

# The Alabama Municipal JOURNAL

August 2010

Volume 68, Number 2

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# The Alabama Municipal JOURNAL

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August 2010 • Volume 68, Number 2

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## On the Cover:

Entries for the 2010 Municipal Photo Contest. **Top:** Union Station, Montgomery by Elmore DeMott; Jubilee Hot-Air Balloon Event, Decatur by Jonathan Moral. **Bottom:** 2009 Street Festival, Madison by Cody Phillips; Clay County Courthouse Dome, Ashland by Jennifer Alam.

# A Message from the Editor



As we do each August, the staff is gearing up for annual policy committee meetings which will be held this month at 9 a.m. at League headquarters at which time members will hear from various resource advisors, review existing League and national policies and, if necessary, adopt revised goals and recommendations. The TPSC Committee meets August 12, FAIR is scheduled for August 13, EENR for August 19, HD for August 23 and the CED Committee for August 31. (For a complete list of committee memberships, see page 5.)

## **Owens Cross Road needs your vote to win a new firetruck!! Deadline: August 27**

For the second consecutive year, E-ONE asked departments throughout the United States to 'tell their stories' for an opportunity to win a new Tradition ES fire truck. Seven nation-wide finalists have been selected. **Owens Cross Road is the ONLY Southern finalist (see page 15).** You can vote for Owens Cross Road by logging on to [www.E-ONE.com](http://www.E-ONE.com) (or to the direct link to vote for Owens Cross Road: <http://e-one.com/news/eone-stories/vote-for-the-best-story.htm?id=557>). Voting ends at 1:00 p.m. on August 27th. The winner will be announced at 3:00 p.m. on August 27th during the 2010 International Association of Fire Chiefs.

## **AAMA/AMJA – September 16-18**

Registration materials were mailed in early August for the joint Fall Municipal Law Conference of the Alabama Association of Municipal Attorneys (AAMA) and the Alabama Municipal Judges Association (AMJA) which will be held September 16-18 in Destin, Florida. Municipal attorneys, judges and prosecutors are encouraged to attend. For more information, contact **Sharon Carr** at **334-262-2566**.

## **NLC Congress of Cities – November 30-December 4**

The 2010 National League of Cities (NLC) Congress of Cities will be held November 30 through December 4 in Denver, Colorado. For 87 years, this unique national conference has offered solutions for moving communities forward. Through innovative programming, participants strengthen their ability to lead and grow America's cities, towns and villages. The Exposition at the Congress of Cities is one of the largest exhibits for city officials and employees to come face-to-face with the companies that serve municipal needs. Municipal representatives looking for products and services to assist them in meeting the changing demands of their communities will find many potential solutions within the Expo. Visit [www.NLCCongressofCities.org](http://www.NLCCongressofCities.org) for more information about the program, registration and exhibits.

## **2011 Municipal Quality of Life Awards – Deadline: December 1**

Next month we will mail information to mayors and clerks regarding our 2011 Municipal Quality of Life Awards program. One winning entry and one honorable mention will be chosen from each of three population categories: 1 – 5,000; 5,001 – 12,000; and 12,001 and over. The three winning entries will enjoy statewide recognition at the League's 2011 Annual Convention in Huntsville; receive a special plaque; be featured in a video shown at the Convention; be spotlighted on the League's website; and featured in the *Alabama Municipal Journal*. The three Honorable Mentions will receive a certificate as well as recognition on the League's website and in the *Alabama Municipal Journal*. I encourage you to read through the materials as soon as they arrive in order to prepare your entry by the December 1, 2010 deadline. Information will also be posted on our website at [www.alalm.org](http://www.alalm.org) in September.

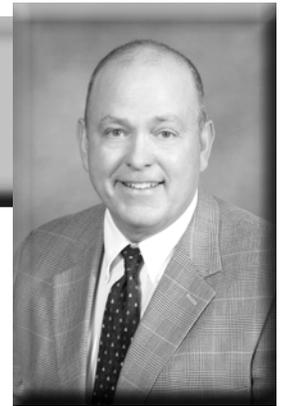
## **2011 Municipal Photography Contest – Deadline: November 5**

I encourage you to enter the League's Fourth Annual Municipal Photography Contest (see page 22). The winning photo will be featured on the cover of one issue of the *Alabama Municipal Journal*. Other entries may be used in the *Alabama Municipal Journal*, as well as other League publications, throughout the year. Several entries from the 2010 contest are featured on this month's cover (for title and photographer, see page 3). Pictures of municipal buildings, parks, streets downtowns, city festivals ... all are acceptable. **This year's deadline is November 5.** Because the winning photo will appear on the cover of the *Journal*, the picture must be **vertical**, color and taken at a high resolution so the print quality is not compromised. Complete information is posted on our website at [www.alalm.org](http://www.alalm.org).

Carrie

# The President's Report

Charles Murphy • Mayor of Robertsdale



## League Policy Committees

The League has five standing policy committees comprised of mayors and councilmembers from each congressional district in the state. The committee chairs recently made appointments to these important League committees which will convene this month at League headquarters to hear from state and federal resource advisors and to update their policy statements for the League's *Policies and Goals* document. This important document will be used by the Committee on State and Federal Legislation when it meets in early January to develop the League's Legislative Package for the 2011 Regular Session. The League would like to thank the following committee members for their service in this important policy process:

### Finance, Administration and Intergovernmental Relations

**Chair:** Mayor Gary Fuller, Opelika  
**Vice Chair:** Councilmember David Hooks, Homewood

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Mayor Jay Jaxon, Eufaula  
Mayor Pete Wolfe, Evergreen  
Councilmember John Glover, Headland  
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Councilmember Jenny Folsom, Cullman

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6. Councilmember Katherine E. Ennis, Helena  
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Councilmember Andrea Hunter, Westover  
Councilmember E. Lee McCarty, Wilsonville
7. Councilmember Stephen Gentry, Greensboro  
Councilmember N. Craig Sanderson, Irondale  
Councilmember Charles Allen, Thomasville

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**Chair:** Council President Dean Argo, Prattville  
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#### Members from Congressional Districts

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Mayor Ron Davis, Prichard
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Councilmember Terri B. Carter, Repton  
Councilmember Charles Meeks, Troy
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Mayor Johnny L. Smith, Jacksonville  
Councilmember Billy J. Pearson, Lincoln

*continued page 12*



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- Court Clerk  
Large Municipal Court

"We are now collecting more than 90% of our fines, and I see far fewer return visits from those I sentence to probation."

-Judge  
Georgia Municipality

### Benefiting the Community...

"JCS has provided great cooperation with the County to cut these overhead costs that have been growing...It's everyone's goal not to have to build more jails. That and these high costs of keeping someone in jail are a big drain on county resources that can be better used elsewhere."

- Former Director of Corrections  
Large Florida State Court

"We have saved on jail expenses and issued fewer warrants."

- Court Clerk  
Large Municipal Court

"...we found that a full service probation provider like JCS can be instrumental in controlling the growth of the jail population and assuring the appropriate use of expensive jail cells."

- Judge  
Alabama Court

### Benefiting the Defendants...

"JCS has helped me understand the bad decisions I have made in my life. Through their guidance I have been given a chance to start over."

- Emma G., Defendant  
Florida State Court

"...thank you for getting me into a treatment program. I'm loving my sobriety. It's a wonderful life. It does work One Day At A Time."

- Danny B., Defendant  
Marshall County, Alabama

"Thank you for everything. Even though you did not have to do it, you did it anyway and it was much appreciated. You kept me out of jail."

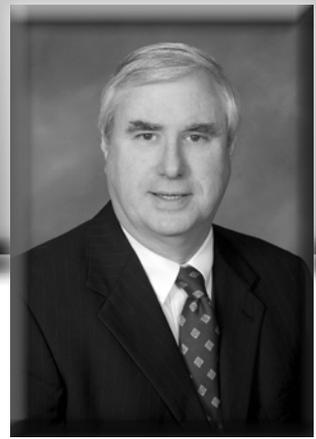
- Craig A., Defendant  
Foley, Alabama

## Judicial Correction Services

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# Municipal Overview

Perry C. Roquemore, Jr.  
Executive Director



## NLC Testifies Against Limiting City Revenue

I read in a recent edition of the *Nation's Cities Weekly* that at a hearing in mid-June, NLC testified as part of a local government group coalition before the House Subcommittee on Commercial and Administrative Law in opposition to legislation to prohibit local and state governments from imposing new taxes on rental cars at different rates than for other goods or services

I was very concerned when I read that our Congress would even consider legislation of this type. Municipal officials should also be concerned that some in Congress are proposing that the federal government set tax rate caps on any locally-levied taxes. The bill, known as the End Discriminatory State Taxes for Automobile Renters Act of 2009, or H.R. 4175, was introduced late last year by Rep. Rick Boucher (D-Va.). NLC and its colleagues at the National Association of Counties, U.S. Conference of Mayors and the Government Finance Officers Association oppose the legislation, as it threatens the basic principles of state and local tax classification authority by federally preempting local taxing decisions.

The legislation is not expected to reach the full House this session. "Since state and local governments must balance their budgets, federalizing state and local tax classifications would not lower total taxes paid, but rather just shift the tax burden to other types of taxes," said Timothy Firestine, chief administrative officer of Montgomery County, Md., testifying for the local government coalition.

Rental car taxes are used to pay for a variety of services and programs. In some cities, the taxes go toward the general fund, while in others they are targeted specifically to pay for job-creating infrastructure investments such as airport improvements, construction of police and fire stations, extension of commuter rail systems or development of performing arts and sports facilities.

In many instances, local governments are held accountable for rental car taxes, as 54 percent of all rentals are considered "home city" rentals – those used by people within their own city or town, according to a rental car industry study cited at the hearing. Based on that finding, Firestine

said, Congress should not interfere with taxation rates local officials and their constituents have deemed appropriate.

NLC is concerned that now is not the time for Congress to cut off any much-needed sources of revenue. "City budgets face an estimated combined budget shortfall of \$56 billion to \$83 billion from 2010-2012," said Chris Hoene, director of the NLC Center for Research and Innovation. "City leaders need the flexibility to raise revenue to invest in their communities and provide services."

The Alabama League will keep watch on this issue or similar issues and keep our members informed.

### Important League Dates for the next 12 Months

In an effort to help our officials keep their calendars up-to-date, the following dates have been established for major events involving the League during the next 12 months. Please mark your calendars as appropriate.

- **CMO Graduation** – Aug. 10
- **Policy Committee Meetings** – Aug. 12 (TPSC); Aug. 13 (FAIR); Aug. 19 (EENR); Aug. 23 (HD); Aug. 31 (CED)
- **AAMA Mid-Year Meeting** – Sept. 16-18, Destin, FL
- **MWCF Board Meeting** – October 20, 2010
- **Year-End Executive Committee** – October 21, 2010
- **AMIC Board Meeting** – October 21, 2010
- **NLC Congress of Cities** – Nov. 30 – Dec. 4 – Denver, CO
- **Organizational Session of the State Legislature** – Jan. 11, 2011
- **Committee on State & Federal Legislation** – Jan. 13, 2011
- **Mid-Winter Executive Committee** – Jan. 27, 2011
- **First Day of Regular Session** – March 1, 2011
- **Congressional City Conference** – March 12-16, 2011 – Washington, DC
- **Southern Municipal Conference Leadership Meeting** – April 21-23, 2011 – Cocoa Beach, FL
- **League Convention** – April 30-May 3, 2011, Huntsville, AL

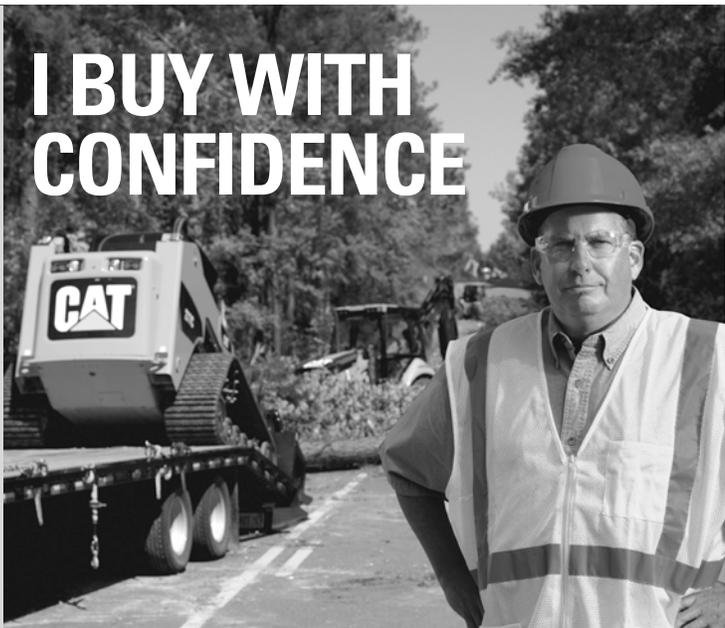
**"We know we're making the right call when we buy Cat® equipment."**

When the Public Works Department in Tuscaloosa County, Alabama, solicits bids for heavy equipment, purchase price is just one factor it considers, says Engineering Coordinator Michael Henderson. "If there's a disaster in our area, we need to know our equipment, and our dealer will come through for us. We must know, beyond a shadow of a doubt, that the equipment is ready to work because response time is critical."

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# The Legal Viewpoint

By Ken Smith  
Deputy Director/ General Counsel



## Sale or Lease of Unneeded Municipal Property

The League receives numerous inquiries from municipal officials and employees concerning the procedures for the sale or lease of unneeded municipal property. This article explains the state laws governing such sales and leases. Sample ordinances and resolutions for a governing body to adopt when authorizing sales and leases are included.

### Sale of Unneeded Real Property

The Alabama Legislature has adopted a simple method for municipalities to dispose of real property not needed for public or municipal purposes. This can be found in Section 11-47-20, Code of Alabama 1975, which reads as follows:

“The governing body of any city or town in this state may, by ordinance to be entered on its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the mayor to make title thereto, and a conveyance made by the mayor in accordance with such ordinances invests the grantee with the title of the municipality.”

In enacting this statute, the legislature did not intend to authorize the sale of property held by a city in trust, such as property subject to a common law dedication for use by the public as a park. The intent was to authorize Alabama cities and towns to dispose of property which is not dedicated. *Moore v. Fairhope*, 171 So.2d 86 (Ala. 1965). A municipality has no implied power to dispose of property **dedicated** to public use, but ordinarily its property abandoned from public use or not devoted thereto may be disposed of by the managing authorities when acting in good faith and without fraud. *O’Rorke v. Homewood*, 237 So.2d 487 (Ala. 1970).

Before real property may be sold, Section 11-47-20, Code of Alabama 1975, requires an ordinance finding that the property is no longer needed for public purposes. *Jones v. Dothan*, 375 So.2d 462 (Ala. 1979). However, the fact that a city adopts an ordinance to the effect that a certain piece of property is no longer needed for public purposes

will be of no avail as long as the property is being used for public purposes.

For example, Section 11-47-20 of the Code does not give a municipal governing body the authority to declare property used for a public cemetery to be unneeded municipal property subject to being sold for industrial expansion. *Anderson v. Adams*, 283 So.2d 416 (Ala. 1973). In *Tuskegee v. Sharpe*, 288 So.2d 122 (Ala. 1973), the Alabama Supreme Court held that Section 11-47-20 does not give a municipality the power to grant an option to purchase real estate owned by the municipality. Property must be **declared** surplus even when it is being transferred to another public entity. *Vestavia Hills Board of Education v. Utz*, 530 So.2d 1378 (Ala. 1988).

Additionally, in *Anderson v. Adams*, cited above, the Alabama Supreme Court made clear that this Section does not give a municipality the authority to dispose of property held for public use. This means that if the property is used by the public, for example, as a roadway or right-of-way, the municipality cannot simply declare the property surplus and dispose of it. First, the municipality must actually own the property involved. Second, if the property is maintained for public use, the municipality may also have to follow statutory vacation procedures before it can dispose of the property. See also, *Moore v. City of Fairhope*, 277 Ala. 380, 171 So.2d 86 (1965). An article on vacation of public property can be found in the League publication, *Selected Readings for the Municipal Official*.

The ordinance adopted by the municipal governing body should:

- describe the property to be sold;
- recite that in the opinion of the governing body of the municipality the property is not needed for public or municipal purposes; and
- direct the mayor to execute a deed to the purchaser.

The Alabama Supreme Court held that neither Section 11-47-20 nor Section 11-47-21, Code of Alabama 1975,

*continued next page*

requires that the ordinance contain a detailed recitation of facts supporting the statement that the land is no longer used for public purposes. *Dothan Area Chamber of Commerce, Inc. v. Shealy*, 561 So.2d 515 (Ala. 1990)

In directing the mayor to make title to the property, the ordinance should recite the circumstances under which the mayor is to execute the deed – whether it is to a particular individual, after the ordinance becomes permanent or whether he or she should execute a deed to the highest bidder in the event bids are called for.

The required ordinance is one of general and permanent nature and must be adopted in the same manner as any other ordinance of general and permanent operation pursuant to the requirements of Section 11-45-2, Code of Alabama 1975. Before such ordinance can become effective, it must be published as required by Section 11-45-8 of the Code of Alabama 1975.

The law does not require a municipality to advertise for bids on the property before it can be sold, yet there is no prohibition against receiving bids. The governing body may determine the manner in which the property may be disposed of, bearing in mind the interest of the municipality. A municipality cannot sell any property owned by it for less

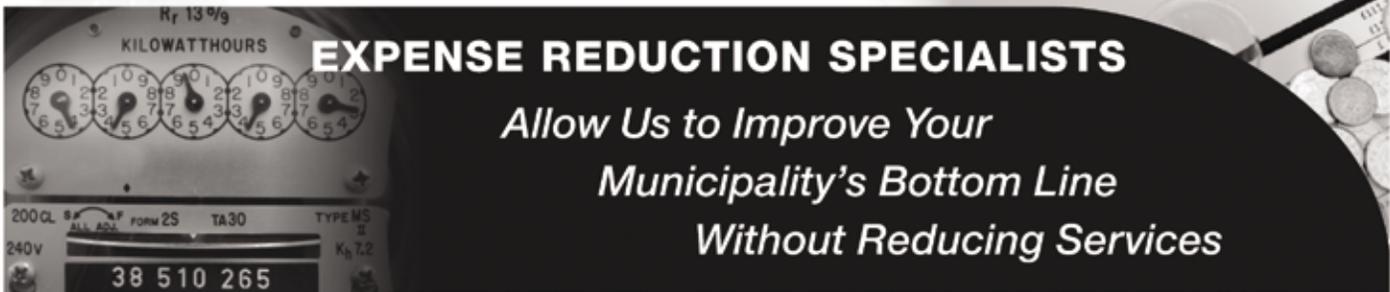
than adequate consideration. Nominal consideration will not suffice. However, a city may sell real estate for less than adequate consideration to a private entity only if the city determines that a public purpose is served. AGO 2003-008.

The Land Sales Act, codified at Sections 9-15-70, *et seq.*, of the Code of Alabama, provides for the competitive bidding process for sales of state (not municipally-owned) land. Section 9-15-70 to 9-15-84, Code of Alabama 1975. The act excepts a transfer to a municipal governing body on the condition that a subsequent transfer to a “private person, firm or corporation” must be competitively bid. Section 9-15-82, Code of Alabama 1975. Pursuant to Section 11-54-186 of the Code of Alabama, the transfer from a municipality to a commercial development authority, of land acquired from the state, and the subsequent transfer of the land by the authority, is exempt from the competitive bid requirements of the Land Sales Act, codified at Section 9-15-70 *et seq.* AGO 2007-131.

### Sample Ordinance

A sample ordinance dealing with the sale of unneeded real property is printed on the next page.

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**AN ORDINANCE**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF \_\_\_\_\_, ALABAMA, AS FOLLOWS:

SECTION 1. It is hereby established and declared that the following described real property of the City of \_\_\_\_\_, Alabama, is no longer needed for public or municipal purposes, to-wit:

[HERE DESCRIBE THE PROPERTY]

SECTION 2. That the mayor and the city clerk be, and they hereby are, authorized and directed to execute and attest, respectively, for and on behalf of the city of \_\_\_\_\_, Alabama, a warranty deed, a copy of which is on file in the office of the city clerk, whereby the city of \_\_\_\_\_, Alabama, does convey the premises described in Section 1, hereof to \_\_\_\_\_ for and in consideration of the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_).

ADOPTED AND APPROVED THIS THE \_\_\_ DAY OF \_\_\_\_\_, 20\_\_.  
\_\_\_\_\_ Presiding Officer

ATTEST:  
\_\_\_\_\_ City Clerk

**Lease of Unneeded Real Property**

Section 11-47-21, Code of Alabama 1975, which deals with the leasing of unneeded real property states:

“The governing body of any city or town in this state may, by ordinance to be entered on its minutes, lease any of its real property not needed for public or municipal purposes, and a lease made by the mayor in accordance with such ordinance shall be binding for the term specified in the lease, not to exceed a period of 99 years; provided, that in counties having a population of not less than 225,000 and not more than 400,000 inhabitants according to the most recent federal decennial census, such limitation of the term to a period of 99 years shall not apply to any oil, gas or mineral lease made in accordance with such ordinance.”

Such ordinances should be adopted and published in the same manner as other ordinances. Except for land obtained from the state there is no requirement that bids be taken before the municipality allows such property to be leased. However, the consideration for the lease must be adequate and not nominal. The Land Sales Act excepts a transfer to a municipal governing body on the condition that a subsequent lease to a “private person, firm or corporation” must be competitively bid. Section 9-15-82, Code of Alabama 1975.

The Attorney General has ruled that pursuant to Section 11-47-21 of the Code of Alabama, if a town considers the

space at the top of a water tower to be surplus real property, the town may lease this space for fair market value to a commercial interest. If the town determines that the property is not real property and the lease would be a grant of an exclusive franchise, the town may lease the space at the top of the tower by taking competitive bids. AGO 2009-028.

**Sample Ordinance**

A sample ordinance for the leasing of unneeded municipal real estate is printed below.

**AN ORDINANCE**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF \_\_\_\_\_, ALABAMA, AS FOLLOWS:

SECTION 1. It is hereby established and declared that the following described real property of the city of \_\_\_\_\_, Alabama, is no longer needed for public or municipal purposes, to-wit:

[HERE DESCRIBE THE PROPERTY]

SECTION 2. The city of \_\_\_\_\_, Alabama, having received an offer from \_\_\_\_\_ to lease that real property described in Section 1, above, it is hereby declared to be in the best interest of the public and the city of \_\_\_\_\_, Alabama, to lease said real property to \_\_\_\_\_ under the following terms and conditions, to-wit:

[HERE SET OUT THE TERMS OF THE LEASE, NOT EXCEEDING 99 YEARS, THE CONSIDERATION OR RENTAL AND ANY SPECIAL CONDITIONS DEEMED BEST.]

SECTION 3. Pursuant to the authority granted by Section 11-47-21 of the Code of Alabama of 1975, the mayor of the city of \_\_\_\_\_, Alabama, is hereby directed to execute said lease agreement in the name of the city of \_\_\_\_\_, Alabama.

SECTION 4. This ordinance shall become effective immediately upon its adoption and publication as required by law.

ADOPTED AND APPROVED THIS THE \_\_\_ DAY OF \_\_\_\_\_, 20\_\_.  
\_\_\_\_\_ Presiding Officer

ATTEST:  
\_\_\_\_\_ City Clerk

*continued on page 14*

4. Mayor Tim Walker, Boaz  
Councilmember Bill Stewart, Gadsden
5. Councilmember Hermon Graham, Florence  
Councilmember Joseph Pampinto, Muscle Shoals
6. Mayor David M. Frings, Alabaster  
Mayor Dennis Stripling, Brent  
Councilmember Roger Barlow, Center Point  
Councilmember Allyn Holladay, Homewood  
Councilmember Bobby Howard, Tuscaloosa
7. Councilmember Willie Jackson, Marion  
Councilmember Corey Bowie, Selma

## **Community and Economic Development**

**Chair:** Council President Ben Reed, Gadsden  
**Vice Chair:** Councilmember Jimmy Madison, Berry

### **Members from Congressional Districts**

1. Councilmember Carolyn M. Doughty, Gulf Shores  
Mayor Jerry Lundy, Mount Vernon  
Councilmember Edward Carroll, Sr., Orange Beach  
Councilmember Brentley Kendrick, Robertsdale  
Councilmember Newton Cromer, Saraland  
Mayor Bill Stewart, Satsuma
2. Councilmember Terry Powell, Andalusia  
Councilmember Luther Upton, Evergreen  
Mayor Robert Williamson, Florala  
Councilmember Joe R. Outlaw, Ozark  
Councilmember Gary Moore, Tallassee  
Councilmember Kathy Holt, Wetumpka
3. Mayor Charles C. Gilchrist, Glencoe  
Mayor Alberta C. McCrory, Hobson City  
Councilmember Chris Watson, Lincoln  
Councilmember June Land Reaves, Oxford  
Councilmember Walter Jacobson, Sylacauga  
Councilmember Ray Edwards, Valley  
Councilmember O'Neal Shaw, Valley
4. Mayor Roy Dobbs, Berry  
Mayor Phil Segraves, Guin  
Councilmember Elaine W. Junkin, Guin
5. Councilmember Mignon Bowers, Athens  
Mayor Billy Shoemaker, Tuscumbia

6. Councilmember James Stewart, Irondale  
Councilmember Susan Carswell, Leeds  
Mayor R. Eric Patterson, Leeds  
Councilmember Katrina R. Hennings, Springville
7. Mayor Mike Grayson, Demopolis  
Councilmember Thomas Moore, Demopolis  
Councilmember Johnny Davis, Greensboro  
Councilmember Jocelyn Tubbs, Marion  
Councilmember Roberta Jordan, Pine Hill  
Councilmember Monica Newton, Selma

## **Transportation, Public Safety and Communications**

**Chair:** Councilmember Marva Gipson, Aliceville  
**Vice Chair:** Councilmember Jeddo Bell, Greenville

### **Members from Congressional Districts**

1. Councilmember Christopher Norman, Bay Minette  
Councilmember Roger Adkinson, Flomaton  
Mayor Ken Williams, Saraland  
Councilmember Sidney Butler, Saraland
2. Councilmember Jason Jewell, Andalusia  
Mayor Wess Etheredge, Daleville  
Councilmember Charlie Johnson, Luverne  
Councilmember Fred Watts, Millbrook  
Councilmember Davy Lindsey, Opp  
Mayor Jim Byard, Prattville
3. Councilmember Ben Little, Anniston  
Councilmember John Spain, Anniston  
Councilmember Ed Hanson, Piedmont  
Councilmember John Hatley, Southside
4. Mayor Gary L. Livingston, Eva  
Mayor Melvin Duran, Priceville  
Councilmember Tommy Perry, Priceville
5. Mayor Don Stanford, Decatur  
Mayor David H. Bradford, Muscle Shoals  
Mayor Melton Potter, Scottsboro  
Councilmember George E. Johnson, Sr., Tuscumbia
6. Mayor Paul D. Jennings, Argo  
Councilmember Jeffrey M. Denton, Chelsea  
Mayor Billy Joe Driver, Clanton  
Councilmember Jerry D. Pate, Helena  
Mayor Don Murphy, Pelham

7. Mayor Kenneth Coachman, Fairfield  
Councilmember Samuel Sanders, Marion  
Mayor Harry Mason, Pine Hill  
Councilmember Alberta Dixon, Thomasville

**Human Development**

**Chair:** Councilmember Tayna Rains, Dutton  
**Vice Chair:** Mayor Jamie Tillery, Bay Minette

**Members from Congressional Districts**

1. Councilmember Barbara Turner, Monroeville  
Council President Howard Rubenstein, Saraland
2. Councilmember Will Sconiers, Andalusia  
Councilmember Clementine P. Pugh, Georgiana  
Mayor Helenor Bell, Hayneville  
Councilmember Lee Etta Edwards, New Brockton  
Councilmember Jimmy Young, Pinckard  
Councilmember Lewis Washington, Wetumpka
3. Councilmember Sadie Britt, Lincoln  
Councilmember Steven Waits, Oxford

4. Councilmember Wayne Sellers, Guntersville  
Mayor Sonny Posey, Jasper  
Councilmember Larry Keenum, Southside
5. Councilmember Matthew Hodges, Scottsboro  
Councilmember Richie Sparkman, Trinity
6. Mayor Tom Henderson, Center Point  
Mayor Charles W. Penhale, Helena  
Councilmember Leigh Hulsey, Helena  
Mayor Keith Mahaffey, Vance  
Councilmember Bridgette Jordan Smith, Vincent
7. Councilmember Mitchell Congress, Demopolis  
Mayor George Evans, Selma

*Thank you!*

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# Unneeded Property continued from page 11

## Sale of Unneeded Personal Property

Section 11-43-56, Code of Alabama 1975, has been interpreted as giving authority to a municipal governing body to dispose of personal property which is no longer needed for public purposes. Although not required by law, a resolution may be adopted by the governing body describing the property to be sold, reciting that the property is no longer needed for public purposes and directing the mayor to sell the property in the manner specified by the council. Bids are not required. However, a municipal governing body should set up procedures to ensure that the municipality receives a fair price for its unneeded personal property. A resolution of this type does not have to be published.

## Sample Resolution

A sample resolution authorizing the sale of unneeded personal property belonging to the city is printed below.

### A RESOLUTION

WHEREAS, the city of \_\_\_\_\_, Alabama, has certain items of personal property which are no longer needed for public or municipal purposes; and

WHEREAS, Section 11-43-56 of the Code of Alabama of 1975 authorizes the municipal governing body to dispose of unneeded personal property;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF \_\_\_\_\_, ALABAMA, AS FOLLOWS:

SECTION 1. That the following personal property owned by the city of \_\_\_\_\_, Alabama, is not needed for public or municipal purposes:

[DESCRIBE PERSONAL PROPERTY TO BE SOLD]

SECTION 2. That the mayor and city clerk be, and they hereby are, authorized and directed to dispose of the personal property owned by the city of \_\_\_\_\_, Alabama, described in Section 1, above, by receiving bids for such property. All such property shall be sold to the highest bidder, provided, however, that the council shall have the authority to reject all bids when, in its opinion, it deems the bids to be less than adequate consideration for the personal property.

ADOPTED AND APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Presiding Officer

ATTEST:

\_\_\_\_\_  
City Clerk



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Please go to the web site below and VOTE NOW for **Owens Crossroads VFD**. It will only take one minute of your time and this minute could help save lives in Alabama if they get enough votes to win this needed truck for their community. You don't have to be a part of a fire department to vote; just concerned to save lives.

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# 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 can hold a separate hearing on an Alabama Litigation Accountability Act (ALAA) claim after the entry of a final judgment on the merits provided that the trial court specifically reserves jurisdiction to hear the ALAA claim. Otherwise, a judgment that does not reserve jurisdiction to hear the ALAA claim at a later date puts an end to all controversies at issue, including the ALAA claim. *Klinger v. Ros*, 33 So.3d 1258 (Ala.Civ. App.2009)

**Public Records:** A refusal to release prison incident reports to the general public was not protected by the statute exempting law-enforcement investigative reports and related material from public disclosure, and, thus, the reports were subject to disclosure under the Open Records Act. Incident reports do not constitute investigative reports. Also the exemption for records concerning security plans, procedures, assessments, measures, or systems, and any other records relating to, or having an impact upon, the security or safety of persons, structures, facilities, or other infrastructure, did not apply to disclosure of information in prison incident reports because the exception referred to records regarding public infrastructure and limited public disclosure of sensitive information affecting public safety and national security. *Allen v. Barksdale*, 32 So.3d 1264 (Ala.2009)

## UNITED STATES COURT DECISIONS AFFECTING ALABAMA

**Conflicts of Interest:** The honest services statute did not make criminal undisclosed self-dealing by a public

official or private employee, i.e., the taking of official action by the employee that furthers his own undisclosed financial interests while purporting to act in the interests of those to whom he owes a fiduciary duty. The honest services statute covers only bribery and kickback schemes. *Skilling v. U.S.*, --- S.Ct. ----, 2010 WL 2518587 (U.S.2010)

**Petitions:** A state law requiring public disclosure of the names and addresses of signers of referendum petitions in general does not facially violate the First Amendment freedoms of speech or association. *John Doe No. 1 v. Reed*, --- S.Ct. ----, 2010 WL 2518466 (U.S.2010)

**Searches and Seizures:** The Fourth Amendment guarantees the privacy, dignity, and security of persons against certain arbitrary and invasive acts by officers of the Government, without regard to whether the government actor is investigating crime or performing another function. This applies when the Government acts in its capacity as an employer. Government searches to retrieve work-related materials or to investigate violations of workplace rules, which are searches of the sort that are regarded as reasonable and normal in the private-employer context, do not violate the Fourth Amendment. *City of Ontario, Cal. v. Quon*, --- S.Ct. ----, 2010 WL 2400087 (U.S.2010)

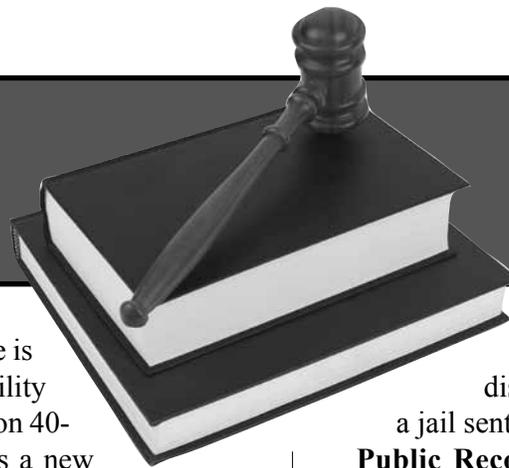
**Takings:** A state did not engage in an unconstitutional taking of property when it approved an erosion control project in submerged land that resulted in six residents losing direct access to their beach front. *Stop the Beach Renourishment, Inc. v. Florida Dept. of Environmental Protection*, --- S.Ct. ----, 2010 WL 2400086 (U.S.2010)

## DECISIONS FROM OTHER JURISDICTIONS

**First Amendment:** An ordinance banning day laborers from soliciting employment from passing motorists does not violate the First Amendment's Free Speech Clause. *Comite de Jornaleros de Redondo Beach v. City Of Redondo Beach*, --- F.3d ----, 2010 WL 2293200 (9<sup>th</sup> Cir.2010)

## ATTORNEY GENERAL'S OPINIONS

**Ad Valorem Taxes:** Property occupied by the original



owner after being sold at a tax sale is not qualified for the age and disability homestead exemption under section 40-9-21 of the Code of Alabama. As a new purchaser, the taxpayer is only allowed the exemptions in effect on the assessment date for which the property was sold for taxes and no more. AGO 2010-078

**Expenditures:** Public funds may be used to pay for meals and/or refreshments served at business meetings when the meals are directly related to the business of the entity, and the meals and refreshments are incidental to the meeting. In order for meals to be an incidental part of the meeting, the primary purpose of the gathering must be to have an official meeting at which business is conducted, not a social gathering at which food is provided. Refreshments may not be provided at a break during a meeting that does not extend through lunch or a mealtime. AGO 2010-076

**Incorporation:** A person may remove his or her name from an incorporation petition at any time prior to submission of the petition to the probate judge. It is incumbent on any person who agrees to sign a petition for incorporation to initially contact the petition committee and not the probate judge when the person seeks to have his or her name removed from the petition. Whether a person's name should be removed from an incorporation petition in instances where the incorporation committee has not been notified is a decision best suited for a determination by the probate judge. AGO 2010-071

**Open Meetings Act:** Even if a quorum is physically present, additional members of a governmental body that are not present may not participate or vote in meetings through electronic means. A member of the governmental body may, however, listen to a meeting through electronic means. AGO 2010-070

**Parking Violations:** The remedies available to the municipal court for the failure to appear or pay the fine on a parking ticket, are equally available to the district court in municipalities without municipal courts, except

that contempt may be punished by the district judge with a fine of up to \$100 and a jail sentence of up to five days. AGO 2010-077

**Public Records:** A governmental body may not publish an individual's complete, nine-digit Social Security number on public records. When, however, a number is needed for identification purposes, the last four digits of a Social Security number may be used. AGO 2010-074

**Zoning:** The Zoning Board of Adjustment has the authority to hear requests for variances to setbacks established by the city's zoning ordinance but not the setbacks established by restrictive covenants found in the recorded plat of a subdivision. AGO 2010-075

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# Obituaries

**Denton W. Nichols**, former councilmember of Ashland, died April 9 at age 67. He served on the Ashland Water and Sewer Board for 16 years, was elected to the Ashland City Council three terms and was a businessman in Ashland for more than 35 years.

**Larry Justice**, former mayor of Loachapoka, died May 4 at age 59. He became mayor in 1995 after moving to the area in 1993. He was instrumental in improving Syrup Sopping Day and boosting interest in the annual event.

**Luise Hardman**, City Clerk for Alexander City, passed away in early May at age 61. She worked for the city for 33 years having started in data processing before being promoted to City Clerk.

**Keith Allen Young**, a first-term city councilmember for Pennington, passed away June 2 at age 42. He taught at Choctaw County High School where he served as coordinator of the history division for 10 years.

**E. Z. (Zadus) Turner** passed away June 14 at age 87. Turner served the City of Vernon as City Clerk, Water Works Superintendent, Fire Chief, and wore many other hats during his service to the city from November 1955 to September 1984. He was also retired from the Alabama Army National Guard.

**Dr. William D. Lazenby**, councilmember for the City of Opelika, died June 14 at age 79. He felt strongly that a fiber system and smart grid technology system would be important for Opelika's citizens and was a champion for improving the area's hospitals and schools.

**Dr. Elizabeth Lyons**, councilmember for the City of Valley, passed away June 14 at age 69. She joined the Council as District 4 representative in 2003, filling a vacant seat, and then ran successfully for the seat twice.

**Willie Cook**, councilmember for the City of Montgomery, died from a heart attack on July 8 at age 53. A former Army National Guardsman who had a career in law enforcement, Cook was first elected to the Council in 1999 to represent District 6.



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# THE GREAT ALABAMA HOMECOMING

215 towns welcome y'all in 2010.

Some 215 towns across Alabama welcome you home this year during the Great Alabama Homecoming. It's all part of the Year of Alabama Small Towns & Downtowns - a celebration of everything that is Sweet Home Alabama.



There are homecoming events and festivals going on practically every weekend from mid-March through mid-December. Special homecoming events like the Ashland Homecoming Weekend, Clayton Homecoming, Celebrate Guntersville, the Monroeville Reunion, and Talladega's 175th Birthday Bash. Check the calendar to see when your favorite towns are holding homecoming events and start planning your trip today.



Remember to enjoy some good old-fashioned Southern cuisine along the way. Sample local favorites like the barbecue chicken with white sauce at Big Bob Gibson BBQ in Decatur, the orange rolls at the All Steak in Cullman, banana pudding at Sisters in Troy, and the royal red shrimp at King Neptune's in Gulf Shores.

If you've never visited Alabama then this is the perfect year to make your first trip and experience Sweet Home Alabama.

**See next page for Aug., Sept. and Oct. events for participating communities!**

Check the Great Alabama Homecoming calendar at [www.alabamahomecoming.com](http://www.alabamahomecoming.com) and start packing!



# 2010: The Great Alabama Homecoming!

## Year of Small Towns and Downtowns

August • September • October

This list of events is provided by the Alabama Tourism Department. The municipalities listed are participants in the 2010 Year of Small Towns and Downtowns program. If you have questions about this program, please contact Brian Jones with Alabama Tourism at 334-242-4665.

8/7	Fairfield	Fairfield Music Festival	10/1-2	Fayette	Alabama Frog Level Festival
8/7	Valley	Cotton Mill Reunion	10/1-3	Ozark	Claybank Jamboree
8/13	Five Points	Back to School Homecoming First Consolidated School Celebration	10/2	Centre	Centre Fall Festival
8/13	Lipscomb	Centennial Celebration	10/2	Emelle	Emelle Business Appreciation Day
8/14	Hobson City	111th Hobson City Founders Day Celebration	10/2	Fulton	Homecoming & Gospel Singing
8/14	Littleville	Littleville Fun Fest	10/2	Glen Allen	Town Festival & Dedication of Town Park/Walking Trail
8/18	Birmingham	Centennial Celebration of Rickwood Field	10/2-3	Madison	Come Home to Madison
8/20	Athens	Athens Homecoming Celebration	10/2-3	Muscle Shoals	Muscle Shoals Music CityFest
8/21	Fultondale	Fultondale Founder's Day	10/2	Sulligent	Old-Fashion Day
8/21	Priceville	Priceville's Annual Cruise-In	10/2	Verbena	Verbena Reunion in the Park
8/21	Russellville	Watermelon Festival	10/2	Woodstock	Woodstock Homecoming
8/27	Killen	Killen Founder's Day	10/8-10	Ashland	Homecoming
8/28	Wadley	A Homecoming Celebration	10/8	Grant	Dedication Day, DAR School
9/3	Gadsden	First Friday Homecoming	10/8-9	New Hope	New Hope Founder's Day
9/4	Whatley	Fort Sinquefield Re-enactment & Reunion	10/9	Blountsville	Homecoming Celebration & Harvest Festival
9/6	McIntosh	Homecoming and Labor Day Celebration 2010	10/9	Cordova	Discover Cordova Day
9/6	Section	Section Labor Day	10/9	Eufaula	Eufaula Homecoming
9/8	Huntsville	50th Anniversary Celebration of Marshall Space Flight Center	10/9	Evergreen	Evergreen Sausage Festival & Homecoming Weekend
9/11	Arab	Arab 2010 Welcome Home Reunion	10/9-10	Garden City	Homecoming Weekend
9/11	Ashford	Harvest Day	10/9	Headland	Harvest Festival
9/12	Mt. Vernon	Founder's Day	10/9	Hodges	Spirit of Hodges
9/17	Crossville	Crossville Harvest Festival	10/9	Piedmont	Foot of the Mountains Festival
9/17	Decatur	Riverfest Homecoming Weekend	10/9	Selma	Riverfront Market Day
9/17-19	Leeds	Gateway to a Region	10/14-16	Montevallo	Homecoming Weekend
9/18-25	Eva	Eva Frontier Days	10/16	Hanceville	The Mud Creek Marching Festival
9/18	Hartselle	Depot Days Festival	10/16	Margaret	Friendship Festival
9/18	Locust Fork	Locust Fork Founder's Day	10/16	Mathews	Jonesville Community Day
9/18	Red Bay	FoundersFest	10/16	Sipsey	Homecoming Day
9/24-25	Geneva	Geneva Homecoming	10/16	Thorsby	Thorsby Swedish Fest
9/24-26	Hueytown	Hueytown Homecoming	10/22-24	Oneonta	Blount Co. Covered Bridge Festival
9/24-26	Jacksonville	Jacksonville Homecoming Weekend	10/23	Atmore	Williams Station Day
9/24-26	Winfield	Mule Day Festival	10/23	Pine Hill	Pine Hill Depot Day
9/25	Childersburg	CoosaFest	10/23	Thomasville	Ghost Walk & Fall Festival
9/25-26	Daphne	Jubilee Festival	10/28-30	Greenville	Welcome Home - Greenville Reunion
10/1- 2	Boaz	Boaz Harvest Festival	10/29-31	Flomaton	Homecoming Weekend
			10/30	Brundidge	Peanut Butter Festival
			10/30	Chickasaw	Founder's Day
			10/30	Falkville	Falkville Fall Festival
			10/30	Hamilton	Hamilton Fall Fest
			10/30	Opp	Opp Fest



# Congratulations Catoma VFD



“Our community relies on  
KME provided by NAFECO”



“Catoma VFD has relied on NAFECO equipment since our department was formed 15 years ago. Brandon Oaks and John Wilson not only sell a great line of trucks and equipment, they also provide training and great maintenance through Chris Smith and the rest of the maintenance team. Catoma VFD has used our relationship with NAFECO to provide the equipment needed to get our community an ISO rating of 5/9 in just the short time we have been together. This has meant thousands of dollars in insurance savings for our community.”

*Fire Chief Bobby Brooks  
Catoma VFD*

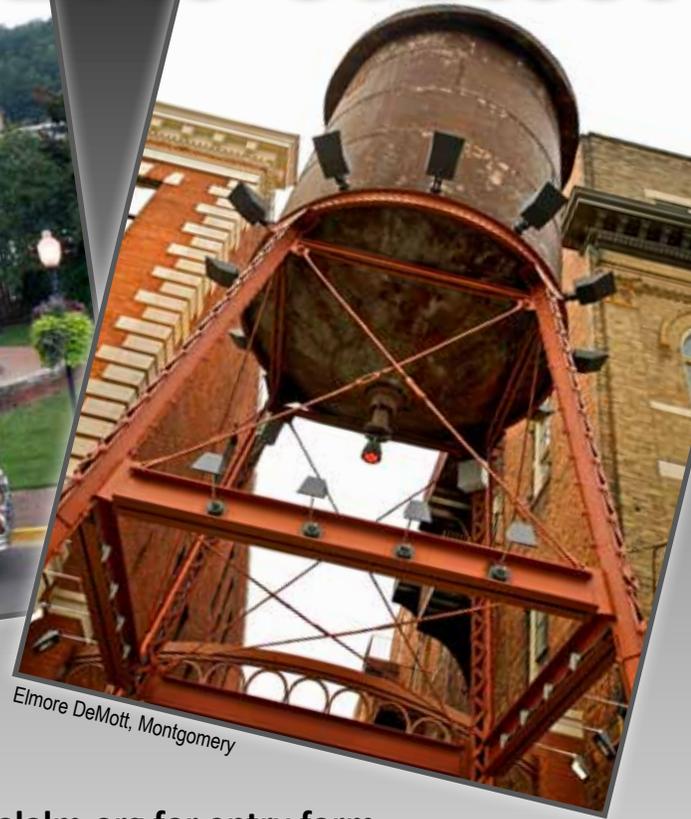


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# 2011 Municipal Photo Contest



Teresa Lee, Prattville



Elmore DeMott, Montgomery

[www.alalm.org](http://www.alalm.org)

## Showcase your Municipality

Visit [www.alalm.org](http://www.alalm.org) for entry form.

The Alabama League of Municipalities is holding its fourth annual photo contest. The winning photo will be featured on the cover of one issue of the *Alabama Municipal Journal*.

### To Enter:

Photos must be of an Alabama city or town and follow a municipal theme: municipal buildings, parks, street scenes, downtowns, city festivals, etc. Photos do not have to be taken by a professional photographer; however, all photos must be taken within the last 18 months. **ALL ENTRIES MUST BE VERTICAL.** Horizontal images will not fit the format for the *Journal*. **Each entry must include a photo description as well as photographer's name and contact information.**

### Photo Format:

Photos must be submitted on a CD or emailed as a high resolution file in the proper format. Entries should be vertical, color images and submitted in JPEG or TIFF format in a resolution high enough for print quality purposes. The print size for the *Journal* is approximately 8.5 x 11 inches. Therefore, the submitted image should be at least 150 dpi **at this size** (1,200 x 1,500 pixels), although 300 dpi (1800 x 1200 pixels) is preferred. **Submissions that are not vertical or that do not have the correct print quality size will be disqualified.**

**Note:** Photo files will not be returned. If submitting a on a CD, please do not send your only file of a photo.

### Ownership/Use Rights:

Photographers retain the copyright to their photographs. By entering the Alabama League of Municipalities (ALM) photo contest, photographers agree to have their submitted photograph(s) displayed within any ALM publication (digital or print) as well as the ALM website without any fee or other form of compensation, and also agree that the photo may be used, with photo credit, on the website for the National League of Cities (NLC) and within NLC's publications. Photos will be credited to the photographer listed on the entry form. In the event that ownership of any photograph submitted to ALM is contested in any manner, ALM retains the discretion to disqualify that photograph and discontinue use of the photograph.

**ALL ENTRIES MUST BE SUBMITTED BY NOVEMBER 5, 2010**

# Investing in Infrastructure

AMFund.com



Learn how AMFund can help your community meet its infrastructure needs.  
Contact Greg Cochran, AMFund President, at 334-386-8130 or [gregc@amfund.com](mailto:gregc@amfund.com).

AMFund is administered by the Alabama League of Municipalities.

## 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.

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