

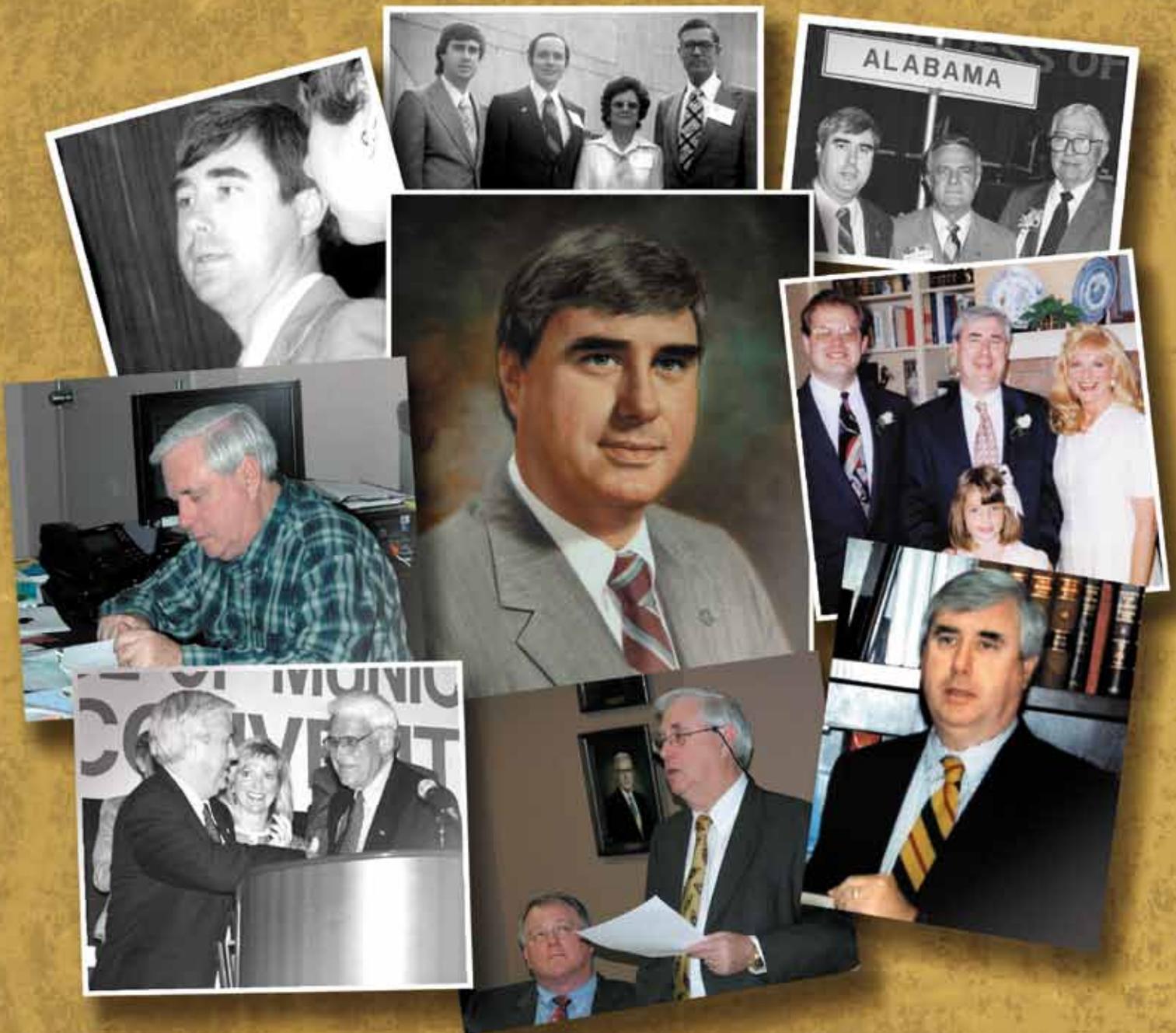
The Alabama Municipal JOURNAL

May 2011

Volume 68, Number 11



The League Salutes
Perry C. Roquemore, Jr.
for 37 Years of Outstanding Service



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Editor: CARRIE BANKS

Staff Writers: TRACY L. ROBERTS, LORI LEIN

Graphic Design: KARL FRANKLIN

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

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On the Cover:

League Executive Director Perry C. Roquemore, Jr., retires May 31, 2011, after 37 years with the Alabama League of Municipalities.

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A Message from the Editor



On Wednesday, April 27th, a record-breaking 312 tornadoes ravaged the South, obliterating homes, businesses and lifestyles; claiming hundreds of lives in six states; and becoming one of the deadliest tornado outbreaks in U.S. weather history. It was also the largest number of recorded tornadoes in a single 24-hour period, with 28 tornadoes confirmed in Alabama where the devastation was beyond unprecedented; it was epic.

The National Weather Service confirmed the severe weather came in two waves: early morning storms with powerful straight-line winds and possible isolated tornadoes followed by afternoon and evening supercell thunderstorms that generated massive, long-lived tornadoes which were the primary killers, taking more than 250 lives in Western, Central and North Alabama – the deadliest tornado day in the state since March 21, 1932. The path of devastation included an EF-5 twister, the strongest of tornadoes, which killed at least 26 people when 200 mph winds leveled nearly everything in its 132 mile-path from Marion County into Tennessee. Similar scenes were recorded in dozens of small cities and rural communities throughout the state.



Many people watched live on TV as the ominous, mile-wide EF-4 monster that had just pulverized a heavily populated area of Tuscaloosa swirled menacingly towards Birmingham. The death toll and number of injured continued to

climb for several days. Mayor Walt Maddox of Tuscaloosa said in an April 28 press conference that neighborhoods had been “basically removed from the map”, as were the city’s emergency management and environmental services facilities. Authorities quickly relocated emergency management to the Bryant-Denny Stadium at the University of Alabama, where surprisingly little damage was sustained; however, most of the city’s garbage and trash fleet was destroyed, which will impact garbage collection for months.

“We are dealing with an overwhelming situation in terms of (the tornado’s) impact on city resources,” Maddox said. “This will not be an easy journey.” One of the city’s fire stations was leveled and two major water tanks were empty immediately following the storm mandating an executive order by the mayor for citizens to conserve water in an

continued on page 26



The President's Report

Charles Murphy • Mayor of Robertsdale



AMIC Responds Immediately Following Deadly Storms; League Convention Postponed

Without doubt, many municipalities and communities in Alabama are suffering. More than 30 counties were gravely affected by the unprecedented storm systems that tore their way through the state on April 27th, killing more than 250 people and destroying nearly everything in their paths. Certainly our prayers are with the people whose lives have been irreversibly changed, and the League is solidly behind its municipal members as the rebuilding process begins.

The Alabama Municipal Insurance Corporation (AMIC), founded by the League in 1989 and on whose board I serve, insures many of the affected municipal entities. Claims adjustors and underwriters began phoning, emailing and otherwise trying to touch base with AMIC's municipal accounts immediately following the epic storms. Adjustors were in Tuscaloosa surveying and photographing the decimation within 24 hours and the first \$1 million check was issued on May 4th so the city could begin rebuilding its Emergency Management Agency and Environmental Services facility which were completely destroyed by the massive, record-breaking tornado that tried to tear the city apart. In addition, the city's water department's roof was heavily damaged; more than 100 municipal vehicles were either damaged or destroyed; a communications tower was destroyed; and heavy damage was sustained by police and fire department buildings. Many of the small municipalities that experienced unfathomable destruction – those under 5,000 in population such as Rainsville, Hackleburg, Hamilton, Cordova, Eclectic and Phil Campbell – are also AMIC members, as are Cullman, Fultondale and Pleasant Grove.

A total dollar amount on the damage to structures

insured through AMIC is yet to be determined, but it will no doubt be extremely high. A \$25 million tornado event is a 1 in 1,000 year occurrence and a \$50 million event is a 1 in 6,000 year occurrence. Needless to say, AMIC is looking at claims within a 1,000 and 6,000 year occurrence rate and will be working diligently to ensure structures are back to where they were before the tornadoes struck – hopefully providing some relief to our struggling municipal families.

Of course, your entire League staff also had to mobilize swiftly on April 28, and the decision was quickly made to postpone the League's annual convention which was originally scheduled to take place in Huntsville April 30 through May 3. Sections of Madison County were without power for several days following the massive storms and, after consulting with the City of Huntsville and the Von Braun Center, the staff immediately began notifying registrants that the convention was postponed. Within a few days, the League, in conjunction with Huntsville city officials and the various facilities, rescheduled the Convention for June 25-28. The alternative dates will follow essentially the same schedule with similar programming as what was originally planned.

The League's Constitution requires that our organization hold an annual business meeting (which is one of the sessions scheduled during convention) to elect officers, renew the executive director's yearly contract and approve the League's Policies and Goals. Since Perry Roquemore is retiring on May 31st, the Executive Committee will meet on May 26th to name an acting executive director (effective June 1) until the membership can vote during its rescheduled annual business meeting next month in Huntsville.

continued on page 24



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- Emma G., Defendant
Florida State Court

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- 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."

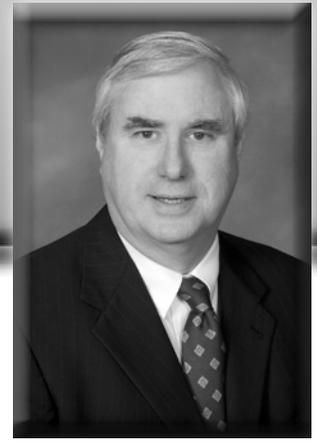
- Craig A., Defendant
Foley, Alabama

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Municipal Overview

Perry C. Roquemore, Jr.
Executive Director



Priceless Memories and Parting Thoughts

In my final “Municipal Overview,” I hope you will indulge me as I take a brief look back at my career with the Alabama League of Municipalities. Thirty-eight years ago I was a senior law student at the University of Alabama School of Law in Tuscaloosa. My son, Chris, was just a few months old. I was looking forward to a future in law, but worried about the bar exam I would be taking a few months later. I also needed to find a job where I could use my law degree.

Being a native of Montgomery, I was particularly interested in finding employment in the Montgomery area. I interviewed with several local law firms as well as with then Chief Justice Howell Heflin of the Alabama Supreme Court. Shortly after returning from the interview with Justice Heflin, I saw a posting by the law school placement office informing students of a job opening with an organization called the Alabama League of Municipalities. I honestly had no idea what the Alabama League of Municipalities did. I asked my father, who lived in Montgomery, to see what he could learn about the organization. Based on his positive report, I decided to go for an interview, which was conducted at the Law School in Tuscaloosa by a true southern gentleman, John Watkins, the League’s then Executive Director. The interview must have gone well because Mr. Watkins called me a couple

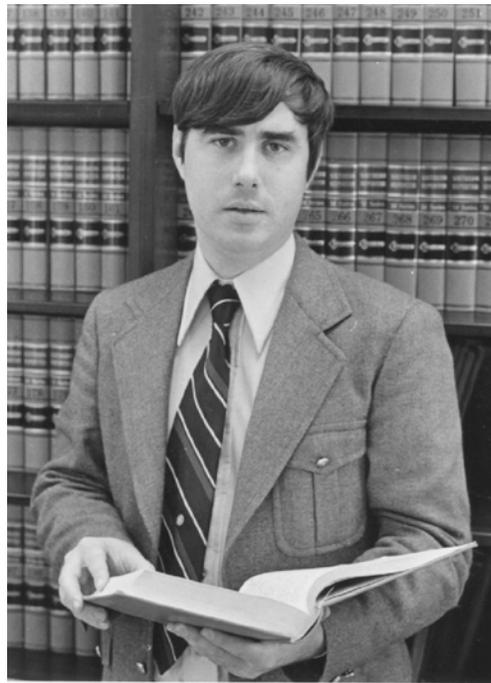
of days later and offered me the job as League Staff Attorney. His only stipulation was that I would agree to stay for two years. In what has turned out to be one of the best decisions of my life, I accepted the job.

I began working as Staff Attorney for the League in January 1974. For the first few weeks of my career, I worked half days and studied for the bar for the remainder of the day and night. In February of that year I took the three-day bar exam and was notified in April that I’d passed.

When I was hired by John Watkins, the League President was Mayor William “Big Daddy” Gardiner of Tuscumbia, who later served as Chief of Staff for Sen. Howell Heflin. The Vice President was Mayor Joe Davis of Huntsville. These two gentlemen went out of their way to make me feel welcome. The League staff consisted of seven full time

people, including myself, and we had 340 member cities and towns. Today, the League has over 60 employees working out of three office buildings in downtown Montgomery to provide services for our members. This excellent staff serves 443 cities and towns.

It’s funny how history repeats itself. The first article I was assigned to write for the League was a piece in the February 1974 *Alabama Municipal Journal* titled “Act 1056: Ethics or Invasion?”. Through that



Perry Roquemore in 1974 shortly after joining the League’s staff.

article, I raised questions as to the constitutionality of our state's newly-enacted ethics law. Several groups, including the League, challenged the constitutionality of certain aspects of the law's disclosure requirements on unpaid municipal boards. The suit was successful in court. As a result of that case, the Legislature passed a much better ethics law in 1975. How ironic that in my last year with the League the Legislature enacted a package of bills to strengthen that ethics law. My first out-of-town meeting with the League, held at Mt. Cheaha, was to participate in a commission formed to rewrite Alabama's State Constitution. At that time, the Constitution had 330 amendments. Today, the State Constitution has still not been rewritten and we have at least 835 amendments.

Two men made a tremendous impact on my life and in my career at the League: John Watkins and Drayton Hamilton. As I have already stated, Mr. Watkins, himself an attorney, was the League Director for the first 12 years of my career at the League. Drayton Hamilton was the League's General Counsel. These two men were willing to share the "tricks of the trade". Both were excellent attorneys and lobbyists. Drayton wrote many of the laws used by cities and towns today. He wrote the "Legal Viewpoint" column for the *Alabama Municipal Journal* and I was assigned to write the Summary of Attorney General and Court Opinions for the League's then monthly newsletter, *The Alabama Municipal News*. My first speech to a municipal group was at the League Convention held in Mobile in May 1974. I spoke to the City Attorneys and City Judges. At that time, both groups met on Monday and Tuesday of the League Convention.

In January 1975, after I had been employed for a year, I was introduced to my first Legislature. At that time, the Legislature only convened in regular session

every two years. In fact, a proposed constitutional amendment was passed at the first session I worked to switch to annual sessions. No one thought it would be ratified by the voters, but it was and we've had annual sessions ever since. I was assigned to track all legislation and to write the weekly legislative bulletin, which I've done since 1975. Drayton and I went to the Legislature every day it was in session to represent the interest of municipalities. Drayton was a veteran lobbyist who was well respected by the members of the Legislature. He was willing to teach me the process. My daily legislative work with Drayton Hamilton, which I remember fondly, lasted until his untimely death in 1990.



*Perry with League General Counsel
Drayton Hamilton in 1987.*

Speaking of the Legislature, I have had the opportunity to work with hundreds of state representatives and senators over the last 37 years. We have

gone from a Legislature that met in the State Capitol, where most legislators had no staff or office, to today's Alabama State House with offices and staffs for all legislators. In those early days without computers, cell phones or the internet, most things had to be done manually. There were less than 100 lobbyists in 1975 compared to hundreds today. There were no PACS, no party caucuses or budget isolation resolutions and, yet, the business of the State of Alabama got accomplished – although it may have taken to 4 a.m. on the morning after the last day of the session when legislators used the old practice of "stopping the clock".

I have had the opportunity of working for passage of hundreds of bills for municipalities. I served on the committee to rewrite the municipal code volumes for the Alabama Code of 1975. The entire Code was adopted as a single bill during the first five days of the session. Among the major League bills enacted during

my tenure with the League were bills to cap municipal tort liability, to modernize municipal election laws, to establish eight classes of cities and towns so that legislation could be enacted for certain sized cities and towns, to allow municipal officials to establish their salaries six months prior to an election rather than having their salaries set by state law, to make the unanimous consent annexation law applicable to all municipalities and not just to those above 2,000 population, to allow publication of certain zoning ordinances by reference to cut publication costs, to require the attachment of a fiscal note to bills costing cities and towns money, to limit unfunded mandates on municipal governments, to obtain a share of the 4 and 5-cent state gas taxes for municipalities, to exempt municipalities from having to pay the state gasoline tax, to authorize the council-manager form of government in Alabama, to create the Municipal Government Capital Improvement Fund to allow municipalities to share in the oil and gas windfalls, to keep the Legislature from doing away with our share of the oil and gas monies, to create the Alabama Water Pollution Control Authority, to allow for the casual sales and use tax on vehicles sold between private parties, to create the Local Government Health Insurance Plan, to cap the tort liability of municipal officers and employees, to allow cities and counties to exercise joint powers under certain conditions, to authorize municipalities and their entities to provide cable and internet services to their citizens as well as many others.

I am very thankful for the opportunity to have worked with hundreds of bright municipal attorneys for more than three decades. For fear of leaving someone out, I will not try to list those individuals by name. I just want them to know that I appreciated their willingness to help me and the League over

the years. The same can be said for all of the state constitutional officers and state employees that have provided assistance to me and the League.

Mayors and council members are elected by the voters of their municipality to lead their cities and towns. It has been my unique pleasure to meet and work with thousands of municipal officials over the years.



Perry giving his first speech to the League membership after being elected Executive Director in 1986.

Many of them have worked hard for our organization by serving on the League Executive Committee, Legislative Committee or as policy committee chairs and members. I have been extremely impressed by their dedication to their hometowns. Serving as a municipal official is often a thankless job, so I want to offer my thanks to you for a job well done. I encourage you to keep up the good work.

It has been my pleasure to work with a number of city employee groups over the years through their own associations.

Municipalities are fortunate to have hard working and dedicated city clerks, revenue officers, finance directors, managers, police chiefs, fire chiefs, administrators, personnel directors, planning directors, recreation directors, utility board directors and other leaders. They keep our cities and towns going on a day-to-day basis.

Our League has been blessed with great leaders. I can truly say that I have always had an outstanding president to help me guide the League. I am pleased to know each of them and to call them my friend.

In addition to our legal and legislative accomplishments, I am also proud of some other accomplishments achieved over the last 25 years during my tenure as your director. Together we have increased the size of our headquarters building at 535 Adams Avenue from 7600 square feet to over 22,000 square feet of office space; created an excellent liability and property insurance company (AMIC);

created AMFund for your financing needs; created the Certified Municipal Official (CMO) program to provide training for elected municipal officials; and brought the League into the 21st century through the use of technology.

Despite all these noteworthy endeavors, I think my greatest accomplishment has been the development of the best League staff in the country. Over my tenure, we have grown to more than 60 employees. All of these individuals are dedicated to our membership. They bring excellent skills to their jobs, and they have made me look good. None of our accomplishments would have ever been realized without the diligence of your fine League staff.

As I turn over the reins to Ken Smith and the staff, I am sure that bigger and brighter days lie ahead. I am confident that our League will continue to grow and prosper, and I humbly thank you for the honor of serving you and the municipalities of our great state for the past 37 years. ■



Perry at his desk in 2010 with a copy of Selected Readings for the Municipal Official, an invaluable manual for local government leaders that he helped research, write and develop.

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THE LEAGUE SALUTES PERRY C. ROQUEMORE, JR. FOR 37 YEARS OF OUTSTANDING SERVICE

A Montgomery native, Perry C. Roquemore, Jr., returned home in 1974 after graduating from The University of Alabama School of Law to accept the Staff Attorney position with the Alabama League of Municipalities. Over the course of his 37-year career with the League, Perry became an expert in municipal law as well as an effective and loyal advocate of municipal interests. His preparedness, professionalism, and genuine concern for the vitality of Alabama's cities and towns made his a voice that was highly respected by the Alabama Legislature.

When Perry was named executive director in 1986 following the retirement of John Watkins, Alabama's municipalities were faced with unreasonable, and unfunded, state and federal mandates requiring ever more from cities and towns without providing any revenue to pay for the added duties and services. In 1988, the League of Municipalities successfully promoted a constitutional amendment that restricted the Alabama Legislature's authority to force unfunded mandates onto municipalities.

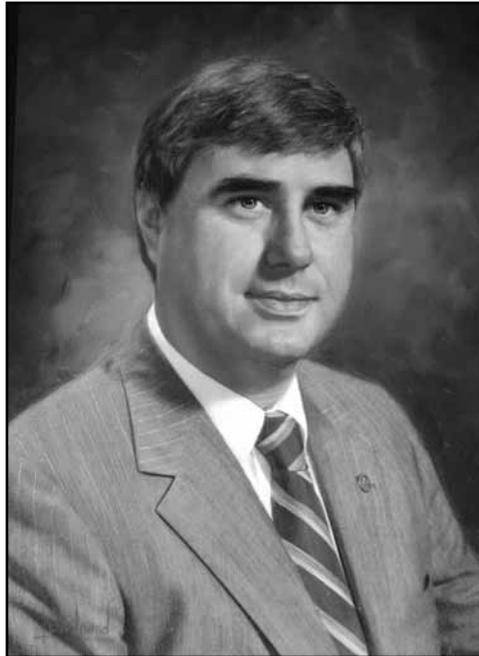
Local governments faced further complications in the 1980s – a time when obtaining liability insurance proved elusive. To resolve the problem, Perry worked closely with League leaders to develop the Alabama Municipal Insurance Corporation in 1989. To this day, AMIC provides competitively-priced coverage to many of the League's member municipalities, and the revenue

generated by AMIC has helped fund expansion of the League's member services.

In the early 1990s, upon Perry's advice, the League's Board of Directors voted to triple the size of its headquarters building, from 7500 square feet to 22,000. The building expansion was completed in 1992, allowing for much needed additional office space that could accommodate updated technology. By 2010, the staff, which was less than 10 when Perry was hired in 1974, had increased to nearly 60 and the League's headquarters were further renovated.

Another way Perry aimed to save time and money for member municipalities was by helping to create more effective municipal leaders. Under his guidance, the League expanded and extended its voluntary training programs, offering not only annual windows for professional growth during League convention but through year-round educational opportunities with curricula virtually guaranteed to improve efficiency.

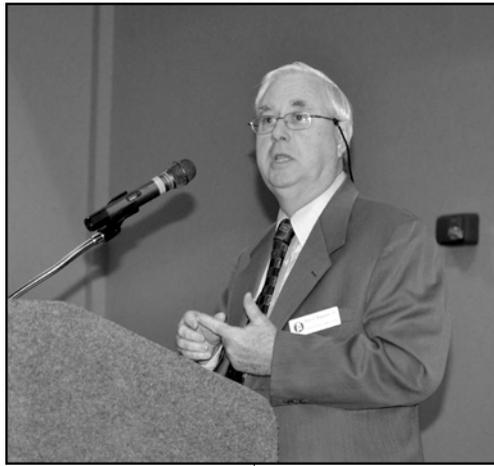
The League's Certified Municipal Official training program, which was only the second such program in the United States, was established in 1994. The response was so great that within three years the League implemented Advanced Certified Municipal Official training. Learning about the expectations, restrictions, and possibilities of municipal office has now equipped thousands of participants to be more effective local government officials. In addition to serving as a model for sister organizations throughout



the country, the Alabama League continues to cultivate future League leaders as well as better-educated local municipal leaders through its CMO program.

In the late 1990s, the groundwork laid by the League in the early '80s to secure municipalities' fair share of oil trust-fund revenues was jeopardized when the Legislature realized that, for the first time, the interest on the funds was about to exceed \$60 million and they would have to deliver on their promise to Alabama's cities and towns. Under Perry's leadership, the League mounted a quick defense of the municipalities' share, pursuing it so far as to win a constitutional amendment to preserve the municipal portion. This rapid response to the threat ensured what has now been more than a decade of additional revenues for municipal capital improvements.

The power of pooling resources and standing together infuses one of the League's most recent undertakings, the Alabama Municipal Funding Corporation



(AMFund). Founded only a few years ago, this program empowers member municipalities to obtain funding that would otherwise be beyond their grasp and can be used for virtually any municipal project.

In 2010, the Alabama League of Municipalities celebrated its 75th Anniversary – an achievement marked by a year's worth of research by Perry and the League staff to create an official publication chronicling the League's intriguing history and a fitting tribute to the organization, its membership and the man who has been at the helm since 1986 – only the third person in the League's history to serve as its Executive Director.

For nearly four decades, Perry Roquemore has been a champion of municipal government. His efforts in pursuing proactive legislative measures and expanding educational, financial, and quality-of-life opportunities for Alabama's cities and towns makes his a legacy that will long be remembered. ■

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The Legal Viewpoint

By Lori Lein
Deputy General Counsel



Disaster Responsibilities of the Municipal Governing Body

The events of April 27, 2011, and the destruction caused by multiple tornados across Alabama and the southeastern United States forced many Alabama municipalities to implement emergency operating procedures. As was demonstrated by last month's unprecedented weather event, it is imperative that municipal governments take proactive action and implement policies protecting the health, safety and welfare of their citizens.

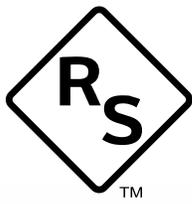
Alabama laws on Emergency Management can be found in Chapter 9 of Title 31 of the Code of Alabama of 1975, as amended. For purposes of this article we will refer to this law as the Alabama Emergency Management Act. The Act outlines the authority and procedures of the state for declaring and dealing with disasters as well as the specific powers granted to local governments during such times. In addition, one of the primary purposes of the Alabama Emergency Management Act is to assist and encourage emergency management and emergency preparedness activities on the part of any political subdivisions of the state by authorizing the state to make grants, as funds are appropriated, to those political subdivisions to assist in the costs associated with emergency preparedness and response. It is vital that municipalities understand and comply with this act if they wish to receive financial assistance from the state with regard to emergency preparedness and response.

In addition to the Alabama Emergency Management Act, Section 11-45-1 of the Code of Alabama 1975, states, "Municipal corporations may from time to time adopt ordinances and resolutions not inconsistent with the laws of the state to carry into effect or discharge the powers and duties conferred by the applicable provisions of this title and any other applicable provisions of law

and to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the inhabitants of the municipality, and may enforce obedience to such ordinances." These powers are commonly known as "police powers" and should be used advisedly as to not interfere with the civil liberties of citizens; however, in emergency situations, fundamental rights may be temporarily limited or suspended. *See Aptheker v. Secretary of State*, 378 U.S. 500, 84 S.Ct. 1659, 12 L.Ed.2d 992 (1964); *see also Korematsu v. United States*, 323 U.S. 214, 65 S.Ct. 193, 89 L.Ed. 194 (1944).

It is important to keep in mind that all laws of the state must continue to be followed during disaster preparation, response and recovery. For example, Section 94 of the Alabama Constitution of 1901, provides, "The legislature shall not have power to authorize any county, city, town, or other subdivision of this state to lend its credit, or to grant public money or thing of value in aid of, or to any individual, association, or corporation whatsoever, or to become a stockholder in any such corporation, association, or company, by issuing bonds or otherwise." In 1994, the Alabama Supreme Court decided *Slawson v. Alabama Forestry Commission*, 631 So. 2d 953 (1994) which held that a public entity such as a city may give money or something of value to nonpublic entities and organizations if the public entity determines the appropriation will serve a public purpose. The court went on to define a "public purpose" as one promoting the health, safety, morals, security, prosperity, contentment and general welfare of the community. *Id.* Further, the court determined that the decision as

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to whether an expenditure serves a public purpose or confers a public benefit is wholly within the discretion of the legislative body making the decision. *Id.*

It is important for a municipality to have an emergency operating procedure in writing and in place **prior to** a disaster. The policy should be adapted for each municipality's unique needs and give guidance and direction to municipal employees and officials on actions to be taken before, during and after a disaster. A written policy should be adopted either by motion or resolution. In light of the constant changes to state and federal laws and the unpredictable nature of disasters, emergency operating procedures should be reviewed annually to be sure they are up to date.

In addition to an emergency operating procedure for employees and officials, a city should have an emergency operating ordinance outlining what to do in the event of an emergency. Unlike an emergency operating procedure, the adoption an ordinance allows a municipality to enforce penalties for any violations. Much like the emergency operating procedure, the emergency ordinance should be reviewed annually and both the emergency operating procedure and ordinance should correspond.

This article outlines the various considerations that must be made when preparing and developing emergency operating procedures and ordinances.

Local Emergency Management Organization and Director

The Alabama Emergency Management Act authorizes and directs municipalities to establish a local organization for emergency management in accordance with the state emergency management plan. In creating such an organization, the council may appoint a director who shall have the direct responsibility for the organization, administration and operation of the organization subject to the direction and control of the council. The organization formed shall perform emergency management functions within the territorial limits of the municipality.

Declaration of Emergency

The proclamation of a state of emergency pursuant to the Alabama Emergency Management Act is the first step in activating the disaster and recovery aspects of state, local, and inter-jurisdictional disaster emergency plans.

The Alabama Emergency Management Act provides that the Governor or the Legislature by joint resolution, have the authority to declare that a state of emergency exists. There is no authority under state law for mayors to declare an emergency in the face of a disaster. The only similar authority a mayor has is found in Section 11-43-82 of the Code of Alabama 1975, which gives mayors the authority, in time of riot, to close businesses in the vicinity of the municipality which sell arms and ammunition.

There is certainly a strong argument backed up by public policy that under its police powers, a city council has the discretion to declare an emergency in order to protect the health, safety and welfare of its citizens. If such a situation arises whereby a municipality cannot obtain a declaration by the Governor or the Legislature because immediate action is needed, the council should convene to declare an emergency.

If the situation is such that the council cannot convene, the emergency operating procedure and ordinance should provide for an alternative. The council, in the procedure or ordinance, should confer upon the mayor or the emergency management director the authority to declare a state of emergency in the event a meeting of the council cannot take place. The declaration by the mayor or the emergency management director should be subject to ratification, alteration, modification or repeal by the council as soon as they can convene. The ordinance should state that subsequent actions of the council will not affect the validity of prior actions of the mayor or other city officials. The declaration should be made as early as possible, especially if evacuations are necessary. All declarations should be made and attested to by the city clerk to the extent feasible.

When dealing with the declaration of a disaster, it is important to remember that unless and until your municipality is declared to be under a state of emergency by the Governor or the Legislature pursuant to the Alabama Emergency Management Act, funding may not be available for assistance.

With regard to funding available, it cannot be emphasized enough the need to document any expenditures made during the time of a disaster. For example, you will need to carefully keep up with every man-hour your employees work and every equipment

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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: Evidence was insufficient to support a conviction for third-degree domestic violence for harassment based on a defendant's altercation with her sister at their mother's home, where no evidence was presented to show that the defendant and her sister were present or former household members. *Kings v. State*, 53 So.3d 162 (Ala.Crim.App.2010)

Courts: In order for the extrajudicial statement of a co-conspirator to qualify under the coconspirators' exception, three distinct conditions must be met: (1) the statement must have been made in furtherance of the conspiracy; (2) the statement must have been made during the pendency of the conspiracy, and (3) the existence of the conspiracy must be shown by independent evidence. Incriminating acts or statements of one co-conspirator after the ends of the conspiracy have been accomplished, and no longer exist, are not admissible against another for purposes of the co-conspirator exception to hearsay. *Hillard v. State*, 53 So.3d 165 (Ala.Crim.App.2010)

Courts: Under the *Terry* exception, a routine traffic stop may be prolonged if police have a reasonable suspicion of other criminal activity. A driver's admission that there was marijuana in the trunk of his car provided probable cause justifying a search of the car following a traffic stop, under the automobile exception to the warrant requirement. *State v. McClure*, 53 So.3d 169 (Ala.Crim.App.2010)

Drug Forfeiture: Section 20-2-93, Code of Alabama 1975, allows only an owner of a vehicle or a bona fide holder of a lien on the vehicle to contest or seek to prevent the forfeiture of the vehicle based on a drug offense. *Hildreth v. State*, 51 So.3d 344 (Ala.Civ.App.2010)

Elections: Pursuant to Section 17-16-44, Code of Alabama 1975, no jurisdiction exists in or shall be exercised by any judge or court to entertain any proceeding for ascertaining the legality, conduct, or results of any election, except so far as authority to do so shall be specially and specifically enumerated and set down by statute. *Rice v. Chapman*, 51 So.3d 281 (Ala.2010)

Eminent Domain: Section 18-1A-232, Code of Alabama 1975, governing the award of litigation expenses for dismissed eminent domain actions makes payment of the landowner's litigation expenses mandatory following dismissal by the circuit court. *Russell v. State*, 51 So.3d 1026 (Ala.2010)

Open Meetings Act: A governmental body did not violate the Open Meetings Act by considering and voting on, at a special meeting, a resolution that was not on the agenda. *Underwood v. Alabama State University*, 51 So.3d 1010 (Ala.2010)

Taxation: The burden is generally on the taxpayer to clearly

establish its right to an exemption from taxation. When a taxpayer generates income, some of which is taxable and some of which is not taxable, the burden rests on the taxpayer to prove that portion which is not taxable. *Alabama Dept. of Revenue v. National Peanut Festival Ass'n, Inc.*, 51 So.3d 353 (Ala.Civ.App.2010)

UNITED STATES COURT DECISIONS AFFECTING ALABAMA

Courts: It is improper to ask a testifying defendant whether another witness is lying. Credibility determinations are to be made by the jury, not the testifying witness. *U.S. v. Schmitz*, --- F.3d ---, 2011 WL 754148 (11th Cir.2011)

Fair Labor Standards Act: The Fair Labor Standards Act's ban on retaliating against employees who "filed" any FLSA complaint covers oral complaints. *Kasten v. Saint-Gobain Performance Plastics Corp.*, --- S.Ct. ---, 2011 WL 977061 (U.S.2011)

First Amendment: Speech at a public place on a matter of public concern cannot be restricted simply because it is upsetting or arouses contempt, because if there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. Speech of church members who picketed near a funeral of a military service member was of public concern and therefore was entitled to special protection under the First Amendment. *Snyder v. Phelps*, 131 S.Ct. 1207 (U.S.2011)

DECISIONS FROM OTHER JURISDICTIONS

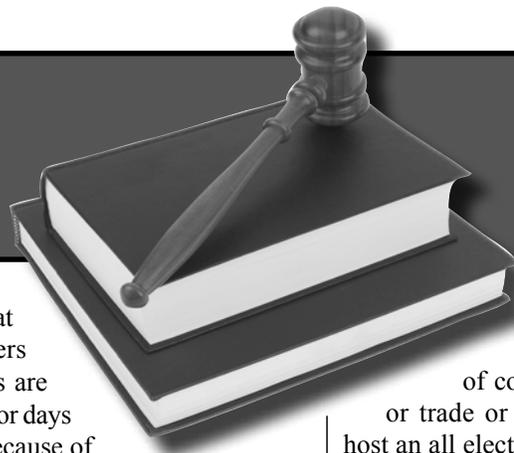
Elections – Hobbs Act: Incumbent candidates who extort cash from victims during their campaigns can be prosecuted under the *Hobbs Act*, but challengers who do so cannot unless they go on to win their election. Defendants, an unsuccessful mayoral candidate and his brother, were not acting "under color of official right" when they allegedly attempted, during mayoral campaign, to obtain additional illicit cash payments from a developer and a city employee in event that the candidate was elected mayor, since the defendants were not public officials during the relevant time period, and thus their actions could not sustain a charge of conspiracy or attempt to extort under the *Hobbs Act*. *U.S. v. Manzo* --- F.3d ---, 2011 WL 538746 (3rd Cir.2011)

Employees: A municipal employer does not violate its employees' rights under the Rehabilitation Act by requiring them to give their supervisors a note from their doctor disclosing the nature of their illness after they use sick leave. *Lee v. City of Columbus, Ohio*, --- F.3d ---, 2011 WL 611904 (6th Cir.2011)

ATTORNEY GENERAL'S OPINIONS

Conflicts of Interest: The Legislative Double Dipping Prohibition Act is applicable to legislators and regulates the conduct of legislators. AGO 2011-042

Holidays: Section 17-3-5 of the Code of Alabama authorizes registrars to be paid for each day's attendance upon business of



the board and for state holidays that coincide with work days. Members of the County Board of Registrars are ineligible to receive compensation for days in which their office was closed because of inclement weather. AGO 2011-044

ETHICS COMMISSION ADVISORY OPINIONS

AO No. 2011-03(B): A member of the Florence City Council, who is also an employee of the University of North Alabama, may not vote, attempt to influence or otherwise participate in the sale of property from the City to the University, as a general conflict of interest exists, and he cannot best serve the City's interests and the employer's interests at the same time.

AO No. 2011-04: Members of the Alabama Legislature may accept a paid invitation to travel to Turkey for cultural and educational excursions that promote dialogue between Turkey and the United States, as the event would be both an educational function and a widely attended event, as defined by the Alabama Ethics Law.

AO No. 2011-05: During the course of a project, a member of the Alabama Road Builders Association may provide a meal for the Alabama Department of Transportation (ALDOT) personnel to discuss problems or issues that have arisen during a specific project in an effort to resolve the problems, as this would be a work session under the Alabama Ethics Law. Association members may provide a meal to ALDOT personnel in relation to a meeting to discuss future projects, new equipment, materials, proposed construction techniques, etc., as this could be considered a work session; however, hospitality may not be provided in conjunction with this meal, as hospitality would not be an integral part of the meeting. A golf or fishing outing may be provided to ALDOT personnel attending a Road Builders Association meeting when the meeting is held as an educational opportunity and the overall purpose is to provide information to ALDOT personnel and is not merely a recreational event, and hospitality is an integral part of the overall function.

AO No. 2011-06: The Baldwin Electric Membership Cooperative (EMC) may donate tickets to or invite guests of the Baldwin County Legislative Delegation to Chamber of Commerce fund raising events, such as a Hospital Gala, when the receipt of the tickets requires no particular course of action on the part of members of the Baldwin County Legislative Delegation. Members of the Baldwin County Legislative Delegation, when attending events as guests of Baldwin EMC put on by the Chambers of Commerce, may accept hospitality, meals and other food and beverages which are provided to the public officials as an integral part of an educational function, economic development function, work session or a widely

attended event, such as a luncheon, banquet or reception hosted by a civic club, chamber of commerce, charitable or education organization, or trade or professional association. Baldwin EMC may host an all elected officials dinner on an annual basis when the purpose of the dinner is to thank the elected officials for their public service and there is no course of action required of the public officials for their attendance. ■

Who is authorized to expend funds and enter into contracts on behalf of the municipality?

Generally, the full authority to control municipal finances is placed in the municipal council. See Section 11-43-56, Code of Alabama 1975. "All legislative powers and other powers granted to cities and towns shall be exercised by the council, except those powers conferred on some officers by law or ordinance." §11-43-43, Code of Alabama 1975. Accordingly, the general rule is that the only method by which an employee or official may expend funds or be given authority to bind the municipality to a contract is by an affirmative vote of the council reflected in the minutes. An exception is the Mayor's authority to contract for an annual municipal audit pursuant to §11-43-85, Code of Alabama 1975.

The council should designate the person authorized to execute a contract. "Contracts entered into by a municipality must be in writing, signed and executed in the name of the city or town by the officers authorized to make the same and by the party contracting. In cases not otherwise directed by law or ordinance, such contracts shall be entered into and executed by the mayor in the name of the city or town and all obligations for the payment of money by the municipality, except for bonds and interest coupons, shall be attested by the clerk." §11-47-5, Code of Alabama, 1975

It is not necessary for the council to validate each disbursement of funds individually, but it is required that all claims, requisitions and demands against the municipality be submitted to the Council for approval, unless already provided for by ordinance or resolution. See generally §11-43-101, Code of Alabama, 1975 and *Tingle v. J.D. Pittman Tractor Co.*, 99 So.2d 435 (Ala. 1957). ■



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hour utilized. Also keep up with every purchase order or invoice for materials, rentals of equipment, contracts entered into for assistance, landfill tickets etc... related to clean up. It is also very helpful to take pictures and to document where they are, what they are of and when they were taken.

Emergency Alert System

The municipality should have a plan in place to exercise the Emergency Alert System (EAS), which can be activated to warn and inform the public during emergency situations. The system can also be used as a public information tool during an evacuation.

Evacuation Plan

Municipalities have no authority to provide for and compel the evacuation of an area except by the direction and under the supervision of the Governor or the Alabama Emergency Management Agency (AEMA), or both. The council should carefully design a plan of evacuation prior to the onset of a natural or manmade disaster and this plan should be coordinated with and approved by the AEMA. The plan may be accomplished in a variety of ways. It should be tailored to the needs of the individual municipality and the circumstances surrounding the disaster.

The availability of public transportation should also be considered when designing an evacuation plan. The plan should include schools, special-care facilities, hospitals and those industries handling extremely dangerous materials. Part of the evacuation plan may include a list or registry of the municipality's disabled citizens. The plan should include procedures for re-entry as well.

Remember that while it is important to have a plan should evacuation be necessary, a municipality may not order an evacuation without the approval of the Governor or the AEMA as provided in Section 31-9-8 of the Code of Alabama 1975.

Emergency Powers

The Alabama Emergency Management Act provides for specific powers of municipalities during times of disaster. Specifically, the city council has the power, pursuant to Section 31-9-10 of the Code of Alabama 1975, to do the following:

(1) To appropriate and expend funds, make contracts,

obtain, and distribute equipment, materials, and supplies for emergency management purposes; to provide for the health and safety of persons and property, including emergency assistance to the victims of any disaster; and to direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies.

(2) To appoint, employ, remove, or provide, with or without compensation, air raid wardens, rescue teams, auxiliary fire and police personnel, and other emergency management workers; provided, that compensated employees shall be subject to any existing civil service or Merit System laws.

(3) To establish a primary and one or more secondary control centers to serve as command posts during an emergency.

(4) To assign and make available for duty the employees, property, or equipment of the subdivision relating to fire fighting, engineering, rescue, health, medical and related service, police, transportation, construction, and similar items or services for emergency management purposes, within or outside of the physical limits of the subdivision.

(5) In the event that the governing body of the political subdivision determines that any of the conditions described in Section 31-9-2(a) has occurred or is imminently likely to occur, the governing body shall have the power:

a. To waive procedure and formalities otherwise required by law pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the utilization of volunteer workers, the rental of equipment, the purchase and distribution with or without compensation of supplies, materials, and facilities, and the appropriation and expenditure of public funds.

b. To impose a public safety curfew for its inhabitants. If a public safety curfew is imposed as authorized herein, it shall be enforced by the appropriate law enforcement agency within the political subdivision. A public safety curfew imposed under this subsection shall not apply to employees of utilities, cable, and telecommunications companies and their contractors engaged in activities necessary to maintain or restore utility, cable, and telecommunications services or to

official emergency management personnel engaged in emergency management activities.

(6) To close, notwithstanding Section 11-1-8 of the Code of Alabama 1975, any and all public buildings owned or leased by and under the control of the political subdivision where emergency conditions warrant, whether or not a local state of emergency has been declared by the governing body of the political subdivision. In the event that any documents required to be filed by a time certain deadline cannot be filed in a timely manner due to the closing of an office under this subdivision, the deadline for filing shall be extended to the date that the office is reopened as provided in Section 1-1-4 of the Code of Alabama 1975.

The emergency powers and duties of the mayor and/or emergency management director should be specifically described in the ordinance and procedure; however, due to unforeseeable circumstances, they should not be limited only to the ordinance and procedure. In addition to the specific powers provided for under the Alabama Emergency Management Act, a municipality may want to consider powers that would fall under their police power. For example, a list of powers may include: closing businesses; suspending alcoholic beverage sales; closing roadways; ordering continuation, disconnection or suspension of public utilities; controlling or allocating the distribution of relief supplies; applying for local, state or federal assistance; and others as needed. A chain of command should be established within the procedure and ordinance. In addition, employees should understand exactly what may be required of them during a disaster, both natural and manmade.

Preprinted Orders, Forms and Resolutions

In the interest of quick administration of the declaration and other procedures during a state of emergency, the council should consider drafting preprinted orders, forms and resolutions. Some sample forms include: declaration of emergency; evacuation and reentry control orders; curfew declarations; orders limiting or controlling re-entry to affected areas; state of emergency extension forms; and refusal to evacuate forms. Refusal to evacuate forms may protect the city from liability in the event a citizen refuses to follow a mandatory evacuation order.

Interlocal Agreements

Interlocal agreements with other governmental entities coordinating emergency management procedures should be in place well before the disaster. In accordance with the federal Disaster Mitigation Act of 2000, all counties are required to have approved and adopted a multi-hazard mitigation plan in order to receive future mitigation grant assistance. If a municipality participated in the development of their county's local hazard mitigation plan and is not sanctioned by the National Flood Insurance Program, that municipality must have passed a National Incident Management System (NIMS) resolution adopting the county's hazard mitigation plan.

The resolution should be transmitted to FEMA through the local EMA office. Failure to pass a resolution prior to receiving a presidential disaster declaration places the municipality at risk of becoming ineligible for future FEMA hazard mitigation grants. All municipal officials and disaster coordinators should coordinate with local emergency management agency personnel during a disaster response and recovery period.

Regular meetings between the city-county emergency management coordinator/director, the mayor, the municipal emergency management coordinator and the municipal department heads should be conducted on a regular basis.

Mutual Aid

Under Section 11-80-9, Code of Alabama 1975, municipalities in Alabama have the authority to provide "assistance, by means of gift or loan, to the governing body of any other municipality or county located within the state when such county or municipality has been declared a disaster area by the Governor of the State of Alabama or by the President of the United States." In order to provide mutual aid, an agreement, in writing, shall be drafted and approved by the assisting governing body and the recipient governing body.

Section 11-80-9, Code of Alabama 1975, does not guarantee reimbursement by any governmental agency unless provided for by contract.

Emergency Procurements

During times of disaster, Alabama's competitive bid laws still apply to the procurement of goods and

services and if a contract can be competitively bid, it should be. However, under the competitive bid law, a municipal council has the authority to let contracts without advertisement in emergency situations when public health, safety or convenience is involved in the delay of acquiring needed equipment. *See* Section 41-16-53, Code of Alabama 1975.

A municipal governing body can only declare an emergency in response to an actual emergency. Under the provisions of the competitive bid law, an emergency must be declared by the municipal governing body prior to the performance of any work by contractors. A municipal council may not declare an emergency after work has been performed by a contractor. However, after a contract has been performed, the council may, under certain circumstances, provide funds to pay the contractor if the purchasing officer properly authorized the contract to be made on a negotiated basis because of an emergency. *See* Attorney General's opinion to Hon. Carl H. Kilgore, May 12, 1975.

Purchases should be streamlined through the mayor and/or emergency coordinator. A list of emergency purchases should be maintained by the mayor and/or emergency coordinator, and as soon as is possible, should be formally communicated to the municipal governing body.

Municipalities located in disaster-prone areas should consider seeking competitive bids and awarding contracts for debris removal and other services in preparation for disasters. Such contracts can be let for those services for all such disasters, but cannot exceed three years. *See* Section 41-16-57(f), Code of Alabama 1975.

Emergency Spending Plan

It is important the emergency operating procedure and ordinance implement an emergency spending plan during disaster operations. This plan should include activation authority and payment methods not requiring high technologies (such as computers), which may be offline in a disaster.

Emergency Control Centers and Temporary Emergency Meeting Locations

Emergency control centers and temporary emergency meeting locations should be established in the event it

becomes impossible to conduct governmental affairs at the regular and usual locations. These locations may be set by the council before or after the emergency. If possible, these locations should be within the municipal corporate limits. If temporary emergency locations are established prior to the disaster, they should be incorporated into the emergency operating procedure and ordinance.

Police and Fire Departments

The emergency operating procedure and ordinance should have a provision granting both the police and fire departments power to enter onto any property or premises as may be necessary to protect the public health, safety and welfare as well as to maintain order. The police department should be granted the authority to bar, restrict or remove all unnecessary traffic, both vehicular and pedestrian, from all local roadways. The fire department should be granted the authority to do whatever is reasonably necessary to protect persons and property while rendering first aid. It is important to note, however, that there is no authority to grant firefighters any police powers.

Work Hour Limits

The city council, mayor and emergency management coordinators should keep in mind overtime pay of non-exempt employees will be compensable under certain circumstances pursuant to federal law. It is important that the mayor and emergency management coordinators work together to ensure employees are assigned shifts and managed in a way minimizing the amount of overtime worked by each employee. This will keep the overall costs of the disaster down as well as reduce employee exhaustion and injury, leading to a more efficient disaster recovery effort.

Compensation During Disaster

Non-exempt municipal employees under the Fair Labor Standards Act are entitled to overtime pay during a disaster; however, exempt employees are not. The Mayor and council should take into consideration the amount of work that may be required of exempt employees during times of disaster. The council should also consider circumstances under which additional compensation may be granted to exempt employees for tireless efforts and work on preparation, response and recovery. If the council chooses to grant overtime compensation for

exempt employees, the emergency operating procedure and ordinance should state the council's intentions.

Personal Property Protection Plan

The emergency operating procedure should include a plan to protect municipal personal property. The plan should address technological failures, including protection and recovery procedures. The plan should address all types of breakdowns, including power, computer and telephone failures. It should also cover complete loss of municipal personal property.

If time clocks are used to maintain personnel working hours, it is important to prepare and implement a plan of paper record keeping to ensure the municipality adequately complies with federal law.

The council should consider a disaster recovery plan for technological data. Many public entities store data in secure, off-site locations. In the event a disaster strikes one of these locations, the municipality can download the data from another location.

Single-Media Contact

The council should designate an employee or municipal official as the single-media point of contact for the disaster plan. This can be the emergency management coordinator, the mayor, or another municipal employee. By establishing a single-media point of contact, the municipality will cut down on confusion during the preparation, response and recovery stages of the disaster. A single-media point of contact and timely dissemination of information to the public will both serve the needs of the citizens and help the municipality operate in the most efficient manner before, during and after the disaster.

Debris Removal

Natural and manmade disasters can generate substantial amounts of debris that can overwhelm existing solid waste disposal facilities. With this in mind, a municipality should design a long-term debris removal plan that prepares for worst case scenarios. When designing the plan, the council should consider federal and state aid, interlocal mutual aid agreements, equipment, recycling, collection and storage sites, hazardous waste, contracts, state bid laws and federal reimbursement options.

Emergency Exercises

Emergency exercises are an excellent way to ensure

personnel adhere to an emergency operating procedure. Emergency exercises familiarize employees with the plan and assist the local governing body in developing a more comprehensive and workable plan tailored to the needs of the municipality. When conducted, emergency exercises should include schools, special care facilities, hospitals and industries handling extremely dangerous materials.

Penalties

The emergency operating ordinance should proscribe penalties for ordinance violations and violations of any powers or orders granted pursuant the ordinance. Municipalities are given the power to enforce their ordinances by Section 11-45-9 of the Code of Alabama 1975.

Termination of Emergency Powers

Declarations, policies, rules and orders enacted pursuant to the emergency operating procedure and ordinance shall remain in effect until the council or other issuing individual withdraws the declaration, rule or order. In any event, all actions taken pursuant to any declaration, rule or order should cease once the conditions which gave rise to the emergency end.

Federal and State Assistance for Emergency Management

While local government is primarily responsible for emergency response, there are times when a disaster overwhelms the capacity of local government for effective response. The operations functions of the AEMA includes those activities essential to a coordinated response in support of the local jurisdiction, such as warning, alerting, emergency communications, damage assessment and recovery assistance. The state's emergency operations center is the command post during disasters. Warning and coordination of the emergency is conducted in coordination with federal and local governments based on the state emergency operations plan.

An invaluable resource during a disaster are the state agency personnel trained to assess damage to public and privately-owned facilities; to aid local government in warning and notification and, if necessary, the evacuation of the threatened populace; to open and operate shelters;

and to assist in other response and recovery operations.

Day-to-day support is provided by a variety of sources but the primary grant offering for local jurisdictions is the State and Local Assistance Program, formerly the Emergency Management Assistance Program. It is aimed, primarily, at increasing the operational capability of emergency management at the local and state levels of government, including development and maintenance of trained, experienced staff and emergency management personnel. In addition to this matching grant, the state legislature allocates funds for local emergency management organizations through AEMA. Several other grants for local emergency planning committees and local emergency management organizations are also available.

Numerous training, planning and exercise services are available from AEMA for city-county management organizations. Courses are delivered in the field and at the Emergency Management Institute for emergency preparedness and cover executive development/management, natural hazards, radiological preparedness, hazardous materials and national emergency preparedness.

Sticking to the Plan

The most important aspect of crafting both an emergency operating procedure and ordinance is making sure the procedure and ordinance are followed. Doing so ensures that employees, officials and residents understand how their municipality will prepare for, respond to and recover from a disaster.

Conclusion

Disaster preparation, response and recovery can be overwhelming. Having a detailed emergency operating procedure and ordinance in place prior to the occurrence of a natural or manmade disaster can be the difference between an efficient and effective recovery and a long and tedious one. The city council and mayor must have positive interaction with county, state and federal emergency management officials to ensure the municipality can provide for its citizens before, during and after an emergency. With a sound emergency operating procedure and ordinance in place, a municipality can weather any storm. ■

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Speaking of Perry, he is only the third person in the history of the Alabama League of Municipalities to serve as its executive director. He's also the longest serving employee in the League's 76-year history and will retire on May 31st with just over 37 years of service. Perry was hired as the League's staff attorney in 1974 and became executive director at the 1986 League Convention following the retirement of John Watkins.

Under Perry's leadership, additional League member programs have been created, including AMIC, the Alabama Municipal Funding Corporation (AMFund) and the extremely popular Certified Municipal Official (CMO) program, which was only the second such program in the country when it was established in 1994. In addition, a Loss Control Department was developed, the League headquarters building was expanded and the League staff has tripled.

Perry's legacy also consists of many key legislative

accomplishments. Throughout his tenure, he has been a front-line protector of municipal rights, continually guarding our municipalities against the infringement of our authority by state and federal legislation. Under Perry's leadership, the League achieved milestones in the progression and diversification of our organization through the election of the first African-American league president, former Mayor Johnny Ford of Tuskegee, as well as former Councilwoman Cynthia McCollum of Madison becoming the first Alabama official elected president of the National League of Cities.

As I look back on my personal relationship with Perry, I'm amazed at all he's accomplished for us during his tenure and how strong and decisive the League has become due to his leadership. Not only has he provided our membership with sound judgment as our executive director, he has become a dear friend to us all. I know you join me in wishing Perry and his family the very best in their future journeys. ■

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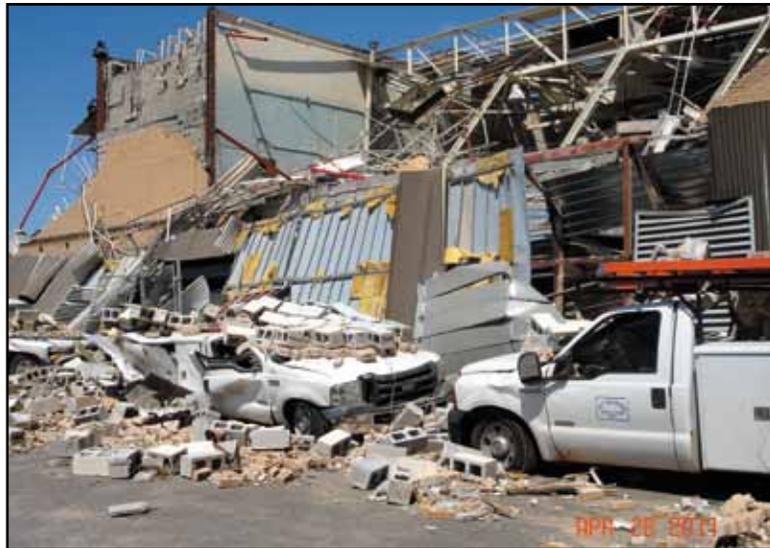
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effort to maintain water pressure throughout the entire system because firefighting efforts would be impossible without adequate water levels. Curfews were put into effect for the most heavily damaged areas. Search and rescue teams worked steadily throughout the flattened communities where nearly 6,000 buildings and homes were destroyed. The University of Alabama canceled finals and postponed commencement ceremonies as the city worked feverishly to begin stitching itself back together.

With as many as a million people without power, Governor Bentley immediately activated 2,000 National Guard troops to help secure decimated areas. President Obama declared

Alabama a major disaster and ordered federal aid to assist with recovery efforts for 38 counties, including Autauga, Elmore, Cullman, DeKalb, Franklin, Jefferson, Lawrence, Marshall, Tuscaloosa and Walker counties. He and the First Lady flew into Tuscaloosa on April 29th to meet with officials and witness the initial recovery efforts first-hand.



In North Alabama, TVA found itself scrambling to recover from a battered network with more than 100 major fallen transmission lines. Extensive structural repair had to be completed before power could be restored to Huntsville and elsewhere – leaving thousands without power for several days. Two-thirds of Huntsville’s water treatment plants were being powered by generators following the storm system.

Of course, the most incredible aspect of this unimaginable tragedy involves resilience and leadership. Alabama’s municipal officials and state leaders rose above the nightmare, immediately mobilizing emergency services. Recovery efforts began within minutes and

are still continuing. Sadly, those efforts will be ongoing for weeks, if not years, in the most devastated areas. Contributions of supplies, money and peoplepower poured in from throughout the state as vigorously and as quickly as the tornados that hurled livelihoods into oblivion.

Alabama’s cities and towns were battered, bashed and bombarded, but they were not beaten.

They *will* overcome.

Carrie

The pictures shown in this editorial are of the Curry Building (and surrounding area), which housed Tuscaloosa’s Emergency Management Agency and Environmental Services Department. They were taken on April 28 by AMIC representatives and depict an estimated \$25+ million in damages.

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