Cir.2008)

DECISIONS FROM OTHER JURISDICTIONS

Polygraphs: To establish a prima facie case under the Employee Polygraph Protection Act provision making it unlawful for an employer to discharge any employee on the basis of the results of any lie detector test, the employee was only required to show that the results of the polygraph examination were a factor in the termination of employment. *Worden v. SunTrust Banks, Inc.*, --- F.3d ---, 2008 WL 4966543 (4th Cir.2008)

Searches and Seizures: The Fourth Amendment border search doctrine permits customs agents acting without a warrant or particularized suspicion to read letters mailed to overseas addressees. Search of a defendant's express package at a regional sorting facility in Oakland, California took place at the functional equivalent of the United States border, and thus, customs officers did not need a warrant or reasonable suspicion to search the contents of the package. *U.S. v. Seljan*, --- F.3d ---, 2008 WL 4661700 (9th Cir.2008)

ATTORNEY GENERAL'S OPINIONS

Ad Valorem Tax: The municipal ad valorem taxes collected on October 1, 2007, by the municipality are based on the

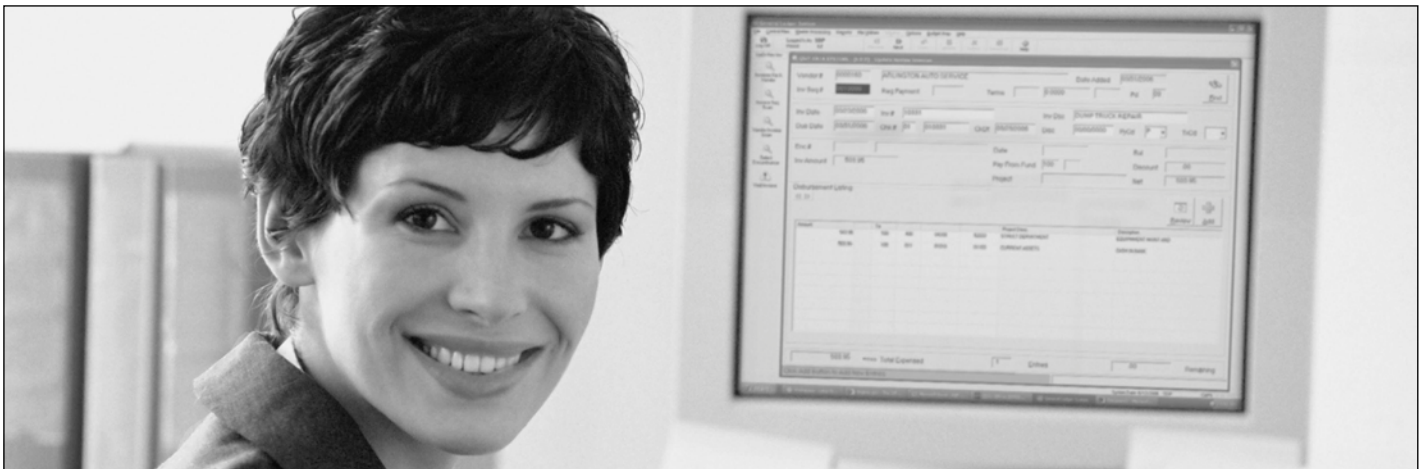
assessment for the preceding tax year (October 1, 2006) according to section 11-51-40 of the Code, and not on subsequent changes in classification which occurred in January 2007. No refund is authorized where there is no error in the assessment. AGO 2009-018

Elections: If the seventh day following the election is a holiday, the tasks of the registrars and canvassing board should be performed on the following day and in the same manner as if the duties were being performed on the appropriate day. AGO 2009-010

Elections: The canvassing boards must meet beginning at the time and date required by statute, to canvass the results of the election. Anyone who chooses to attend must be allowed to be present. Starting the canvassing at any time other than the time and date mandated will constitute a violation of the law punishable as a class C misdemeanor. AGO 2009-014

Office of Profit: A member of the County Board of Human Resources, created pursuant to Section 38-2-7 of the Code of Alabama, who files qualifying papers to run for city council or who is elected is no longer qualified to serve on that board. A member of the State Board of Human Resources may serve as a council member since the statute creating this board contains no conflict-of-interest provision. AGO 2009-017

Property: When a county abolishes an Industrial Park pursuant to Section 11-23-7 of the Code of Alabama 1975, the County Commission may sell the land remaining to a municipality for an amount less than the actual cost of the property and the improvements thereto. AGO 2009-012 ■



Integration makes your job easier.

QS/1®'s Governmental Solutions can help you manage your county or municipality and its services with greater efficiency. With more than 75 different modules, you can build a system that meets your needs. The modules are integrated to support data sharing. QS/1 makes learning new modules easier with similar navigational and keystroke functions. Join the more than 150 cities and counties in the Southeast who have made QS/1 their system of choice.



1-800-235-0762
www.qs1gov.com

N

RECENT DELIVERY

Attention:
Mayors, Council Members, Purchasing Agents, City Clerks

Fire Apparatus, We're Talking Delivery...



A

“NAFECO & KME Customized
the Truck to Our Needs”



F



E

...to Boaz Fire/Rescue Congratulations

C

“This is the first KME truck that the City of Boaz has ever purchased. A great individual, Mr. Gary Sherrill, did a great job creating the specifications for this truck. He is, I'm sure, sorely missed by NAFECO, an outstanding organization whose devotion to service and customer satisfaction is unparalleled. NAFECO and KME make a great combination. Thanks to Mayor Walker for seeing the need for a rescue truck like this so we can better serve our community.”

*Mayor Tim Walker
Fire Chief Olen Morrison
City of Boaz, Alabama*



800-628-6233 • 256-353-7100 • Fax 256-355-0852 • www.nafeco.com



Join over 200 Attorneys in an Association designed specifically to connect legal minds over municipal matters. As a member you are connected to other municipal attorneys with an online bulletin board to correspond with one another and two annual meetings a year that address specific topics to current issues.

AAMA was created to serve and benefit municipal attorneys and prosecutors throughout the State of Alabama. The goals of AAMA are to foster communication and education of attorneys and the public as to the unique aspects of municipal law.

Visit www.alalm.org/AAMA/AAMA.html for membership information.

Become

a member of the Alabama Association of Municipal Attorneys

TODAY!



ALABAMA MUNICIPAL JUDGES ASSOCIATION

The Alabama Municipal Judges Association (AMJA) organized as a section of the Alabama League of Municipalities (ALM) at the AMJA annual meeting on November 9, 2007. AMJA was created to serve and benefit municipal judges throughout the State of Alabama. The goals of AMJA are to foster communication and education for municipal judges in order to increase the efficiency and effectiveness of Alabama's municipal courts.

All Alabama municipal judges, full-time or part-time, are eligible for full membership in AMJA

Visit us online @

<http://www.alalm.org/amja/amja.html>

AMJA members enjoy benefits such as:

- The Municipal Judges forum located at www.leagueboard.org, which is only accessible to member judges, enables members to share ideas and ask questions of other municipal judges through the forum and e-mail;
- Reduced conference attendance rates; and
- Access to the ALM legal department and current legal developments including legislation and case law.

AMJA membership dues also enable the Association to bring in recognized national and regional experts to speak on topics of interest to municipal judges.

Administered by the Alabama League of Municipalities, AMFund is designed to provide ALM members with low-cost financing to fund almost any municipal project.

To learn how AMFund can help your community meet its infrastructure needs, contact:

Greg Cochran

AMFund President

**at 334-262-2566 or via
email at gregc@alalm.org**



Visit online at www.amfund.com

Municipal Revenue Service

The League's Municipal Revenue Service for collection of delinquent insurance license taxes has more than 50 years experience of responsible and aggressive collection of lost revenue, currently for over 300 communities in Alabama.

Contact us today and let our proven professionals get the job done efficiently and effectively.

Together our strength in numbers works for you.

ALABAMA LEAGUE OF MUNICIPALITIES

**535 Adams Avenue Montgomery, AL 36104
334-262-2566 OR 888-255-0434**

PUT OUR EXPERIENCE TO WORK FOR YOU.

Over 300 Alabama Municipalities Have.

Alabama League of Municipalities
PO Box 1270
Montgomery, AL 36102

Presorted Std.
U.S. POSTAGE
PAID
Montgomery, AL
PERMIT NO. 340

Insuring the Future of Local Government



Is *YOUR* future covered?

Rated A- by
A.M. Best

STEVE WELLS, PRESIDENT
334-386-3863

www.amicentral.org

JIM CHAMBLEE, SALES MANAGER
866-239-AMIC (2642)