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September 2012

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On the Cover:

2012 CMO Commencement Ceremonies were held on August 9th in Montgomery marking the 17th graduating class of elected officials to receive the CMO designation and the 14th graduating class to receive Advanced certification.

Congratulations, graduates!

A Message from the Editor

It's been a lively summer for your League staff. As is true every four years, the municipal election cycle generated a deluge of inquiries, the majority of which were handled through the League's Legal Department: Lori Lein, Tracy Roberts, Rob Johnston and Sharon Carr. In July alone, they handled nearly 1450 calls and emails ... and they're not done yet! This intense pace will continue through the October 9th run-off elections until new officials take office November 5th.

Of course, legal inquires are only part of the equation. In addition to municipal elections, CMO graduation ceremonies were held August 9th (congratulations, graduates!), the League's five standing policy committees met in August, planning and preparation for the Fall Law Conference (scheduled for Sept 27-29) were completed and pertinent municipal articles and handbooks are in the process of being updated and reformatted. The League staff is now preparing for our extremely popular quadrennial "Orientation Conference for Newly-Elected Municipal Officials," which will be offered in Montgomery, Mobile, Birmingham and Huntsville in late October and early November. Be sure to check the League's website at alalm.org as well as *This Week* (emailed every Tuesday morning) for updates. In addition, the Annual Quality of Life Awards Program is now underway. The **deadline for entries is November 2nd** and a Call for Entries, as well as information about the awards process, can be downloaded from our website by clicking on the icon in the center tapestry of the homepage.

Student Internships: A Win-Win for the Municipality and the Student

Over the past few months, the Communications Department has been very fortunate to work with two very talented student interns: Sara Baker, who later interned with the Town of Pike Road and is studying Communications at Auburn Montgomery, and Abby Luker, who is a graduate of Troy University and is now earning her MA in Communications at the University of Alabama while interning with the City of Tuscaloosa. See pages 13 and 15 for related articles. I'd like to thank Pike Road and Tuscaloosa for sharing their internship insights with us, and I encourage you to consider implementing a similar program in your community.

Internships allow a municipality to take advantage of free or low-cost labor, as well as the unique (and often extensive) talents, abilities and enthusiasm of young people who are seeking entry into the professional market. Because interns are usually highly motivated and eager to learn, internships generally require minimal investment and can be a valuable community commodity – not only in terms of the work accomplished on behalf of your municipality but in the direct impact internships have on the future workforce. Internships can also increase staff productivity – the extra help can allow seasoned employees to focus on creative or intense projects requiring experience and expertise without becoming overburdened by side tasks and busy details.

Interns can be used in many different areas. For instance, a communications intern could be assigned to assist with the city's social media outreach efforts (Facebook, Twitter, YouTube, etc.); research and write news releases, newsletter articles and feature stories; maintain website content by researching and writing updates; assist in coordinating and publicizing special events; assist in maintaining and updating database information; and help develop a variety of public information plans and internal/external communication projects including formulating and defining the city's website with interactive, citizen-focused content.

A political science intern assigned to work with the municipal clerk and/or city council could assist in the legislative process by researching and processing ordinances and resolutions and other related documents (i.e. committee agendas/city council dockets), attending Standing Committees and Legislative Committees of the Mayor and City Council and performing tasks such as filing, answering constituent calls and researching and reviewing documents pertaining to city business and departments as directed. A technology or IT intern could assist staff with web maintenance and Internet/Intranet technical support as well as help develop technological solutions to enhance outreach and constitute relation efforts.

Obviously a municipality can design an internship for nearly any department. I recommend working with your area university or community/technical college to fully develop an internship that will be most beneficial to both your city and the student intern.



With Abby Luker (right), communications intern for ALM several weeks this summer.

Carrie

The President's Report

Mayor David Bradford • Muscle Shoals



17th CMO Graduation Ceremony Held August 9th

On August 9, the League held commencement ceremonies in Montgomery for its Certified Municipal Officials (CMO) Training Program. These graduation exercises marked the 17th group of officials to receive their Basic CMO certification and the 14th group to receive their Advanced CMO certification. My congratulations to all the graduates! As an Advanced CMO graduate, I'm a firm believer in the League's municipal official training. The CMO program is designed to guide and support municipal officials in carrying out our elected duties efficiently and effectively, and I can personally attest that the information learned is invaluable to mayors and councilmembers as we make critical decisions for our cities and towns. Graduating from the Basic and Advanced CMO programs further signifies the commitment of Alabama's elected officials to our communities.

The League established the Certified Municipal Officials Training Program in 1994. It consists of a series of one-day continuing education programs designed for elected municipal officials – mayors and councilmembers – who voluntarily wish to receive formal training in municipal government. Officials who complete 40 credit hours of training are awarded the professional designation of Certified Municipal Official. Training sessions are generally conducted twice each year at four regional sites throughout the state. Additional hours may be earned by attending designated sessions during the annual League Convention and other approved events sponsored by the League and the National League of Cities. A limited amount of credit may be obtained by attending other approved courses. The training program can be completed in as few as two calendar years.

The Elected Officials Training Program is an ongoing project of the League to fulfill the education mandate contained in its constitution. The first session of the Elected Officials Training Program was held at the Adams Mark Hotel in Mobile on September 22, 1994. The same program was offered in Birmingham, Montgomery and Huntsville. Nearly 200 officials enrolled in the program during the first sessions. As of this year, more than 3,460 municipal officials are enrolled and have attended one or more courses.

Session topics include council meeting procedure, rules of parliamentary procedure, the Open Meetings Act, public records, ordinance drafting, powers of municipalities, ethics laws, conflicts of interests, duties of mayors and councilmembers, tort liability, annexation, zoning, subdivision regulation, municipal revenues and expenditures, the competitive bid law, personnel issues, insurance issues and regulatory powers of municipalities.

In 1998, the League added an Advanced CMO Program for those officials who had received the CMO designation and desired additional training. During its January 2000 meeting, the League's Executive Committee approved the addition of a continuing education requirement to the Program. The committee members felt the new requirement would strengthen the CMO Program. As of Jan. 1, 2000, each Advanced CMO Graduate is required to earn ten (10) credit hours of approved training within two (2) calendar years to maintain their Advanced CMO active status. Any CMO Advanced Graduate who does not earn at least ten (10) approved credit hours of training within two (2) calendar years will have their Advanced CMO status designated as "inactive" until such time as the required ten (10) hours of approved credit is earned. The continuing education credits started at the 2000 Convention in Birmingham.

This year, a total of 50 municipal officials successfully completed the requirements to receive their CMO certification and 33 officials received their Advanced CMO certification. Perry C. Roquemore, Jr., who served as the League's executive director for 25 years before retiring in May 2011, addressed the graduates at this year's ceremony. The 2012 graduating class of Certified Municipal Officials is listed on page 20. **Congratulations!** ▀

For more information on the League's
CMO Program, visit:
www.alalm.org/CMOPage.html



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Marshall County, Alabama

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- Craig A., Defendant
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Municipal Overview

Ken Smith • Executive Director



The Municipal Budget and Auditing Process

Assembling, preparing and adopting a municipal budget requires about three months of hard work and deliberation. No statutory provision exists that expressly requires all municipalities of the state to establish any particular period for the fiscal year. It should be noted, however, that Section 1-3-4, Code of Alabama 1975, does state that “the fiscal year of the government shall commence on the first day of October and end on the thirtieth day of September. This fiscal year shall be used for purposes of making appropriations and of financial reporting and shall be uniformly adopted by all departments, institutions, bureaus, boards, commissions and other state agencies.” The Attorney General has ruled that the term “government” is a very comprehensive term and “includes the affairs of a state, community, or society. It is all-inclusive.” AGO to Hon. H. K. Hawthorne, March 12, 1968. Therefore, most of the cities and towns of Alabama begin their fiscal years on October 1, meaning budget preparations for the next year should begin in the month of July.

The importance of a budget to municipal administration cannot be overemphasized. A budget is more than a perfunctory, itemized plan of proposed expenditures balanced against estimated revenues for the fiscal period. It is an authorization for the administration to implement municipal policy during the coming year. It is a means of attaining unity in administration by drawing all municipal programs together for overall scrutiny. It is also a means of assuring adequacy of municipal services in the most efficient manner.

Once adopted, a budget is the financial and administrative compass for the executive, administrative and legislative agencies of the municipality. The city or town that is budget-conscious throughout the year produces more services for its revenue, makes more capital improvements, keeps the public more reliably informed and adheres to the policies established by its governing body.

This article will discuss Alabama laws relating to municipal budgets, what a budget should accomplish, who is responsible for the budget, types of budgets, procedures generally followed in preparing a budget, the adoption of the budget and what it means and budget reporting to be followed throughout the fiscal year.

Municipal Budget Laws

Section 11-43-57, Code of Alabama 1975, is as close as Alabama law comes to requiring municipal budgets. That section states that in all cities under the mayor-council form of government, the council shall appropriate the sums necessary for the expenditures of the several city departments. It shall also appropriate the sums necessary for the interest on municipal indebtedness; the council shall not appropriate, in the aggregate, an amount in excess of its annual legally authorized revenue.

This section also permits the council to appropriate the sums necessary for the operation of city departments and for the interest on its bonded and other indebtedness, not exceeding in the aggregate within 10 percent of its estimated revenue. Municipalities may, though, anticipate any expected revenue for the year and contract for temporary loans or use bonds or appropriate anticipated revenue at any time for the current expenses of the city and interest municipal indebtedness.

In an opinion of the Attorney General, found in the April-June *Quarterly Reports of 1940* at page 304, it was held that this section does not apply to municipalities under 2,000 population. The opinion pointed out that cities at that time were required to submit their budgets to the Division of Local Finance of the State Finance Department under the provisions of Title 55, Sections 151-154, Code of Alabama 1940. These code sections were repealed by the Acts of 1951. Therefore, there is certainly room to doubt that any Alabama cities or towns are actually required by general state law to make an annual budget. However, certain cities are required by local legislation to adopt budgets.

For example, Montgomery is required to have an annual budget by Article 5 of Act No. 618, 1973 Regular Session. Similarly, Birmingham is required to make an annual budget under the provisions of Article 5 of Act No. 452, 1955 Regular Session, as amended.

Alabama laws which allow the employment of a city manager, found in Section 11-43-20 through 11-43-22, Code of Alabama 1975, do not require that a budget be made and submitted to the governing body. However, the Council-Manager Act, found at Sections 11-43A-1 through 11-43A-52, Code of Alabama 1975, as amended, provides for and

requires a budget to be adopted by ordinance in municipalities operating under the council-manager form of government. *See*, Section 11-43A-29, Code of Alabama 1975, as amended. Also, Section 11-44C-1 through 11-44C-93, establishing the form of government for Mobile, requires the adoption of an annual budget. Other municipalities may have similar legislatively-created requirements.

Official Responsibility

While state laws do not require cities and towns to adopt a budget, most municipal governing bodies realize the importance of planning their finances in advance and do operate under a budget. Section 11-43-56, Code of Alabama 1975, gives the council control over the municipal purse strings in mayor-council cities and towns. Some cities and towns require, by ordinance, the preparation of a budget and designate the officer or employee responsible for its preparation and how the budget is to be compiled and submitted. In other municipalities, a budget is prepared and presented to the governing body without formal requirement in keeping with long standing precedent.

Adopting a budget is the responsibility of the municipal governing body. The budget reflects wage and salary policy for the coming year, municipal programs which will be added

or deleted, whether services will be increased or reduced, and the amount of planned capital improvements which will be undertaken. Regardless of who prepares the budget, once adopted it becomes the established financial and administrative policy for the coming year.

Who Prepares the Budget?

The responsibility for preparing a budget should rest with the officer who administers the overall municipal operation. This officer is in the best position to prepare the budget and should be given the opportunity to present a program for consideration by the council. Section 11-43-81, Code of Alabama 1975, makes the mayor the chief executive in charge of municipal administration in a mayor-council city or town. Therefore, the mayor should see that a budget is prepared, under his or her direction, for presentation to the council in ample time for consideration and adoption before October 1, or the start of the municipal fiscal year. If the council adopts an ordinance requiring the preparation and submission of a budget, it is doubtful that the mayor can be required to perform this duty because of constitutional issues of separation of powers. The council should require the clerk, treasurer, or comptroller to prepare the budget under the mayor's supervision for

continued on page 23

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The Legal Viewpoint

By Lori Lein
General Counsel



Paying Legal Expenses of Officers and Employees

From time to time the League receives questions concerning the payment of legal expenses for the defense of its officers or employees involved in civil suits or criminal actions. The officer or employee may be the subject of a suit by or against the municipality or may be defending a suit for actions rendered on behalf of the municipality. The officer or employee might be the subject of a criminal action for actions taken in his or her official position.

The overriding question is whether the council has the power to pay such legal expenses when requisitioned to do so by the officer or employee. Also, what are the steps or procedures involved to approve the payment of such legal expenses? And then there is always the question of whether the city must pay the expenses or whether the city has merely the discretion to pay such expenses.

These issues become very complicated when the officials being sued are members of the governing body that has to decide whether to pay the charges.

The Three Part Test

This issue is first examined in the case of *City of Birmingham v. Wilkinson*, 194 So. 548 (Ala. 1940), where the question was raised of whether a city was obligated to employ an attorney to defend two members of the governing body against charges of fraud, corruption and graft. The charges were never proved and the complaint was dismissed at trial.

The Alabama Supreme Court set out a three-part test as to when a municipality can pay legal expenses. The court held that a municipal corporation has the implied power to employ counsel to render services in: (1) matters of proper corporate interest, including the prosecution or defense of suits by or against the corporation, (2) and the defense of suits against municipal officers or employees for acts done on behalf of the corporation (3) while in the honest discharge of their duties. *Id.* at 552.

The court stated that members of the governing body cannot employ legal counsel to shield themselves from the consequences of their own unlawful and corrupt acts. However, the city has the power and the duty to defend the members of its

governing body against unfounded and unsupported charges of corruption and fraud. If a proper corporate interest is found and the officer or employee acts on behalf of a municipality in the line and scope of his or her duties and furthermore the duty was discharged in honest and good faith, then the city has the power and discretion to pay the legal expenses involved. *Id.* at 552.

The court in *City of Birmingham* pointed out that a difficult situation arises when the officials charged with fraud and corruption are members of the governing body who must decide whether to defend the suit at public expense while the suit is still pending. The court points out that while the suit is still pending, it is questionable whether the city can pay the legal fees. *Id.* at 552.

The officials being accused are called upon as members of the governing body to act on the propriety of defending the suit at public expense. Little guidance is provided by the court as to whether such fees can be paid while the suit is pending, so it puts the burden on municipalities to determine on their own the truthfulness of the accusations. Of course, where the suit ends favorably to the city and its officers – and the legal fees are then requisitioned – there is no problem with the city paying the expenses if it wishes to do so.

In the end, the *City of Birmingham* court casts doubt upon the payment of expenses while a suit is pending. It suggests that a city wait until the outcome of the suit to determine whether to pay the legal expenses. If a decision is favorable then the city has no problem paying the bill. But, the court never states that a city is prohibited from paying legal expenses while a suit is pending. Arguably, as long as there are matters of proper corporate interest involved and the officer or employee is being sued for actions done on behalf of the municipality while in the honest discharge of his or duty, a municipality can pay for legal counsel expenses while the case is still pending. *Id.*

Of course, it is a difficult task for a municipality to come to the conclusion of whether or not the allegations are true. But the governing body should make this determination as to the three-part test before any expenses are paid and such findings should be put into the minutes. However, is the city required to pay the expenses? What if the municipality determines there

is a corporate interest involved, and the officer or employee is being sued for actions taken on behalf of the municipality while in the honest discharge of his or her duty? Nowhere does the *City of Birmingham* court state it is mandatory that the cities pay such expenses. Therefore, it should be remembered that a city retains the discretion to pay the expenses or not to pay them. If the city pays the bill, though, it must make sure that the three-part test set out by the *City of Birmingham* court is met. *Id.*

What Is Proper Corporate Interest?

The phrase “proper corporate interest” was interpreted in the case of *City of Montgomery v. Collins*, 355 So.2d 1111 (Ala. 1978). In that case, city taxpayers brought a class action to enjoin the city of Montgomery from expending municipal funds to defend city police officers indicted for perjury.

In looking at the issue, the Alabama Supreme Court had to decide whether it was in the proper corporate interest for the city to defend its police officers that were not only accused but indicted for the crime of perjury. The court held that it was in the proper corporate interest for the city to do so. *Id.* at 1114-5.

The initial charges against the police officers included a claim of conspiracy by the officers to violate the civil rights of the plaintiffs. The court reasoned that a claim of violation of civil rights might also later include the city as a defendant under agency principles. It would be within the reasonable scope of proper corporate interest for the municipality to then attempt to protect itself and its officers against future civil litigation brought under agency principles by defending their agents against criminal charges arising out of the same general

circumstances in order to gain their acquittal. *Id.* at 1114-5.

The city’s stake in gaining the officers’ acquittal was high, since a judgment of conviction in a criminal case against its officers could be later admissible in a civil action brought against the city based on the officers’ conduct on behalf of the city.

Therefore, the *City of Montgomery* court concluded that a matter of “proper corporate interest” might depend upon the existence of a risk of litigation against the city itself should the perjury prosecutions have proved successful. Moreover, the *City of Montgomery* court saw that the officials in charge of the administration of the city could reasonably conclude that defending the officers was necessary to the good morale of the police department or for recruitment and retention purposes. *Id.*

There may exist other equally compelling reasons that fall within the proper corporate interest. Even though the *City of Montgomery* court did not give a clear definition of the phrase “proper corporate interest,” it gave good examples of situations in which it considered the phrase applicable. *Id.*

Even if Indicted?

The fact that the officer was indicted in the *City of Montgomery* case made no difference to the court. It held that an indictment casts not a single pebble of guilt in the scale against a criminal defendant. Its function is merely to inform the accused of the crime with which he is charged. *Id.* at 1115.

Since an indictment is merely informational, the court held that a city retains the discretion to determine whether the city’s interests required a defense to the charges against the officers.

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The court stated that whether the city's decision is wrong in these types of cases is for their constituency to decide. The Attorney General's office has ruled along the same lines. *Id.* at 1115.

In an Attorney General's Opinion (AGO) to Hon. Willard Piezzza, February 1, 1978, that office decided that the city of Tallassee had the discretion to pay for the legal defense of an employee, the driver of a city ambulance, which crashed into and killed two women. That the driver was indicted in a criminal action arising from the crash made no difference in the opinion of the Attorney General. The opinion stated that the discretion to pay the legal expenses of the employee, as long as the three part test set out in the *City of Birmingham* is met, does not cease when city officials or employees are indicted for the commission of a crime.

What Is Not Proper Corporate Interest?

In *Greenough v. Huffstutter*, 443 So.2d 886 (1983), the Alabama Supreme Court touched on the issue of proper corporate interest when it looked at a case in which a civil action was brought in order to determine the eligibility of two newly appointed board members to the personnel board of the city of Mobile. The suit sought to enjoin the personnel board from holding meetings or acting unless and until replacements were appointed.

The essential allegations charged a lack of legal qualification to hold the positions on the board. The trial court found that the two members lacked the qualifications to hold the positions and removed them from the board. When the board requisitioned

the city of Mobile for the payment of expenses incurred in defending the two men, the city refused to pay. *Id.* at 890.

The court held that a municipality cannot provide funds for the defense of an official in a criminal action or even in a civil action where there is no benefit to the municipality. Thus, a city has no such interest in a suit exclusively directed against its officers, charging lack of legal qualifications to hold office. In fact, the *Greenough* court states that paying such expenses would not only be outside the power of the city to do, it would offend Section 94 of the Alabama Constitution of 1901, which prohibits the grant of public funds for any individual purpose. *Id.* at 890.

So Section 94, which most city officials will recognize as a factor in many municipal problems, is also a factor to consider when deciding to pay legal expenses for officers and employees and should be a consideration in determining whether a proper corporate interest exists.

Other Decisions

In other situations the Attorney General's office has ruled that the payment of legal expenses is not within the proper corporate interest.

In an AGO to Hon. Perry C. Roquemore, January 11, 1978, the city of East Brewton attempted to dismiss the police chief. At the termination hearing, the police chief attended the hearing with his attorney and the council decided to retain the services of the chief. The city asked the Attorney General's office if it could pay the attorney's bill in the matter. That office replied that there is no authority for the expenditure of such funds in

continued on page 21



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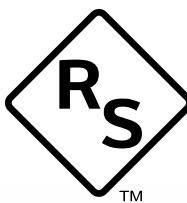
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Advice for Establishing a Municipal Internship Program

By Mary Catherine Barganier • Communication Director • Town of Pike Road

In the midst of challenging economic times, local governments across the United States are struggling with revenue decreases and staff reductions, while even the best and brightest college students face a difficult job market upon graduation. How can these two groups come together to help meet each other's needs? A municipal internship program could be the solution to both groups' challenges.

As communication director for a growing municipality with a small staff, I wear many hats and often find that I don't have time for all the tasks on my list. With an ever-expanding to-do list and no resources to hire additional employees, I recently established an unpaid communication internship program, and this summer the Town of Pike Road's first intern began work. Her term now complete, I offer the following advice to other municipal officials considering a similar program.

Proper Perspective

First, be sure you have the proper perspective. The relationship between your city and an intern is a two-way street. While the city gains an extra worker, the intern gains valuable on-the-job experience. There are other, less obvious benefits to the employer-intern relationship as well. While you are teaching your intern, keep your mind open to what your intern can teach you. University students are exposed to the latest technologies and tools in their fields of study. It is wise to plan your intern's work so that he or she can bring you up-to-speed on the latest practices in your profession.

Speaking of planning your intern's work, understand that overseeing that work will require a good deal of your time. To make good use of your intern's time and your own, it is crucial that you have a plan before he or she is on board. When developing a job posting to distribute to area universities, think about one or two large projects you

would feel comfortable entrusting to a student. Include in the job description a list of the skills and knowledge needed to complete those projects. Then create a plan of work for your intern based on those projects. You will waste valuable time and resources if you select an intern and then have no plan for his or her time with your city.

Create a Job Description

Creating a solid description of the internship will not only help you organize your intern's work, but it will also ensure that quality candidates take interest in the position. Make the job description as concise as possible, but offer concrete details. If you are looking for an intern who can manage your city's social media accounts, do not assume that every college student has those skills. List them in the position posting.

Work with Area Universities

While a concise, concrete description is important, it will do you no good if it is not distributed at the right time. Choose which universities to send your posting to by determining what academic majors will fit your needs and

I was genuinely intrigued when I first found out about the communication internship in Pike Road. My interest was not sparked by a promise of pay (there wasn't one), but by the opportunities that such an experience would surely bring. Mary Catherine offered a program that exposed me to many facets of both communication work and the process of government operation. The tasks that were given to me allowed me to contribute to the functions of Town Hall, provide support in multiple capacities and expand my skill set. I genuinely feel that the experience I gained far outweighs whatever stipend I could have earned.

– Sarah Baker, Summer 2012 Communication Intern, Town of Pike Road

how far the student intern would have to commute to your city offices. Call those departments and ask to speak with the individual who oversees student internships. He or she will give you the specific instructions for job postings. My university contacts advised me to send the posting for a summer intern within the first few weeks of spring semester. Students begin making plans for the next semester well before mid-term, and the sooner they see your internship

posting, the more likely you will be to attract the attention of the most motivated individuals.

Paid vs. Unpaid

Another important consideration during the planning stage of an internship is whether or not your city can afford to pay a student intern. The Town of Pike Road's communication internship was an unpaid position, and yet, our posting attracted applications from accomplished students with excellent faculty and professional references. University students are accustomed to the idea of unpaid internships, so do not be dissuaded from establishing an internship program just because your municipality may not have a stipend budgeted. Offer an excellent opportunity, and you can attract an excellent student intern.

Invest in the Intern

Once you have an intern in place, make the time to invest in that student. Give your intern a tour of your city, make sure he or she knows everyone in the office, take time to answer

questions and explain the processes we municipal employees take for granted. These are the things no student will learn in a university classroom, but which will greatly improve their chances for a smooth transition from college to the "real world."

Finally, when an intern successfully completes his or her term, offer assistance with resume updates and references for class credit or future employment. Remember that your responsibility as the leader of an internship program is to ensure not only that tasks are accomplished, but also that the program is a beneficial learning and growing experience for the young people involved. ■

Mary Catherine Barganier is Communication Director for the Town of Pike Road in Montgomery County. A native of Fort Deposit, she holds degrees from Auburn University and Virginia Tech in communication and urban planning, respectively. Mary Catherine can be reached at marycatherine@pikeroad.us or by calling (334) 272-9883.

City of Tuscaloosa Partners with the University of Alabama to Provide Internships

In Tuscaloosa, various City departments work with the University of Alabama – generally the college most associated with the department's essential function – to determine a qualified pool of interns. The University screens the interns and provides a list of potential candidates to the City, which then interviews and selects the interns. For example, the Mayor's office works closely with the University's College of Communications to provide graduate students with paid internships that coincide with the student's Advertising and Public Relations (APR) degree track.

According to Mayor Walt Maddox, both the City and the University pay an hourly wage, which allows the intern to be classified as a City employee and, thus, covered by the City's liability insurance. Maddox stressed that interns are provided flexible work schedules so their classes can come first and that City personnel attempt to assign duties that pair well with each intern's strengths and talents.

"Our interns provide fresh perspectives and knowledge of the latest technological trends that assist in our efforts to improve the quality of life for our citizens," Maddox said. "I have found our interns to be bright and extremely dedicated to the City."

Maddox said interns provide administrative staff with essential support and are an extremely valuable asset for very little investment. "In the aftermath of April 27 (the 2011 tornado outbreak that decimated much of the state), our interns coordinated with the Governor's Office, handled logistics with the National Guard and provided vital public relations assistance."

Abby Luker, who interned with the Alabama League of Municipalities for several weeks this past summer, is currently interning with the City of Tuscaloosa while she earns her master's degree in Advertising and Public Relations from UA. She received an "unofficial" guideline and list of duties from her predecessor, which is part of the current intern's responsibilities – making sure incoming interns know general information before starting. Of course, the list continually evolves. In addition to assisting with the City's social media efforts (Facebook and Twitter), attending meetings and drafting media releases, letters and certificates of recognition, Abby's duties will change depending on what issues the City and Mayor Maddox are facing throughout the year. She began her internship in late August, coinciding with the start of her one-year graduate program, and will work through August 2013, completing her real-world experience with the City of Tuscaloosa by passing her revised "unofficial" list to the next intern. ■

Trees: A Valuable Community Commodity

By Abby Luker • Communications Intern • ALM

As a leader in total forest acreage, Alabama has long been known for its beautiful forests covering nearly two-thirds of the state. With such abundance, it is essential that the benefits of these forests not go unnoticed but instead be fully realized.

Beautification programs that include tree-lined streets and well-maintained urban forests can prove beneficial in their ability to not only improve a municipality's environment as they provide cleaner air to residents but also the municipality's economy as they are inviting to potential patrons.

For these reasons and more, the Alabama Forestry Commission endorses the Tree City USA program, created in 1976 by the Arbor Day Foundation, USDA Forest Service and the National Association of State Foresters in an effort to provide municipalities with guidance and national recognition for effective urban and community forestry programs.

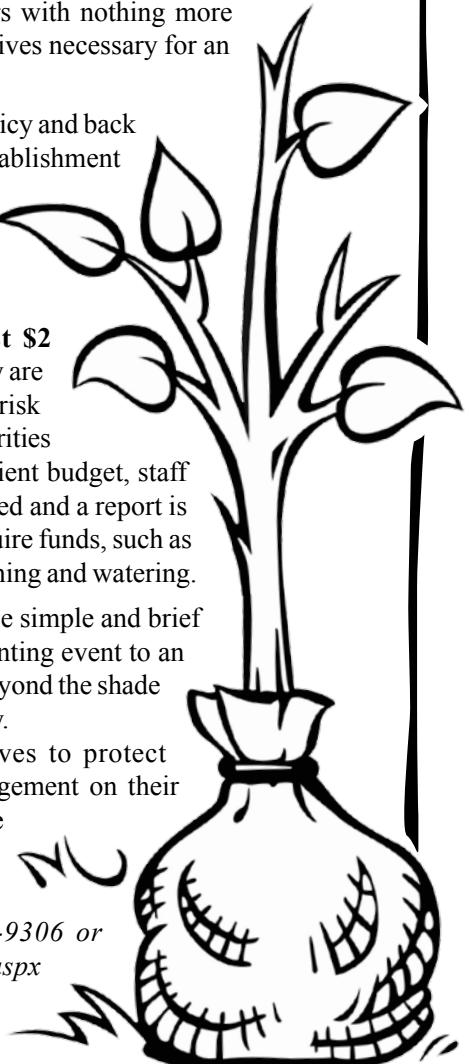
"Trees provide numerous benefits ... they absorb a lot of water and they clean our air," said Clifford Hawkins, community development coordinator with the Alabama Forestry Commission. "And we all know that a healthier and cleaner environment leads to a healthier lifestyle." Hawkins, who champions protecting our environment, expanding our recycling programs and educating our citizens about the environment, said the Tree City USA program is extremely valuable.

Currently, 84 Alabama communities are considered to be a Tree City USA, an honor available to any city, town or community willing to meet four minimum standards:

- ☛ **Create a tree board or department.** Whether it is a professional forester or an arborist, an entire forestry department or a voluntary tree board, someone must be legally responsible for the care and management of the municipality's trees. The presence of both a professional staff and an advisory tree board are encouraged, but the advisory board or commission should not be limited only to tree-related professionals. Board members with nothing more than a genuine interest in trees can often provide the fresh ideas and different perspectives necessary for an effective program.
- ☛ **Establish a tree care ordinance.** An ordinance provides the opportunity to set good policy and back it with the force of law when necessary. The ideal tree care ordinance designates the establishment of a tree board or forestry department and gives this body the responsibility for writing and implementing an annual community forestry work plan, which will provide clear guidance for planting, maintaining and removing trees found in streets, parks and other public places.
- ☛ **Maintain a community forestry program with an annual budget of at least \$2 per capita.** In examining their community budgets, most municipal staffs discover they are already spending more than \$2 per capita on their trees. Municipalities spending less risk losing more money in the long run and should re-examine their community's budget priorities and re-direct the funds necessary to properly care for tree resources. For a most efficient budget, staff should focus funding on an annual work plan, developed after an inventory is completed and a report is approved by the city council, that addresses the various situations and operations to require funds, such as species diversity, hazardous trees, insect and disease problems, planting needs, and pruning and watering.
- ☛ **Hold an Arbor Day observation and proclamation.** An Arbor Day celebration can be simple and brief or an all-day or all-week observation and can include anything from a simple tree planting event to an award ceremony that honors leading tree planters. Such an observance offers benefits beyond the shade and beauty of new trees – it sheds light on the complex issue of environmental quality.

Established as a state agency in 1924, the Alabama Forestry Commission serves to protect forests from harmful agents; to help landowners carry out responsible forest management on their property in a way that benefits themselves, their land and society; and to educate the general public on the value of forests in insuring both a healthy economy and environment.

To learn more about Tree City USA, contact Clifford Hawkins at (334) 240-9306 or clifford.hawkins@forestry.alabama.gov or visit www.forestry.state.al.us/tree_city.aspx or www.arborday.org/programs/treecityusa/.



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: Even if a defendant requests to represent himself or herself and the trial court permits the defendant to do so, the trial court's failure to comply with the rule governing waivers of the right to counsel is grounds for reversal. Presuming waiver of the right to counsel from a silent record is impermissible; the record must show, or there must be an allegation and evidence that show, that an accused was offered counsel but intelligently and understandingly

rejected the offer. *Presley v. City of Attalla*, 88 So.3d 930 (Ala.Crim.App.2011)

Courts: A non-attorney is prohibited from representing the interests of a public entity in legal matters. The plain language of the statute regarding who may practice as an attorney did not limit the practice of law to drafting pleadings and was broad enough to encompass the completion of a complaint form on behalf of the city's housing authority. *Ex parte Williams*, 89 So.3d 135 (Ala.Civ.App.2011)

Courts: Time spent incarcerated by a defendant before he is convicted must be credited toward the sentence imposed. *Johnson v. State*, 89 So.3d 205 (Ala.Crim.App.2011)

Courts: Multiple offenses alleged to have been committed by the same defendant may not be consolidated and tried jointly under the "common scheme or plan" provision of the rule governing joinder of charges for trial unless evidence of each offense would be admissible, under the "common scheme or plan" exception to the collateral crimes exclusionary rule at a separate trial of the other offense. *Tillman v. State*, 89 So.3d 832 (Ala.Crim.App.2011).

Criminal Law: In determining whether an out-of-state conviction will be used to enhance punishment pursuant to the Habitual Felony Offender Act, the proper inquiry is whether the conduct upon which the foreign conviction was based would have been a felony in Alabama had it been committed on or after January 1, 1980. *McGowan v. State*, 88 So.3d 916 (Ala.Crim.App.2010)

Forfeiture: The state failed to "promptly" institute a forfeiture proceeding relating to currency where filing did not occur until after an ineffectual DEA drug forfeiture proceeding. *Green v. City of Montgomery*, 87 So.3d 1195 (Ala.Civ.App.2011)

Nuisances: A homeowner's arguments challenging the city's finding that his house was an unsafe public nuisance should have been made in a direct appeal to the circuit court from the city's decision and could not be considered on the homeowner's appeal from the circuit court's decision granting city summary judgment on the homeowner's negligence claim in connection with the city's demolition of the home. *Harris v. City of Birmingham*, 89 So.3d 159 (Ala.Civ.App.2011)

A large black and white photograph of a water tank dominates the top half of the advertisement. Below it, a circular logo features a silhouette of a person working on a tank, with the words "Utility Service" written below the figure. The text "America's Tank Maintenance Company!" is prominently displayed in bold letters. Below this, a section titled "Utility Service is the premier provider of professional water tank services:" lists four bullet points: "Maintains thousands of potable water tanks under full service asset management programs," "Delivers true sustainable solutions and peace of mind," "Provides site management services for antennas on existing and new tanks," and "A water quality management tool... WaterMix™". The WaterMix logo includes a stylized water droplet icon and the tagline "The Right Mix for Cleaner Water". At the bottom, a call to action reads "Call your local Utility Service Representative today..." followed by contact information: "Michael Szabo • 706.575.1456" and "mszabo@utilityservice.com". The website "www.utilityservice.com" is also mentioned.

Tracy L. Roberts
Deputy General Counsel

UNITED STATES COURT DECISIONS AFFECTING ALABAMA

Firearms: A provision of Georgia's firearms laws regulating possession of weapons in a place of worship did not violate the Second Amendment. A pre-existing right codified in the Second Amendment did not include protection for right to carry a firearm in a place of worship against the owner's wishes. *GeorgiaCarry.Org, Inc. v. Georgia*, --- F.3d ----, 2012 WL 2947817 (11th Cir.2012)

DECISIONS FROM OTHER JURISDICTIONS

First Amendment: Interior postal sidewalks are not public forums for purposes of First Amendment analysis. A ban on collecting signatures on post office sidewalks that did not run along public streets was reasonable and, therefore, did not violate the First Amendment's free speech clause. *Initiative and Referendum Institute v. U.S. Postal Service*, --- F.3d ----, 2012 WL 2866306 (C.A.D.C.2012)

Ordinances: A New York City health code resolution requiring all tobacco retailers to display signs bearing

graphic anti-smoking images is void because it is preempted by the Federal Cigarette labeling and Advertising Act. 23-34 94th St. Grocery Corp. v. New York City Bd. of Health, --- F.3d ----, 2012 WL 2819423 (2nd Cir.2012)

Sex Offenders: The provision in the federal Sex Offender Registration and notification Act that makes it a crime for a federal sex offender to knowingly fail to update his registration after moving within a state cannot constitutionally be applied to a defendant who was discharged from federal supervision before the provision's enactment in 2006. *U.S. v. Kebodeaux*, --- F.3d ----, 2012 WL 2632106 (5th Cir.2012)

ATTORNEY GENERAL'S OPINIONS

Licenses and Business Regulations: The fact that Alethia House receives rental income from its real property cannot be construed to constitute pecuniary gain or individual profit to defeat its tax-exempt status, so long as it is carrying out its intended purpose under section 40-9-12(a) of the Code of Alabama. AGO 2012-068 ▀

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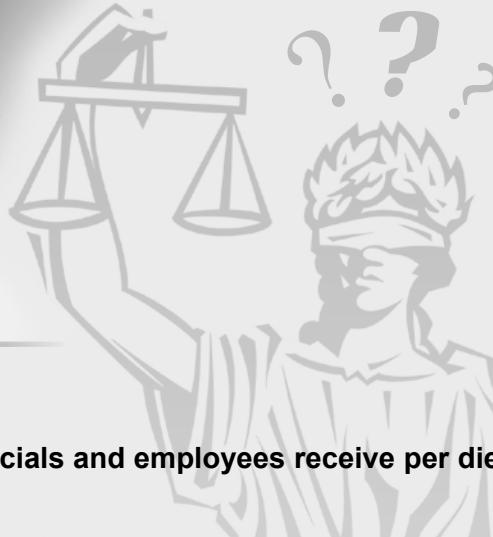
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F.A.Q.

Your Frequently Asked (Legal) Questions Answered
by Assistant General Counsel Rob Johnston



Per Diem Expenses

Expenses of Municipal Public Officials: Can municipal officials and employees receive per diem for travel and related expenses?

No. Unlike state officers and employees who are specifically authorized to be reimbursed on a per diem basis under Section 36-7-20, Code of Alabama 1975, municipal officials or employees can only be reimbursed for actual travel expenses incurred. See Section 36-7-1, Code of Alabama 1975. Itemized statements must be presented to the municipal treasurer, and the council will approve or disallow the expenditures at a regular meeting held within a period of 30 days after presentment. See Section 36-7-2, Code of Alabama 1975. Advances for expenses are permitted only if they are allowed by a resolution adopted by the council. See Section 36-7-3, Code of Alabama 1975. Provided however, even when expenses are advanced, an itemized statement of actual expenses must be presented by the officer or employee immediately upon return to the municipality. Section 36-7-4, Code of Alabama 1975.

With regard to municipal officials, it is recommended that municipalities adopt the practice of reimbursement or paying the actual expenses incurred in the performance of official duties upon affidavit of the official who incurred the expenses. This method generates a record for the disbursing officer and evidences the fact that the payments are not made in such a manner that they might be regarded as unauthorized salary increases for municipal officials. AGO 81-187. The municipal governing body may authorize flat expense allowances for city officials for expenses incurred by them in the performance of their official duties provided that the amount of such allowances bears a reasonable and substantial relationship to the actual expenses incurred by the officers. However, this expense allowance could not include reimbursement for expenses incurred while traveling or remaining beyond the limits of the municipality. Such expenses should be handled in accordance with Sections 36-7-1 and 36-7-2 of the Code. AGO 80-377. ▀

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Council Member Claudia T. Wigglesworth, Daleville
Mayor Robert Williamson, Florala
Mayor Eddie J. Woods, Forkland
Mayor Daryl Craig Patterson, Gordo
Council Member Louella Kelley, Graysville
Council Member James Levon Hicks, Grove Hill
Council Member Philip H. Garrison, Guin
Council Member Sally Alexander, Hanceville
Council Member JoAnn Lindsey, Hartford
Mayor Anna Berry, Heflin
Council Member Katherine E. Ennis, Helena
Council Member Barbara F. Hyche, Helena

Council Member Willie James Elston, Hobson City
Council Member James D. Stewart, Jr., Irondale
Council Member Stanley J. Roberts, Sr., Lanett
Council Member Carl Sudduth, Livingston
Mayor John L. Howard, New Hope
Council Member Jimmy L. Young, Pinckard
Mayor Terry John Calhoun, Rainbow City
Council Member Robert T. McCartney, Jr., Rainbow City
Mayor Melton E. Potter, Scottsboro
Council Member Rhonda M. McCloud, Shorter
Mayor Sam H. Wright, Sylacauga
Council Member Georgette W. Moon, Tuskegee
Council Member Bridgette Jordan Smith, Vincent
Council Member Mary Lee Reynolds, Vincent
Council Member Ken W. Hammock, Wetumpka
Council Member Dennis E. Burks, Winfield

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Council Member Lucky C. Armstrong, Abbeville
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Council Member Patti P. Fuller, Aliceville
Mayor Earl V. Johnson, Andalusia
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circumstances where the council institutes the action against which the officer or employee is to be defended.

In AGO 1992-073, the Pike County Commission asked whether it must pay the legal expenses for three Pike County commissioners who were sued by the county district attorney as a result of an overpayment of salary compensation. The Attorney General's opinion replied that no corporate interest could possibly be served by the county's payment of legal fees spent defending an action filed on behalf of the county.

In AGO 2001-210, a municipality was not required to pay the legal expenses incurred by an employee to appeal a disciplinary action to the personnel board; however, a municipality may pay the legal fees if the city council determines that: (1) the city has a proper corporate interest in the action; (2) the actions allegedly committed were done in the discharge of official duties; and (3) the official acted honestly in good faith. A city may also pay the legal expenses in anticipation of litigation if the city council determines that it is in the best interests of the city to settle the anticipated litigation. *See also*, AGO 2006-116.

AGO 2002-274 opined that a municipality may, but is not required to, reimburse the municipal clerk for legal fees incurred by the clerk when he or she is suspended without pay from his or her position, but is later restored and reimbursed for lost pay by the council.

In AGO 2008-020, the Attorney General determined that public funds cannot be used to pay legal fees incurred by an

elected official in the defense of an election. Since a candidate who is an incumbent is not acting in his official capacity when he runs for re-election, a city does not have a proper corporate interest in an election contest between an incumbent and his or her opposition.

Conclusion

Municipal officials should be extraordinarily cautious before deciding to pay the legal expenses of its officers and employees. Not only is it difficult to decide whether allegations are true but whether the actions taken were in the line and scope of their duties or whether there is a proper corporate interest in paying the bills. This can be extremely difficult where allegations are against officials who are members of the governing body deciding whether to pay the bills.

It is important for officials making such determinations to remember the three part test outlined in *City of Birmingham*. A determination based upon the three-part test must be made by the Council and put into the minutes. Since Section 94 is yet again a factor that must be considered in these types of problems, a Council must make sure it is not just individual interests that are being served and that a proper corporate interest is found and written into the minutes.

As always, care must be taken in making these determinations as a Council would not want the liability of making unauthorized expenditures coming back to haunt them.■

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presentation to the council at its first meeting in September.

The officer charged with the responsibility of submitting the budget explains and stands up for departmental requests when the governing body considers the budget. Once adopted, it is very important that each member of the governing body support the budget before the public. If a particular cut in service or deleted program is criticized, it can be pointed out that in the council's considered judgment the sacrifice was made for a more necessary function.

Types of Budgets

There are three principal types of budgets – the lump-sum budget, the line-item budget, and the program budget. Actually the **lump-sum budget** should not be regarded as a budget at all. It merely makes a lump-sum appropriation for expenditures by a department or agency without any restrictions as to what the appropriation is for. It provides no means of oversight during the fiscal year to ensure the various administrative agencies are performing their duties or operating within their appropriations.

The **line-item budget** itemizes the appropriations to be made to each department or agency of the municipality. Generally, it is a detailed summary of all the various expense accounts in each department with an allotment for each. This type of budget is probably used by more cities and towns than either of the other two types. Nevertheless, it leaves much to be desired.

The main deficiency with the line-item budget is that it concentrates the governing body's attention on a host of detailed accounts and fails to correlate expenditures with definite programs or services. It serves well because it is an accurate method of determining if various departments and agencies are operating within their detailed appropriations during the year.

The **program budget**, or performance budget, shows the overall cost of major municipal functions, the amount allotted to each organizational unit performing these functions by particular activity, and the detailed objects of expenditures within each unit breakdown.

A program budget reveals departmental objectives, the programs used to achieve these objectives, the volume of work required to accomplish each program and serves as a combined management and fiscal control instrument. The program budget allows a governing body to determine appropriations by programs and services as opposed to concentrating its time on a multitude of meaningless cost items. Program budgets reveal administrative policy as established by the council and present an understandable fiscal picture to the press and public.

The foundation of a proper and satisfactory budget lies in the use of an adequate classification and chart of accounts. When the budget is being prepared, the budget officer should seriously consider whether the accounting system of the municipality facilitates the preparation and execution of budgets for the coming year. If the current system is considered to

be inadequate, recommendations for change during the next fiscal year should be offered along with an estimated cost for the change.

Content of the Budget

The budget should contain a budget message from the official who prepared it, followed by a listing of estimated revenues, recommended agency expenditure appropriations, and capital improvement appropriations. The message explains the budget, shows what it does and what it fails to do and denotes any significant changes which occurred over the past year. Six important features of the message are listed below:

- it sets out the policy and general objectives of the city;
- it presents and carries forward the comprehensive theme developed by the budget officer in reviewing and formulating the budget;
- it gives a general statement of the financial status of the city;
- it highlights major program changes, tax increases or decreases and sets out significant data;
- it accurately states problems still remaining to be solved and recommends improvements to the revenue structure; and
- it should be attractive, easy to understand, and brief.

In addition, some budget officers like to include a brief summary of the budget and a table of contents to first allow an overall view, with references for more detailed examination.

Steps to Prepare a Budget

The budget officer should set up a calendar of steps to be followed in preparing a budget. First, each department and agency of the city or town should be notified to begin the preparation of budget requests for the coming year. Approximately one month should be allowed to submit budget requests and a deadline date should be set. With this notice, the budget officer gives department heads worksheets and guidelines relating to the information desired and the form in which it is to be submitted. The budget officer should also indicate where statistical and financial data not available in their immediate departments may be obtained.

After receipt of departmental and agency requests, the budget officer should allow approximately 10 days to study and preliminarily assemble the budget. After this step, the officer then schedules hearings with departmental and agency heads for discussion of their requests. These meetings reveal categories where requests need to be cut, omissions which should have been included, duplication of services and ideas for better service at a saving. Furthermore, these conferences give each department head a chance to see the budget instrument in its entirety and to feel that they are included as a member of the team for overall municipal accomplishment.

Following departmental conferences, which may continue for about 10 days, the budget officer should allow approximately 10 days to draft the message and prepare the budget instrument

in final form. The budget is presented to the governing body in time to allow one month for study and hearings before final adoption.

Upon presentation, the budget is explained by the budget officer who sits with the council during deliberations. Often, department heads are asked to be present for these conferences to give detailed explanations of activities planned for the coming year in their departments. The governing body may or may not hold a public hearing on the budget. Whether or not information relating to the budget is released to the press before its adoption is a matter which the governing body should decide.

The last step is the adoption of the budget finally decided upon by the governing body. This should be done before the beginning of the fiscal year on October 1.

Most budget officers confer informally with members of the governing body during the preparation process, generally at council committee meetings. In this way, the budget officer learns the feelings of the final arbiters on important points such as possible salary and wage increases, increased taxes, and program increases before the budget is prepared and submitted. This procedure often eliminates many changes which might otherwise result at a council meeting.

Estimating Revenues

The procedure generally followed in estimating revenues is to list the receipts from each particular revenue source over the last three to five years and project the trend of increase or decrease for the coming year. Caution must be exercised in making such projections where license or tax rates have been changed during the projection period.

A careful check should be made to determine if any state legislation might affect receipts from state-shared revenues for the coming year or if any other factors might affect this source of revenue. If a new license tax is being considered, computations should be made to find out what revenue the tax will be expected to produce. This may be done by contacting a municipality of the same population range. Finally, the budget officer should check with the tax assessor for the assessed valuation of properties within the municipality for the coming year. Ad valorem tax receipts can be computed from these figures. Information relating to auto tag receipts should be obtained from the office of the probate judge.

Budget Reporting

Budgeting is a year-round process. Each month the governing body should receive a report from the officer in charge of finances showing revenues and expenditures during the month and through that date for the year. This report should also show the budgeted figure for such revenues and expenditures. From this report, the governing body should

be able to determine if it was accurate in its appropriations, if departments are performing as they should and if it will be necessary to take remedial action.

Municipal Audits

At least once a year, the mayor shall appoint an accountant to make a detailed examination of all books and accounts of the city or town to cover the period since the preceding examination and make a full report thereof, in writing, under oath to be submitted to the council at its first meeting after the completion of the report. The audit report shall be spread upon the minutes of the council. The mayor is required to employ either an independent public accountant or the Department of Examiners of Public Accounts to conduct this annual audit. There is no prohibition against employing the same accountant for successive years. For services rendered, the accountant shall be paid such sum as may be agreed upon. Section 11-43-85, Code of Alabama 1975.

The mayor **must** secure an audit at least once a year. The council **may not** appoint the accountant. Section 11-43-85 authorizes the mayor to enter into a contract fixing the accountant's fee at a reasonable amount without the approval of the council. The council is legally obligated to pay a reasonable fee for such services, although it did not authorize or take part in the agreement. AGO to the League of Municipalities, November 4, 1959. However, if annual audits have been made for previous years and were accepted by the council, the mayor may not employ, without the consent of the council, an auditor to re-audit the books of the city for such years. AGO to Hon. E. R. Caldwell, June 15, 1965. If the council is not satisfied with the audit provided by the mayor's auditor, the council may order an additional audit to be made by the auditor of its choice.

Section 36-25-4(a)(7), Code of Alabama 1975, authorizes the Ethics Commission to direct the state director of the Examiners of Public Accounts to audit a municipality. Section 11-43-85 authorizes the mayor to request the Examiners of Public Accounts to audit the municipality. AGO 1992-322.

Conclusion

This article does not attempt to cover every particular facet of the budget and auditing processes because space does not allow it. Items such as public improvement assessments, bonded indebtedness and capital improvement budgeting have not been mentioned. It is hoped that the municipal official has found a few helpful suggestions in the foregoing material. The goal of this article is to emphasize the importance of a budget as a management and policy tool, an aid to be used continuously rather than a financial instrument to be adopted and forgotten. ▀



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- Public Works (includes infrastructure projects)
- Public Service (anything not covered in the three subject areas listed above)

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