

The Alabama Municipal JOURNAL

May/June 2014 Volume 71, Number 8



Successful Legislative Session for Alabama's Municipalities

– See page 4 for details





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On the Cover:

League Director of Intergovernmental Relations, Greg Cochran, with Governor Robert Bentley, who signed two key ALM's bills – Local Government Debt Recovery (ACT# 2014-321) and Weed Abatement Revisions (ACT# 2014-303) – into law the week of April 7th.

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Successful Legislative Session for Alabama's Municipalities

Greg Cochran • Director of Intergovernmental Relations • ALM

Sine Die

The Legislature concluded its 2014 Regular Session on April 3rd. In all, 1,102 bills were introduced of which 274 were passed by both chambers, including local bills, constitutional amendments, state agency sunset legislation and bills of statewide application.

Municipal Successes

As I repeat regularly, the League is only as effective as our members are engaged. When our membership engages and speaks with a unified message, the Legislature takes notice. During my 18 years with the League, our most successful “wins” – whether it be on offense or defense – occurred when our members spoke *loudly* and *often*. The 2014 Regular Session was no exception. Thanks to your advocacy, municipal governments fared very well this legislative session.

Three of the League's five priorities passed from the League's legislative package: HB82 Local Government Debt

Recovery (ACT# 2014-321)

by Rep. Clouse and Senator

Fielding; SB273 Weed

Abatement Revisions (ACT#

2014-303) by Senator Beasley

and Rep. McMillan; and HB235

Funding of the ADEM SRF

Wastewater Program (ACT#

2014-284) by Rep. Clouse

and Senator Orr. The League

also supported our municipal

members in the passage of

the following bills: SB402

& SB403 Wind Conversion

Regulation for the Counties of

Etowah (ACT# 2014-191) and

Cherokee (ACT# 2014-190)

by Senator Williams and Rep.

Nordgren; HB64 Sovereign

Immunity for Education

Personnel (ACT#2014-124) by Rep. Jones and Senator Holley; HB299 Direct Pay of Municipal Employees by Rep. Collins; SB108 Criminal Record Expungement by Senator Bedford and Rep. England; and SB19 Public Contracts by Senator Orr and Rep. Clouse.

We successfully opposed several bills that were deemed harmful to local governments including: HB458 Ad Valorem Tax Breaks on Section 42 Housing by Rep. Robinson; HB559 Gun and Ammo Sales Tax Holidays by Rep. Nordgren; HB79 Administrative Court Costs and Docket Fees Diversion to State General Fund by Rep. Poole; SB111 Traffic Schools Oversight by AOC by Senator Orr; HB491 Firefighter Occupational Disease Revisions by Rep. Treadaway; and more than 80 tax exemption or preemption proposals.

We provided advocacy for amending several bills to make them more palatable to our municipal members: HB24 Prompt Payment to Contractors by Rep. Roberts; SB355 Storm Water Phase II Regulation Revisions by Senator Ward; HB89 Alcoholic Beverages in Annexed Territory (ACT#2014-87) by Rep. Ison; HB195 Public Works & Open Competition Act (ACT# 2014-107) by Rep. Butler; HB292 Solid Waste Permitting Process Revisions by Rep. Baker; SB148 One-Call Notification (ACT# 2014-220) by Senator Allen; SB193 Disclosure of Property Purchases (ACT# 2014-133) by Senator



ALM's collaborative efforts with municipal lobbyists have led to legislative success!

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The President's Report

By Mayor Walt Maddox, Tuscaloosa



Municipal Officials: Standard-Bearers of Results-Oriented Government

The writer Victor Hugo correctly stated that “no power on earth can stop an idea whose time has come.” In the macro of American history, it is simple to identify cases that validate Hugo’s belief, such as the civil rights movement or women’s suffrage. However, it is in the micro where we work as municipal leaders; therefore, in every city and in every town, we are uniquely positioned to deliver on the ideas that can transform our communities.

Nearly a year ago, when you provided me the honor to serve as your president, I pledged not to bide time or inherit a title because the challenges we faced were too great for pomp and circumstance. I have endeavored to be engaged with our members and discuss ideas and issues that were meaningful and relevant to our roles as public servants and to the Alabama League of Municipalities. What I have experienced at listening tours, CMO trainings and League meetings is that towns and cities across this state are demonstrating that the public sector can work effectively when the focus is on results and not rhetoric. Clearly, municipalities are demonstrating the capacity and the wherewithal to address infrastructure, economic development, education and so much more. From Loxley to Southside, from Alexander City to Jackson, I have seen the amazing work of mayors and city councilors who believe in the power of local government and its ability to improve quality of life by simply believing in an idea and working it to its natural conclusion.

My greater hope is that in the near future our work will inspire the federal and state levels of government to place people ahead of partisanship. As municipal leaders, we have the unique ability to effect positive change across political and geographical boundaries. Our formula for success is simple – our priorities are without shades of red or blue and work is never subjected to the review of political bosses who place ideology ahead of innovation.

Every day, in hundreds of municipalities across Alabama, local elected officials forgo the politics of fear to chart a course where listening, understanding and working together are considered essential duties of the office. Quite simply, municipal leaders get things done regardless of race, religion, politics or socio-economic status – we are the standard-bearers of results-oriented government.

I believe that our results are grounded in the relationships we have and will continue to build. We are not lobbied in spacious government corridors or upscale restaurants by special interest groups. The people we have the honor of working for know where to find us whether it is at home, at the grocery store or at the ballpark. We are fortunate to have a covenant with our fellow citizens that cannot be broken by time and space.

As we move forward, we must strengthen these relationships because our challenges are ever increasing, especially unfunded mandates. Rising to this occasion will require us to leverage the bonds we have with our constituents, and use it as a call to action, especially when holding everyone accountable.

Relationships are also important as it relates to the League. Our League ensures you will not be alone when meeting these difficult situations. As I stated at last year’s Annual Convention, we are not an abstract organization in a faraway place. We are Priceville, we are Gadsden, we are Robertsdale and we are all the great cities and towns throughout Alabama.

Understanding this, I encourage each of you to utilize the services provided by *your* League and its amazing staff. It is important to note that this relationship is not a one-way street. If Alabama’s municipalities are going to succeed, it is going to require all of us to be more active and involved. As stockholders, we must invest our time, talent, treasure and ideas so the League can educate, advocate and be our voice in Montgomery.

As I close this final article as your president, I want to reinforce a core belief that I have lived by as mayor: **We serve people and not bureaucracies.** We are very fortunate to be serving something greater than ourselves. This path requires us to never forget that behind every statistic is a father, mother, friend or fellow citizen who is striving for a better quality of life. As municipal leaders, we have a statutory and moral obligation to provide top-tier services, eliminate red tape and create a culture of innovation. By meeting the high expectation of putting people first, we elevate our politics, and most importantly, we elevate the communities we have the honor of serving.



Without a doubt, the honor has been mine to serve you as League president. I am truly thankful for this opportunity, and I look forward to the new ideas from whose times are coming. ■



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Municipal Overview

By Ken Smith, Executive Director



Why Grant Proposals Fail

It is an unfortunate reality that the vast majority of grant proposals are going to fail. There simply isn't enough money to fund every project, no matter how important it is to the person submitting the proposal and no matter how much time, energy and effort went into drafting the grant proposal.

There are steps you can take, though, to help improve the chances that your proposal will be considered and, perhaps, funded. Don't give the grant agency a reason to reject your proposal without giving it due consideration. This article is based on one that was originally published in the September, 2013 issue of *City & Town*, a publication of the Arkansas Municipal League. It was written by Chad Gallagher, a consultant and former mayor of De Queen, Arkansas. The portions taken from that article are reprinted here by permission.

Grant writing is both an art and a science. Every grant proposal is submitted with hope and expectation. When writing a grant the writer eats, sleeps and breathes the proposal. To write the proposal well, the writer should believe in the proposal and expect it to be funded. Even on proposals where the funding odds are lower than others, there is still a genuine hope to see it funded. Inevitably in grant writing you will face many of those days. Finding out that a proposal has not been funded is always disappointing. When it happens, what you do next can be as important as writing the proposal itself.

Why do proposals fail? Sometimes a proposal's failure isn't because it wasn't well written. The application may have met the necessary scores but competing applications scored higher. The demand for the funds could have significantly outpaced the funding availability or a variety of other issues – regional, political, etc. – could have arisen. However, there

are some common mistakes that hurt proposals. Here are some reoccurring mistakes that doom grant applications:

Not following directions. Not following the guidelines provided for grant applicants or leaving out a required document will almost always automatically disqualify your application from even being considered. It seems so simple but it's true. Many grants fail for not carefully observing all the rules of the application.

Poor or sloppy appearance. If you are proposing to achieve something great with the funding agency's funds, your application should be well organized. Presentation matters.

Poor spelling and/or grammar. This only hurts your effort. Proofread your proposal carefully.

Failure to demonstrate experience in similar projects or a reasonable ability to administer and implement the program. It is important to build confidence with the funding agency for your organization. A great idea is useless in the hands of someone incapable of bringing it to reality. You must give the funder faith.

Project outcomes are unclear or immeasurable. They must easily be able to tell if the funding achieved success.

Method of implementation is off. If it doesn't seem to achieve the anticipated goal then it is an ineffective method. Your process should match the destination.

A weak evaluation strategy. Make sure you are using appropriate measures to monitor the compliance and success of your proposal. You want to be sure that your proposal has measurable results.

Math errors in the budget section. Your teacher was right: Math is important.

Failure to appropriately justify budget requests. Agencies don't like to see greedy applicants.

Lack of appropriate experience among key personnel.

If your personnel lack the background needed to perform the work, your proposal isn't sound. Be sure to address any questions about resources or equipment you will use to facilitate your project as well.

A failure to clearly identify the need or problem to be addressed by the project. The idea may be great but what is it solving or addressing in your community. Do you really need it?

Lack of an appropriate commitment in matching funds, resources or manpower. Funding agencies like to see demonstrated commitment to projects.

Failure to demonstrate project sustainability beyond the funding cycle of the requested grant.

Failure to sign a required form. Yes, this happens.

Lack of clear and appropriate verifiable data for the need and the selected method of addressing the need. Every grant application declares a need. It is important that you support these statements with verifiable and dependable data that demonstrates the need. Likewise it is important to

provide strong support for why the solution you propose is best and will work.

You aren't writing for your audience. Each grant proposal should be unique, not simply a rewrite of a former proposal. Know who is providing the funding and why, then tailor your request to meet their purpose.

This isn't an exhaustive list, but it certainly covers some of the most common pitfalls seen over the years.

As the old saying goes, when life hands you lemons make lemonade. When you receive the unfortunate news that your grant application was not funded you must somehow turn it into a good day. The best way to do that is to start asking, "Why?" When an application isn't funded, try to find out why it was rejected so you can improve for the next time and avoid an unnecessary mistake in other applications. Ask your contact at the agency to explain to you why your application didn't make it. Ask for the score sheets from the review process. Ask for constructive criticism. Request copies of successful applications. All of these steps will aide you in becoming a better grant writer. ■

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The Legal Viewpoint

By Lori Lein, General Counsel



Complying with Alabama's Immigration Law

Based on questions the League's Legal Department received during this past business license cycle, a certain degree of confusion remains about Alabama's immigration law as it relates to municipal government compliance with the law. Known as the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, the law is codified at Sections 31-13-1 et seq. of the Code of Alabama 1975. Many of the law's provisions have been struck down by the federal courts or amended by the Legislature. What remains includes several provisions directly impacting municipal government operations. This article addresses those areas of the law affecting municipal government. In order to determine if your municipality is in compliance, answer the following three questions:

Question 1: Is your municipality registered with E-Verify and SAVE? It is important to understand that E-Verify and SAVE are two distinct programs serving different purposes.

E-Verify

E-Verify is an electronic program through which employers verify the employment eligibility of their employees after hire. In short, employers submit information taken from a new hire's Form I-9 (Employment Eligibility Verification Form) through E-Verify to the Social Security Administration and U.S. Citizenship and Immigration Services (USCIS) to determine whether the information matches government records and whether the new hire is authorized to work in the United States. E-Verify is administered by the U.S. Department of Homeland Security, USCIS, Verification Division and the Social Security Administration.

Under Alabama's immigration law, all Alabama employers with employees located in the State of Alabama are required to be registered with E-Verify. This includes all Alabama municipalities. Section 31-13-9, Code of

Alabama 1975. An out of state company with no employees in Alabama does not have to comply with this section of the law.

Proof of Enrollment by Contractors – No Affidavit Required

Unlike the law as originally passed, **there is no requirement** that contractors and subcontractors doing business with municipalities provide sworn affidavits as a condition for the award of a contract, grant or incentive by state, county or municipal governments in Alabama. While contractors are not required to provide any type of sworn affidavit with regard to enrollment with E-Verify, they are required to demonstrate proof of enrollment in E-Verify in order to contract with a municipality. The law does not specify what documentation must be provided but there is little doubt that a copy of the Memorandum of Understanding (MOU) entered into between the contractor/business and the Department of Homeland Security to use the E-Verify system would suffice as sufficient documentation of enrollment.

When the law was amended in 2012, it eliminated the requirement that contractors obtain affidavits of compliance from their sub-contractors in order to avoid liability for their violations. However, it imposes a new "constructive knowledge" standard for contractor liability for the violations of sub-contractors assigned any portion of a government contract. Any subcontractors who work with general contractors who have been awarded contracts by the municipality must be enrolled in E-Verify. The general contractor should be aware of this requirement and have a system for assuring compliance. *A municipality is **not** responsible for assuring a subcontractors' compliance.*

Only Competitively Bid "Contracts"

What constitutes a "contract" under this provision of the immigration law? One of the 2012 amendments included a definition of contract as: a "contract awarded by the state,

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any political subdivision thereof, or any state-funded entity that was competitively bid ...". Section 31-13-9(l), Code of Alabama 1975. Only contractors who are entering into a contract with a municipality pursuant to a competitive bid process must provide documentation of enrollment with E-Verify. Therefore, a municipality does not need to get proof of E-Verify enrollment just to make a purchase at a local store unless the purchase is made pursuant to a competitive bid process.

Because contracts with other governmental entities are not subject to the state bid laws, there is a good argument that the documentation of E-Verify enrollment requirement does not apply to contracts between governmental entities. However, we caution municipalities that if they choose to competitively bid a contract, even if they are not required by law to competitively bid, they should obtain documentation of E-Verify enrollment from the contractor.

The League recommends that for all contracts entered into through a competitive bidding process (through the Competitive Bid Law, the Public Works Law or simply by choice of municipal officials), municipalities should consider including in the invitation to bid a statement advising bidders that they must comply with Section 31-13-9, Code

of Alabama 1975. Municipalities should advise that if the bidder employs persons in the State of Alabama, then the bidder must provide documentation that they are enrolled in the E-Verify program along with the bid. Additionally, the bidder should be advised that if they employ persons (anywhere), that the award of the contract is conditioned on the bidder not knowingly employing, hiring for employment or continuing to employ an unauthorized alien within the State of Alabama. Finally, the League recommends advising bidders that any awarded contract will contain a provision, as discussed in Question 2 below, whereby the bidder promises not to violate federal immigration law.

Grants and Incentives

Although not as prevalent as municipal contracts, Section 31-13-9, Code of Alabama 1975, also applies whenever the municipality awards any incentives and grants. All municipalities should be on alert to identify any grants or incentives to which this rule may apply. Any entity that employs one or more employees within Alabama that receives a grant or incentive from a municipality must provide documentation of enrollment with E-Verify.

SAVE

Section 31-13-29, Code of Alabama 1975, requires Alabama's municipalities to verify the legal status of individuals seeking certain benefits from a municipality. The only method of verifying status is through the SAVE program. The SAVE Program is a web-based service that helps federal, state and local benefit-issuing agencies, institutions and licensing bureaus determine the immigration status of benefit applicants to help them ensure that they are issuing benefits to individuals entitled to receive them. The U.S. Department of Homeland Security (DHS), U.S. Citizenship and Immigration Service (USCIS), Verification Division, administers the SAVE Program.

By federal law, the SAVE program can only be utilized in very limited situations. Under Alabama's immigration law, one area that meets the federal law for the use of SAVE is for the issuance of business licenses. All Alabama municipalities should register with SAVE and be prepared to use the program to verify the legal status of individual business license applicants ONLY if they cannot otherwise provide proof of citizenship or legal status in the United

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States. More on business licensing in Question 3 below.

The League has worked with the federal government to establish a streamlined process for registration with SAVE. Visit www.alalm.org/save-program.html for more information on registration.

Question 2: Is your municipality using the required contract language?

Section 31-13-29, Code of Alabama 1975, requires that all state, county and municipal “contracts” and agreements contain the following language:

By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

With the definition of contract contained in this section limiting itself to contracts that are competitively bid, there is an argument that this language is only required for contracts that are competitively bid. However, the language of the law also says “agreements” and, therefore, it is the recommendation of the League that this language be included in any written agreement or contract irrespective of whether it was entered into as a result of a competitive bid process.

Question 3: Is your municipality confirming citizenship of individual business owners applying for a business license?

Section 31-13-29, Code of Alabama 1975, requires individual applicants for a municipal business license to prove either citizenship or lawful presence in the United States for all initial applications for a business license. Citizens and permanent residents will be exempt from proving lawful status for subsequent renewals after the initial verification is made.

In the League’s opinion, this requirement only applies to “individuals”, including individual partners in a general partnership, but would not include LLC’s, corporations or partnerships with a legal status other than a general partnership. A person’s citizenship can be demonstrated by using any one of the documents listed in Section 31-13-29, Code of Alabama 1975. A person’s citizenship can be demonstrated by using any one of the following documents:

1. A driver’s license or nondriver’s identification card issued by the Alabama Department of Public Safety or the equivalent governmental agency of another state within the United States, provided that the governmental agency of another state within the United States requires proof of lawful presence in the United States as a condition of issuance of the driver’s license or nondriver’s identification card.
2. A birth certificate.

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The Alabama Department of Revenue (ADOR) is responsible for the administration, collection and enforcement of more than 50 state taxes and fees, with annual collections exceeding \$9 billion, as well as the sales of all property acquired and sold by the state for delinquent property taxes. With 22 divisions and an average of 1,200 employees, ADOR hasn't always had an amenable relationship with Alabama's local governments – something Revenue Commissioner Julie Magee has made a priority to change, especially when it comes to administering taxes.

Governor Robert Bentley appointed Magee, a Mobile resident and former vice-president of the Mobile-based InsTrust Insurance Group, to the post of State Revenue Commissioner in January 2011. With a career spanning more than 20 years in the business community where she largely focused on competitive sales and market expansion in the insurance industry, Magee brought to ADOR a keen understanding of marketing and the importance of relationship building.

“I don't have the answers to solve every problem put in front of me, but I do have 1,200 really smart people I can go to for solutions,” Magee said. “We're really big on task forces around here. We create task forces to solve problems because I think the more heads you put together in a room, the creativity helps come up with better answers. We run the whole Revenue Department that way.” She also said she strongly relies on a team management approach and that she, along with her assistant commissioner, Michael Mason, and two deputy commissioners, Joe Garrett and Curtis Stewart, makes almost all major decisions in a group setting, including a concerted effort to work more strategically with local governments.

“Mike (Mason), my assistant commissioner, has been here 37 years,” she said. “He knows what was tried and worked; what was tried and didn't work; what's he's always wanted to try but didn't have the resources to support. Back when he started, the cities and counties didn't have the authority to administer their own taxes. The State did it all. He knows how bad we were at it. He's the one who's told me that we deserved the reputation we had.”

Magee said she's had strong support from

Governor Bentley, who has allowed ADOR to implement programs previous administrations thought were too controversial, ultimately leading to the One Spot program allowing businesses to file tax returns and pay city, county and state sales taxes via one centralized online system rather than submitting multiple tax reports.

One Spot

A ground-breaking program, One Spot is the result of a law passed in 2012 that set the stage for a more efficient system using existing ADOR software to allow businesses to file tax reports and pay sales, use and rental taxes for state, cities and counties simultaneously.

Magee said it didn't make sense that the state and the taxpayers had invested just over \$50 million for a software programming platform that manages more than 50 different taxes when local governments were doing essentially the same thing. “All the cities and counties were doing the same thing we were doing but using a totally different process to do it.”



Alabama Revenue Commissioner Julie Magee was appointed by Governor Robert Bentley in January 2011.

she said. “Some were automated. Some, like Jefferson County, had written their own systems. Some had outsourced it to a vendor. At the end of the day, it meant taxpayers were filing and remitting tax returns and payments in 400-plus different ways.”

Through One Spot, however, when the information on the return is electronically filed by the taxpayer, the system then sends the information and the payment to the right place. One Spot programming includes the local jurisdictions’ IDs so the taxpayers know they’re remitting to the correct jurisdiction. Behind the ID is the bank account and routing number for that local jurisdiction so the money automatically goes from the taxpayer’s account into the locality’s account – a seamless transaction. And, according to Magee, there’s an added bonus: “Because One Spot streamlines the reporting and collection process, counties and cities are now receiving taxes they never got before from businesses they never knew existed that are operating in their jurisdiction,” she said.

After an 18-month planning period, One Spot went live October 1, 2013. The way the statute (Act 2012-279) is written, every local jurisdiction (city and county) must participate in One Spot – either directly or through a vendor. According to Magee, just over 200 cities use a third-party vendor. For those localities that chose not to use a vendor but have limited software/hardware – and in order to avoid an unfunded mandate from Montgomery – ADOR has made \$1 million dollars available per year for three years via integration grants to allow local jurisdictions to connect to One Spot. “The Department recognized that for some localities, especially those with outdated systems, the implementation wasn’t so simple,” she said. “Some localities are hand-keying the information. They’re running reports, printing them out and then looking at the reports and keying in the information. Those are the localities I want to get a grant from us to put in hardware and software so they don’t have to hand key in the information.”

Approximately \$600,000 of the first million has been distributed thus far and Magee said ADOR has yet to reject an application. The integration grant application is a simple, two-page form and can be obtained by contacting Deputy Commissioner Curtis Stewart at Curtis.Stewart@revenue.alabama.gov.

Overcoming Implementation Obstacles

Magee said the 18-month planning period leading up to One Spot’s October 1st launch was often contentious. “The burden on getting started was really on the cities and counties,” she said. “They had the hardest burden in order to implement this – and they didn’t trust us because in the past we weren’t trustworthy.” Magee emphasized that she understood operating in a silo had been an issue for ADOR in the past so she made a concerted effort “to break down any sort of thinking that indicates Revenue first and local jurisdictions second.” She’s also firmly committed to creating a user-friendly experience for the taxpayer. “I really think that when it comes to tax collection, we had to streamline the approach so that the end-

user, the taxpayer who’s collecting and remitting the tax, has the best experience possible,” she said. “I believe that if you can leverage the steps in the process using one source, everyone benefits from that. So that was the whole rationale behind One Spot – leverage the state software so that a local jurisdiction can use it and the taxpayer can benefit through the ease of the process. A local official is a taxpayer, too. And their taxes paid for Revenue’s system.”

The first few weeks of the launch were challenging. “We had some glitches,” Magee said. “Our first month, we had 116,000 tax returns filed through One Spot. We’re up to around 166,000 now so there’s a lot of different users.” In addition to file formatting issues, Magee said ADOR inadvertently double-dipped into the accounts of about 500 taxpayers for two days without knowing it. “I was mortified over the error and so, between the nine taxpayer service centers throughout the state, we contacted every account and, in many cases, notified the taxpayer before they even knew it happened.” According to Magee, none of the service centers reported anyone angry over the glitch and that, instead, they repeatedly heard from taxpayers that they were extremely happy to have the One Spot system for filing.

One Spot Weekly Conference Calls

Magee said the Department is continually making improvements to One Spot based on feedback from municipalities and counties. For example, ADOR went live on March 1 with several specific innovations requested by the locals, including FEIN numbers with the sales tax returns so businesses can be easily tracked. The innovations have been generated through a series of weekly conference calls ADOR began sponsoring soon after One Spot launched in October.

“The conference calls were a very simple thing to do and probably one of the most important things we’ve done,” Magee said. The calls are open to anyone who wants to participate and are held every Tuesday at 10:30 a.m. During the calls, issues and solutions are discussed. Participants are also encouraged to send emails after each call to further discuss any issues they may be having with the program. The calls also serve as a way for the different jurisdictions to learn from each other. Reports from each session are available on ADOR’s website at <http://revenue.alabama.gov/salestax/oslclindex.cfm>. Magee said when they first implemented the calls, they lasted about an hour and a half each. Now that a lot of the early issues have been rectified, the calls may last around 15 minutes with 10 to 20 people on each call.

“I’m not afraid of competition and I’m not afraid of accountability,” Magee said. “If we can’t put a superior product out there that people want to use instead of another product, that’s on us. Our goal was to work with all the stakeholders, listen to their concerns and their needs and meet them. Once that’s done, you’ve established proof of concept. And that’s what we’re doing with One Spot, establishing proof of concept – that we’re dependable and that our decisions are based on

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how things affect the local jurisdictions. I believe once proof of concept is firmly established, there's no reason not to explore adding lodgings tax and other things like that to One Spot. The ultimate goal is to make it easier on business owners to do business with the State, the cities and the counties."

Technology and Data Protection

Magee said she feels ADOR is an early adopter of technology. The Department's tax collection software platform is designed such that additional processes can be added as needed. "We're one of 22 states using the same software, customized for Alabama," Magee said. "So if you're a multi-state business, our system looks really familiar to Georgia's and Louisiana's and others across the nation. Alabama has actually leveraged all the software's modules more than any other state."

Thanks to ADOR's software platform, the Department is now completely paperless. Magee said she was able to drop a \$100,000 per year lease on a 30,000 square foot warehouse and shred everything in storage because the Department went paperless. In addition to going totally paperless, 92 percent of the tax returns filed in Alabama by this past March were electronic. Three years ago, it was 78 percent. Last year ADOR went live for the first time with a simple, online Alabama State income tax return service that allows one to log onto the ADOR website, create an account and file his or her state income tax return free of charge. In addition, Magee said simple steps have been taken to save time and money. For instance, all checks are electronically scanned and the money goes directly into the bank, thus avoiding the need for physical deposits.

Data protection is also a top priority. "We have protected our data more so than probably any other state," Magee said. "We're the only state that has a five-person team dedicated entirely to security – just in Revenue. Five people's full-time job is to protect

the security of the taxpayer's information. We are forced now, because of ID theft and security breaches, to spend much more time protecting the taxpayer's information and trying to protect our systems from being breeched and basically trying to avoid sending out fraudulent tax refunds. We are trying to do everything within our power to verify and validate information."

For example, Magee said the Department recently added a driver's license field to enable individual verification through the Department of Public Safety so "we know you are who you say you are." If the field is left blank, it doesn't affect the process. The return can still be filed. However, Magee emphasized that this verification process is simply another way of using existing state agency resources to validate information and protect the taxpayer. "When your ID is stolen and used for a tax return, you can't file your own taxes," she said. "It is a nightmare to un-ring that bell." Catching individuals who create bogus tax returns is very important to the Department.

Aiding in Economic Development

ADOR has an Economic Development Division with three fulltime employees who meet with local city officials, county commissioners, chamber of commerce officials and existing business owners to determine what tax incentives and credits a project qualifies for. "You don't have to hire a law firm, you don't have to hire a lobbyist," Magee said. "Those three people work, free of charge, with the local officials to make sure that they know what exists and, if the project goes through, there's never any mistakes or question about the qualifications because all our incentives are statutory in nature and these employees know intimately how they're supposed to be applied. They work in tandem with the Department of Commerce on economic development projects as well as working with individual entities when requested."



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Magee said the Alabama Department of Commerce is always the lead and responsible for getting the project off the drawing board. "Then we are brought in along with any other appropriate agency that may apply, such as Alabama Power or the local chamber of commerce, and we do a team recruiting approach. Usually we're all sitting around the same table at the same time. That way we all hear what everyone has to say. It's a transparent recruiting process. There's never any question about what does or does not qualify. Not all the questions are answered right away, but most of them are. It's very reassuring to the business owner and the local officials that we're all on board together at the same time."

Magee said that in her three years with ADOR, she's learned other states have a contentious relationship between the Departments of Revenue and Commerce. "They don't want to give out tax credits and tax incentives to recruit new business," she said. "In Alabama we work together. Before one shovel of dirt is overturned, everybody has the knowledge they need in order to know what to expect."

Departmental Changes

Since her appointment as Revenue Commissioner, Magee has aimed to improve ADOR's reputation and the way it does business. "I've only been here three years, but I stepped into a really well run agency and well educated agency so I didn't inherit a lot of broken things; however, there were some things that needed to be rectified," she said. "We had a huge problem with nepotism so we rewrote almost the entire personnel handbook the first year I was here. Elementary stuff. I don't have a tax background but I do have a marketing and managing background. We rewrote a lot of the HR policies and brought them more in line with real-world models. We also made a lot of internal changes, mostly due to retirements. I took a couple of divisions that were, in my opinion, of critical importance to the overall tax revenue in our state that weren't getting the resources they needed and made them their own box on the organizational chart."

Magee said the rest of the changes have involved efforts to bring to fruition the good ideas that longtime employees have wanted to implement – programs such as One Spot and, more recently, a new online insurance verification system which will, hopefully, payoff down the road with fewer people being hit by uninsured drivers. "ADOR is verifying the liability portion of each person's car insurance every 30 days for every car that has an Alabama tag," Magee said. "That way, if someone lets an insurance policy lapse after the first payment, the system will catch it during the next 30-day cycle." Magee said Alabama is currently the only state to implement this particular program and that the Ohio Governor's office recently contacted ADOR to determine how the program works in Alabama so it can be replicated in Ohio.

Marketplace Fairness Act

In July 2013, Magee was elected chair of the Multistate Tax Commission (MTC), an intergovernmental state tax organization that works on behalf of states aiding in the administration of tax laws applying to multistate and multinational enterprises. After serving as vice-chair and treasurer of the MTC, she was the first

person from Alabama to hold this top leadership role with the organization and she has been very involved in national efforts to pass the Marketplace Fairness Act.

She fully expects the Marketplace Fairness Act to eventually become law and said once it passes, One Spot will help ease the transition. "When One Spot was created, it wasn't because of the Marketplace Fairness Act; however, when the Act passes, we'll need to have a mechanism to receive and distribute the out of state sales tax," she said. "So with One Spot, we look like we have a crystal ball in preparing for Marketplace Fairness Act. Other states know that our One Spot process has put us light years ahead of them. We are well poised for the six month period before any state can collect when the Act passes because in that six months you have to register all the businesses that don't already have accounts in your state – *thousands* of new businesses. We've already got our system in place via One Spot."

Stay Informed

ADOR's comprehensive website, www.ador.alabama.gov, covers many areas, including One Spot information. In addition, Magee strongly encourages local officials to sign up for the free notification services offered through ADOR to stay informed about current updates and changes affecting various state and local Alabama taxes. Visit www.revenue.alabama.gov/maillinglist/subscribe.cfm to begin receiving these important notices. ■



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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. When trying to determine what Alabama law applies in a particular area or on a particular subject, it is often not enough to look at a single opinion or at a single provision of the Code of Alabama. A review of the Alabama Constitution, statutory law, local acts, administrative law, local ordinances and any relevant case-law may be necessary. 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 Supreme Court Releases Opinion on Municipal Employee Liability:

On Friday, March 14, 2014, the Alabama Supreme Court issued its decision in *Morrow v. Caldwell*, --S.3d--, 2014 WL 982969 (March 14, 2014). The case involves a wrongful death action brought by the mother of minor who was electrocuted when he came in contact with a chain-link fence at a residence. The case was brought against, among others, a City of Montgomery electrical inspector in his individual capacity for negligence in inspecting the premises where the accident occurred. Specifically the plaintiff alleged that the inspector had acted recklessly, wantonly, or willfully. The inspector's motion for summary judgment was denied. The Circuit Court agreed to certify the question of whether or not the municipal damages cap of \$100,000 applies to a municipal employee sued in his individual capacity.

The League, along with others, filed an amicus brief in the case. The Supreme Court granted oral argument which was heard on August 14, 2013.

This is a case where bad certified questions make bad law. The Court held that the cap on damages for claims against a municipality does not limit the recovery on a claim against a municipal employee in his or her individual capacity. It is perhaps important to note that the facts of this case only involve claims for willful and wanton acts on the part of the city inspector and there is some discussion by the Court of this fact. The Court, however, pointed out that the only recovery that is capped is the recovery from a municipality in those limited situations in which a municipality could be held liable in a negligence action, either directly or by way of indemnity.

For a copy of the case or more information, please contact the League.

ALABAMA COURT DECISIONS

Nuisances: A city ordinance's definitions of "junk" and "nuisance" cannot be arbitrary, unreasonable, and overbroad,

since cities may not, under the guise of police power, impose restrictions that are unnecessary and unreasonable upon the use of private property. A resolution authorizing a nuisance abatement submitted by the housing code department, accompanied by a list of the properties containing alleged nuisances and a short description of the alleged nuisances by housing code department employees, was itself sufficient evidence and that no additional evidence was required to shift the burden of proof to the property owners. *K & D Automotive, Inc. v. City of Montgomery*, --- So.3d ---, 2014 WL 803375 (Ala.2014).

UNITED STATES COURT DECISIONS AFFECTING ALABAMA

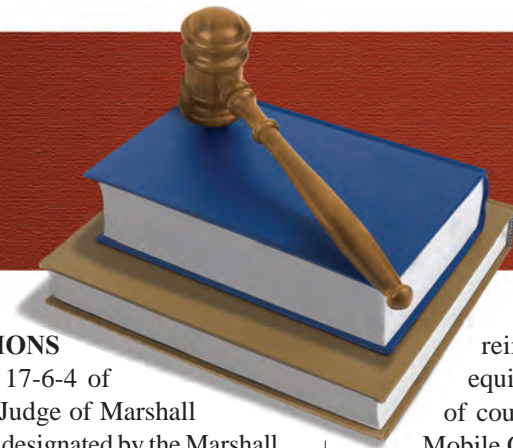
Criminal Law – Search and Seizure: A resident's objection to a warrantless police search will not prevent police from obtaining valid consent for the search from someone else if they lawfully remove the objecting resident from the premises. The Fourth Amendment force of residents' objections to searches dissipates once the residents are no longer "present," even if the reason the residents are no longer present is that the police removed them. *Fernandez v. California*, 134 S.Ct. 1126(2014).

DECISIONS FROM OTHER JURISDICTIONS

Constitutional Law-Freedom of Speech: City cannot force adult bookstores to close overnight when other retail businesses are not similarly regulated, because its justification of "fewer armed robberies" was not statistically significant, and a city may not regulate the secondary effects of speech by suppressing the speech itself. *Annex Books, Inc. v. City of Indianapolis*, 740 F.3d 1136 (C.A.7 Ind. 2014)

Criminal Law – Search and Seizure: Police need to get a warrant before searching the data on an inmate's mobile phone that is being stored in a jail property room. *State v. Granville*, 2014 WL 714730, (Tex.Crim.App. 2014)

Immigration – Detention: States and localities are not required to follow immigration detainers issued by the federal government. Language in federal regulation dealing with immigration detainers, providing that, upon determination by federal officer to issue such a detainer to a local government agency for detention of alien or suspected alien, such agency "shall maintain custody of the alien for a period not to exceed 48 hours," is not mandatory, but merely as indicating that, if the individual was held in custody pursuant to detainer, any such detention could not exceed 48 hours. *Galarza v. Szalczyk*, --- F.3d ---, 2014 WL 815127 (C.A.3 Pa. 2014).



ATTORNEY GENERAL'S OPINIONS

Elections: Pursuant to section 17-6-4 of the Code of Alabama, the Probate Judge of Marshall County shall use the voting precincts designated by the Marshall County Commission for special elections concerning fire districts. (NOTE: This opinion only applies to a county election.)

Streets and Roads: Because the county commission never accepted the streets located in the subdivision that is within the corporate limits of the town, the county is not obligated to maintain those streets. AGO 2014-042

Education: A policy adopted by a local school board pursuant to section 16-1-24.1(a) of the Code of Alabama must prohibit all persons, other than authorized law enforcement personnel, from bringing or possessing any deadly weapon or dangerous instrument on school property. Act 2013-283 does not modify or rescind the requirements of section 16-1-24.1(a) of the Code. A board of education that has not previously adopted an express policy prohibiting all persons, other than authorized law enforcement personnel, from bringing or possessing any deadly weapon or dangerous instrument on school property is required to do so. AGO 2014-044

Capital Improvement: Section 11-29-6 of the Code of Alabama permits the use of capital improvement funds to

reimburse other county accounts for the use of equipment and materials in the general maintenance of county roads. Once the funds are transferred, the Mobile County Commission may utilize those funds for the broader purposes applicable to the reimbursed account. (NOTE: This opinion only applies to the County Government Capital Improvement Act. However, the definitions in section 11-29-3, Code of Alabama 1975 of the County Government Capital Improvement Act are similar to the definitions in section 11-66-3, Code of Alabama 1975 of the Municipal Government Capital Improvement Act) AGO 2014-045

Entertainment District: Assuming all other aspects of section 28-3A-17.1 of the Code of Alabama are met, a city is authorized to establish an entertainment district because the city operates a recognized main street program as required for Class 7 municipalities pursuant to section 28-3A-17.1. AGO 2014-046

Competitive Bid Law: The city water works and sewer board may purchase equipment through the National Joint Powers Alliance ("NJPA") without violating the competitive bidding requirement of section 41-16-50 of the Code of Alabama, provided the board complies with all of the requirements of section 41-16-51(a)(16) of the Code. AGO 2014-050 ■

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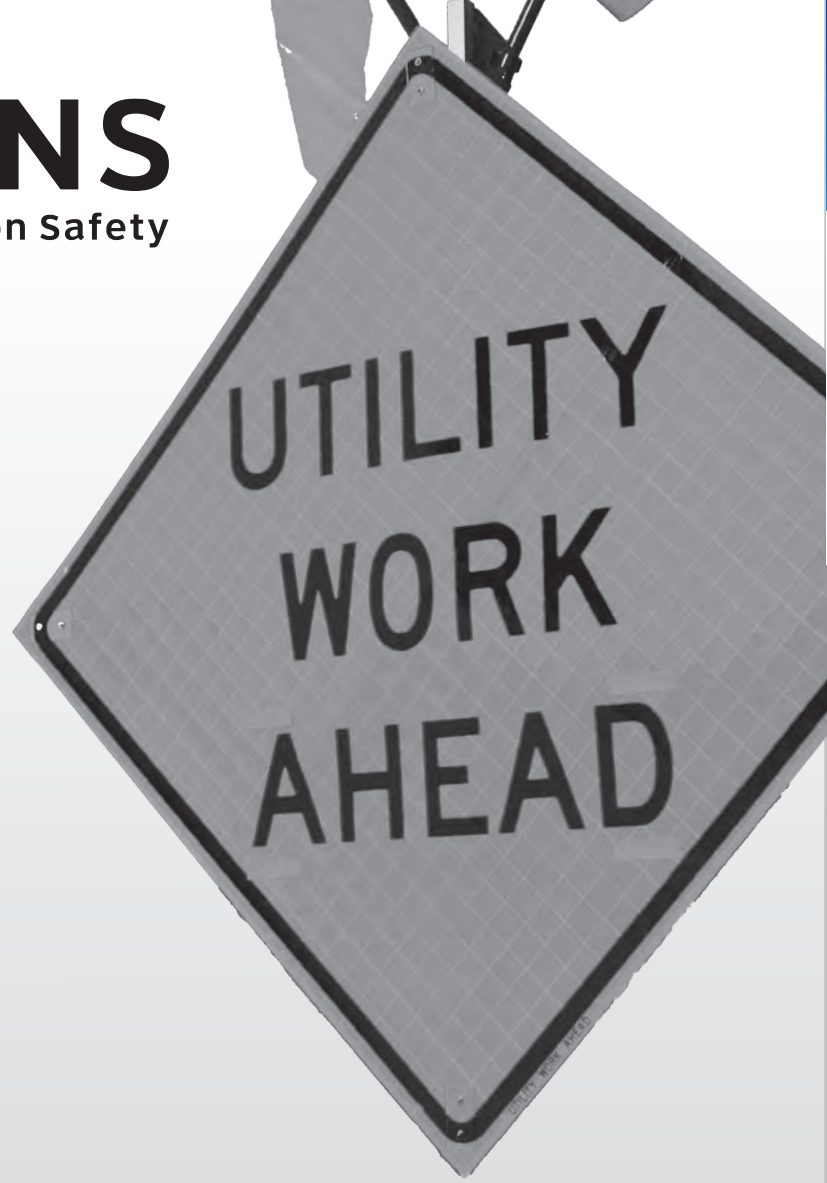
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Risk Management:

A Tool to Protect Local Governments

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Photo by Elmore DeMott © 2013

Local government officials take risks every day. Many of them are built into the type of work local governments perform, such as law enforcement, infrastructure maintenance and recreation. Others are based on decisions elected officials or top administrators make in running the government, such as in hiring and firing of employees. The erosion of sovereign immunity combined with new laws and regulations over the past 40 years has increasingly made public agencies targets for lawsuits, and growth in complexity of public services and ubiquitous availability of personal communication devices have exposed local governments to a greater degree of risk than ever before.

Progressive city and county governments are doing something about the greater risk exposures they face by creating effective risk management programs. Risk management is a systematic organizational approach to minimizing the adverse effects of loss exposures. Coe (1980, 4) defined risk management as “a process for identifying and controlling risks of all kinds – from accidents, thefts, and fire to equipment breakdown and liability suits.” It means comprehending that there are potential negative consequences of any decision, process or action. The organization must anticipate them and minimize their effect. A comprehensive risk management program considers all aspects of the organization’s functions and attempts to develop policies, programs and procedures that ensure that risk exposure is minimized.

The erosion of sovereign immunity combined with new laws and regulations ... has increasingly made public agencies targets for lawsuits, and ... have exposed local governments to a greater degree of risk than ever before.

The Importance of Risk Management

Why is risk management important? For the organization not attuned to risk management, it is likely that more dollars and time will be unnecessarily spent dealing with lawsuits or claims that arise from poor practice, lack of training, or faulty decision-making. Every dollar spent on liability claims, injuries and accidents is one less dollar available to provide the services that citizens have paid for and demand (Reeves 2013). Coe (1980, 3) identified several objectives of a well-conceived and well-managed risk management program:

- To protect government assets;
- To ensure a safe environment for employees and for members of the public who come into contact with these employees as services are provided;
- To minimize the possible interruption of vital public services;
- To safeguard that all exposures to financial loss are discovered and handled;
- To reduce the costs of accidents, including insurance premiums, through effective safety management;
- To reduce other financial losses by using efficient reduction procedures.

Risk management, then, is more than a modern name for insurance management. It is a dynamic process because new laws are passed, employees leave and new ones are hired, new equipment is bought and other equipment becomes dangerous to operate and the mix of services changes, as do the providers in some instances. For example, if a local government decides to contract out a service that was previously provided by government employees, the risk manager has to recognize that she has to control a new and different set of risks.

Public Official Liability

Risk management involves more than public official liability, but it is the area that generates the most litigation for local governments. Public official liability is concerned with errors, omissions and wrongful acts (misfeasance, nonfeasance and malfeasance) of public officials. It typically shows up in constitutional violations in employment or land use regulations.

Examples of public official liability include sexual harassment, wrongful termination, due process violations, failure to train, disparate treatment and impact, annexation, zoning and permits, such as taking, failure to issue permits or enforcement actions or failure to act (Reeves 2013).

Rosenbloom and Carroll (1990) argued that all public administrators have a duty to become “constitutionally competent” because of the complex legal world in which they operate. The Supreme Court declared in 1982 that “a reasonably competent public official should know the law governing his conduct,” and can be held legally liable for violating the constitutional rights of others (Rosenbloom and Carroll 1990, xi). Public officials must comprehend the elements of constitutional competence that include the following: “(a) a broad familiarity with constitutional values; (b) knowledge of the scope and structure of individuals’ substantive, procedural, and equal protections rights; and (c) a concern with integrating constitutional values and rights into administrative practice” (Rosenbloom and Carroll 1990, 170). Section 1983 of Title 42 of the U.S. Code is the primary civil rights act used in litigation against public officials and local governments (Wasserman and Phelus 1985, 77). It reads in part:

Every person, who, under color of any statute, ordinance, regulation, custom or usage, of any state or territory ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured

by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.

It was enacted originally as Section 1 of the Ku Klux Klan Act of 1871 in response to the unlawful activities of the KKK in the South following the Civil War. For 90 years, the Act was seldom used except on occasion to protect voting rights of citizens, and the courts were reluctant to interpret the law except in the narrowest sense. Wasserman and Phelus (1985, 77) pointed out that the modern era in the use of Section 1983 in civil rights cases began in 1961 when the United States Supreme Court ruled that police officers were individually liable for unlawful activities. However, the Court in *Monroe v. Pape* declared that the city was not a person and was therefore not subject to Section 1983.

In 1978, after thousands of cases in state and federal courts had been decided on the basis that municipalities were not persons, the Supreme Court reversed more than 100 years of precedent and held that municipalities were persons under the Act (Wasserman and Phelus 1985, 78). The *Monell v. Department of Social Services of the State of New York* decision opened the floodgates of litigation against local governments in the United States making the warning of Rosenbloom and Carroll (1990) for public administrators to be constitutionally competent critical.

To understand the impact of the *Monell* decision, consider that in 1961 there were approximately 250 pending federal civil

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rights cases, while in 1983 there were 241,842 suits filed in federal courts (Wasserman and Phelus 1985, 78-79). During the first eight months of 2013, over 81,000 charges were filed with the Equal Employment Opportunity Commission (EEOC) under Title VII, according to the EEOC Office of Research, Information and Planning website. Another 30,000 discrimination charges were filed with EEOC under other civil rights laws, such as the Americans for Disabilities Act (ADA) and the Equal Pay Act (EPA). Since the *Monell* decision, local governments have had their share of the hundreds of thousands of lawsuits filed

If it is not possible to eliminate the risk, then there are risk reduction techniques that can be effectively employed to lessen losses.

under Title VII. The liability and defense costs associated with employment claims and other sources of liability have significant impacts on local government efficiency (Reeves 2013).

Risk Management Decision-Making Process

The effective risk manager follows a five step decision-making process that Head and Horn (1991, 6) spelled out as follows:

- (1) Identifying exposures to accidental loss that may interfere with an organization's basic objectives;
- (2) Examining feasible alternative risk management techniques for dealing with these exposures;
- (3) Selecting the apparently best risk management technique(s);
- (4) Implementing the chosen risk management technique(s); and
- (5) Monitoring the results of the chosen technique(s) to ensure that the risk management program remains effective.
- (6) Coe (1980, 11) noted that these steps are not one-time activities, but all must be on-going to keep pace with the constantly changing environment of local government.

In the identification stage, the risk manager recognizes that there are at least four types of risks: damage to property, loss of property, loss of income or increased costs because of damage to or loss of property and liability to others as a result of injury to persons or property (Coe 1980, 11). The risks that a local government faces are not always readily apparent. As a result, the risk manager realizes that she has to use several approaches to determine the risks that the city government faces. For example, documents, such as budgets, financial reports, contracts, leases and policy and procedures manuals, must be reviewed. Has a policy been created by the chief administrative officer or the governing body that is illegal or unethical? Is there anything in the budget that violates ethics or other state laws?

The risk manager should also periodically inspect all city-

owned premises and operations (Coe 1980, 11). Are there dangerous conditions on playgrounds, sidewalks, or in public buildings that might lead to lawsuits from citizens who are injured because of the city's negligence? Are city employees following accepted methods in working on the streets or in trenching for utility or public works repairs? Are proper warning signs placed in entrance ways to public buildings during or after a rain or snow storm? Once the risk manager identifies violations, then her notice to correct the dangerous condition must be followed by appropriate line personnel. It is critical that the mayor or city manager make clear to all management employees that risk management is an important responsibility of everyone in the organization.

Once risks are identified, then the local government must take steps to control the risk. Coe (1980, 16) suggested that the risk manager subject each risk to the following sequence of questions. Can the risk be:

1. Eliminated completely?
2. Reduced to be not significant in cost?
3. Assumed partially or in total by government?
4. Transferred to insurers through risk assumption agreements?

In the identification stage, the risk manager may evaluate probable frequency and severity on a matrix that has four possible degrees of loss: low frequency, low severity; high frequency, low severity; low frequency, high severity; and high frequency, high severity (Reeves 2013; also see Coe 1980, 17-18). While all risks must be taken seriously, those identified as high severity must receive the organization's urgent attention.

The most effective way to control risk is to eliminate it completely, and Coe (1980) recommended that risks that pose the most severe threats should be evaluated carefully to determine if they can be eliminated. In order to eliminate a risk, the organization must either change the way something is done, or stop doing it altogether. Generally, the former is easier to accomplish than the latter, although some services that are no longer needed because of changes in technology or practice can be eliminated. Coe (1980, 22) noted that a town that cannot adequately train its volunteer firefighters might contract with an adjoining town to provide fire service. Or, playground equipment that is outdated should be removed and modern safe equipment installed or the playground closed.

If it is not possible to eliminate the risk, then there are risk reduction techniques that can be effectively employed to lessen losses. "When possible, the effective risk manager asks how it can be done rather than saying no," according to Wernette (2013). One approach is to have a formal safety program. Assistance from the National Safety Council is available for local governments that are interested in having professional advice on how to organize and manage a formal safety program. Safety programs are not created or conducted in a vacuum, but must have organizational support from top executives with buy-in from everyone in the organization. Safety needs to be part of the organizational culture, and safe practices need to be

followed by all departments in the city government.

“At the crux of the risk control process is the question of how much risk to assume and how much to insure,” Coe (1980, 27) stated. He noted that at one extreme, all risks are insured while at the other end, only risks are insured if required by law. Generally, neither approach is correct. Insuring against every risk leads to excessive insurance cost, while insuring only what the law requires could lead to financial disaster. Another approach in controlling risk is to transfer it. Risk can be transferred by pooling coverage with other local governments. A good example is the pooling of risk associated with workers’ compensation programs. Cities can also use hold harmless agreements effectively transferring risk to the company doing business with it. The most popular risk control technique is through the purchase of insurance. The risk manager can play an important role in determining how much and what types of insurance to buy, as well as comparing costs and effectiveness of various policies.

Alabama League of Municipalities and Risk Management

The Alabama League of Municipalities (ALM) has been at the forefront of risk management efforts for cities in the state for many years. This service has been especially important for the hundreds of municipalities that cannot afford their own risk management staffs. By pooling resources through ALM, cities are able to have excellent insurance and other risk management programs that they may not be able to afford individually. In

2002, the Loss Control Services Division of ALM was formed through a joint effort of two ALM-founded programs – the Alabama Municipal Insurance Corporation and the Municipal Workers Compensation Fund. Through consolidation, the Loss Control Services Division was able to provide more staff and service at less cost to member cities.

ALM’s risk management website (www.losscontrol.org accessed October 17, 2013) described the ALM program as follows:

The Loss Control Division has 12 dedicated staff members and offers a variety of services, including an Employment Practices Hotline, regional and on-site training programs on a number of loss prevention topics as well as exclusive, state-of-the-art training such as the SkidCar defensive driving program and the Firearms Training System (FATS).

ALM assigns loss control representatives to one of four different regions of the state. One of the services provided by the ALM Loss Control staff is for a risk management site review that covers all operations of the city government. Recommendations to address potential risks and how to mitigate them are included in a formal report to the municipal leaders. Another advantage of this excellent program offered by ALM is that it facilitates sharing of information among the member cities. If one city is faced with a certain risk, it is likely that other cities will be faced with it as well.

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Examples of Risk Management Programs in Alabama

The City of Auburn established its risk management program in 1987 when two circumstances developed: 1) insurance premiums doubled, and 2) the litigious environment in which local governments operate became more pronounced. The first risk manager was situated in the Finance Department, but was later permanently placed in the Human Resource Department (HR). To a large degree, this placement reflects the city's greatest risk exposure which has to do with lawsuits arising from personnel issues. In addition, the first risk manager was promoted to HR Director, and had the most knowledge of risk management in the organization.

The City of Auburn has an extensive risk management policy that covers all the potential areas of risk, including safety of employees and equipment. The policy states that it is the city's intention "to take reasonable precautions against accidental losses, injuries or damages that would, in the aggregate, affect the city's financial position or ability to fulfill its public responsibilities." The risk manager reports to the HR director, and the HR director reports to the city manager. All department heads are also charged with the responsibility to support the risk management program and "to identify and minimize the risk of accidental loss, injury, or damage to city employees, public and private property and the general public." According to HR director Steve Reeves (2013), Auburn's long-term experience with the risk management program has lessened the city's exposure to losses and made city facilities and infrastructure safer for citizens and employees.

Dothan has had a safety program for many years. In 1987, as a result of the increase in insurance premiums for municipalities, Dothan decided to self-insure many of its risks. As a result, an aggressive risk management program was established with a safety manager in charge of safety and health, insurance placement/evaluations, claims investigations and multiple other duties (Gougler 2013). The safety manager reports to the general services director who reports to the city manager. Safety manager Trampas Gougler (2013) stated, "Overall, the City of Dothan employees embrace the safety and health programs and understand the tremendous cost savings that an effective risk management program gives to the citizens and employees of the City of Dothan." Mr. Gougler (2013) noted that he explains to employees that on-the-job injuries not only result in pain and suffering for employees, but also "costs the city tremendous amounts associated with those injuries and that the money spent on such injuries is unrecoverable."

Tuscaloosa has an active safety management system headed by safety director Willie Simpson who serves as a resource for all city departments. As safety director, Mr. Simpson ensures that city departments have the necessary training and equipment to provide a safe work environment for their employees. Tuscaloosa's insurance carrier does a monthly inspection and forwards the results to the safety director who works with the department heads to address all safety or risk concerns. The safety director is located in the city's human resource

department. Mr. Simpson (2013) noted, "Our risk management program is in its infancy, and I am still putting together a safety needs assessment for our various departments."

Conclusion

Over the past 40 years, local governments have learned to be proactive in guarding against the numerous risks they face. As Cragg and Kloman (1985, 7) explained:

The erosion of government immunity to third-party liability suits, the lack of effective risk controls, the increasing cost of governmental insurance, and the fact that insurance companies are no longer willing to write governmental entities have all led to an increased interest in risk management, a process for developing practical solutions to these problems.

Alabama local governments have not been immune from greater risks. It is likely that all Alabama cities of greater than 5000 population have been subject to at least one lawsuit over the past 30 years. For most, the number is much greater. In addition to avoiding lawsuits, local governments have a responsibility to their employees and citizens to provide a safe environment for work and play. In conclusion, risk management should be systematically conducted by trained personnel, should have top management's full support, and is the responsibility of every local government public official and employee. ■

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3. Pertinent pages of a United States valid or expired passport identifying the person and the person's passport number, or the persons United States passport.
4. United States naturalization documents or the number of the certificate of naturalization.
5. Other documents or methods of proof of United States citizenship issued by the federal government pursuant to the Immigration and Nationality Act of 1952, as amended.
6. Bureau of Indian Affairs card number, tribal treaty card number or tribal enrollment number.
7. A consular report of birth abroad of a citizen of the United States of America.
8. A certificate of citizenship issued by the United States Citizenship and Immigration Services.
9. A certification of report of birth issued by the United States Department of State.

10. An American Indian card, with KIC classification, issued by the United States Department of Homeland Security.
11. Final adoption decree showing the person's name and United States birthplace.
12. An official United States military record of service showing the applicant's place of birth in the United States.
13. An extract from a United States hospital record of birth created at the time of the person's birth indicating the place of birth in the United States.
14. AL-verify.
15. A valid Uniformed Services Privileges and Identification Card.
16. Any other form of identification that the Alabama Department of Revenue authorizes, through an administrative rule promulgated pursuant to the Alabama Administrative Procedure Act, to be used to demonstrate or confirm a person's United States citizenship, provided that the identification requires proof of lawful presence in the United States as a condition of issuance.

A legible photocopy or a copy in digital or other electronic formats of any of the above forms of identification are acceptable under this section of law.

For anyone unable to demonstrate citizenship by one of the methods provided, the law requires that their status must be verified through SAVE. It has been the experience of some of the League's members that they have not had to utilize the SAVE program because it is only used in the case of individual business owners who cannot provide one of the above methods of proof. The League has available sample business license forms used by some municipalities for obtaining the necessary proof of citizenship and lawful presence.

Conclusion

It is important to answer and understand the three questions contained in this article in order to assure compliance with Alabama's immigration law. Please visit the League's website, www.alalm.org, for more information on the Immigration Law and contact the League's Legal Department if you have any questions. ■



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Loss Control Website Loaded with Resources!



In January 2002, the Alabama Municipal Insurance Corporation (AMIC) and the Municipal Workers Compensation Fund (MWCF) consolidated their risk management efforts and created a joint Loss Control Division. This solidarity allowed the two insurance programs, which have many common members, to provide a variety of safety services, including site visits, regional training, proactive driver and firearms training, at half the price. Now, nearly 12.5 years later, the Loss Control Division is an integral part of both the AMIC and MWCF programs and continually strives to provide members with useful risk management information. One way we meet that goal is through our dedicated website – www.losscontrol.org – which was launched in 2012.

In addition to staff bios, territories and contact information, losscontrol.org provides information on upcoming training (SkidCar, FATS and loss control seminars) as well as:

- Links to nearly 100 applicable safety and health websites
- PDF links to every issue of *Risk Management Solutions* published since Fall 2002
- A searchable index of topics offered through our Safety Video/DVD Library
- Employment Hotline information
- Sample Risk Management Review surveys and information about the review process
- Online training
- **NEW!!** A *comprehensive* library of reference documents and PowerPoint presentations covering everything from Accident Investigations to Volunteers, Inmate Use and Ride Alongs

Over the past few months we've added a comprehensive list of reference documents sorted via topics A-Z. They're easy to find: "Reference Documents" is the first item listed under "Quick Links" to the left-hand side of the homepage. More than 100 documents are currently available, including safety guidelines, sample policies and attorney general opinions, as well as 38 PowerPoint presentations covering a range of topics such as Accident Investigation, Equipment Safety,

Risk Management Principles and Controlling Property Exposures. We will add additional resources on a regular basis so be sure to visit losscontrol.org often.

Last Spring, the Loss Control Division began offering our members another innovative tool to provide quality employee professional development – FREE online training! We partnered with LocalGovU to create an Online Learning Center that provides a variety of course topics, including risk management, human resources, safety and law enforcement. Courses are available on a 24/7 basis from any computer with internet access and are provided at no cost to AMIC/MWCF members. Course topics change on a quarterly basis, with new courses becoming available on the first business day of



January, April, July and October. Written specifically for public entities, these courses consist of short modules that typically take about 30 minutes to complete.

If you're not already accessing the courses through LocalGovU, you will need to choose one person to be your account administrator and ask him/her to set up the account. This person will also receive updates on courses offered each quarter. To set up an account – or to log onto your existing account – visit **losscontrol.org** and click “Online Training” under the Quicklink section to the left of the home screen. Then simply follow the instructions to create an account. A LocalGovU representative will contact you within 48 hours to provide information and set up your staff. After your account has been created, the courses will be made available to you and your staff. A list of courses is also available on **losscontrol.org**.

The Loss Control website is updated regularly so please be sure to visit often. If you have suggestions about topics or information you'd like to see posted, please feel free to contact Donna Wagner at 334-262-2566 or via email at **donnaw@alalm.org**. We appreciate feedback and want to make sure **losscontrol.org** remains a go-to resource for your risk management needs! ■

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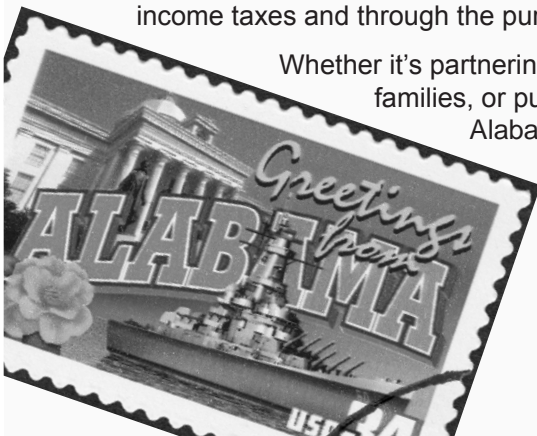
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Pittman; SB207 Municipal Business License Tax of Rental Property (ACT# 2014-15) by Senator Figures; and HB105 Alabama Tax Tribunal (ACT# 201-146) by Rep. DeMarco.

One Spot Business License Resolution

The Legislature passed SJR43 by Senator Blackwell creating the One Spot Business License Interim Task Force charged with studying and developing recommendations for streamlining the application for and payment of municipal business licenses and preparing them to be included in a future online filing system. The task force will include the Revenue Commissioner of ADOR, three voting members appointed by the League, three voting members appointed by the Municipal Revenue Officers Association and four voting members appointed by business interests.

2014 Disappointments/2015 Opportunities

A few bills supported by the League did not receive final passage and we will work with legislators and other special interest advocates on these issues to consider next year. Two League legislative priorities, employee liability protection and municipal election revision, top this list along

with statewide wind conversion regulations, ADOR sales and use tax collections fee reduction and electronic school bus violation citations.

Collaborative Efforts Increases Influence

Realizing that relationships are critical in the legislative process, several years ago the League staff implemented a weekly “lobbyist luncheon” to meet with lobbyists representing municipalities from around the state to discuss their issues and how a combined effort can help move agendas forward. Because the meetings have been extremely successful and allow us to add more voices to the process, we continued them throughout the 2014 Regular Session. Working together is always critical; however, it was even more important this year during a legislative election cycle where we faced a much more focused and shorter Regular Session – which, of course, meant fewer opportunities to pass key municipal legislation.

The League is extremely appreciative of the municipal lobbyists who worked closely with us throughout the session. I can’t emphasize enough the influence and



ALM Director of Intergovernmental Affairs Greg Cochran, Governor Robert Bentley and ALM Vice President Mayor Wally Burns at the League’s Executive Committee Meeting, January 23, 2014. (Photo by Jamie Martin)



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- Former Director of Corrections
Large Florida State Court

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

- Court Clerk
Large Municipal Court

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- Judge
Alabama Court

Benefiting the Defendants...

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

- Emma G., Defendant
Florida State Court

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

- Danny B., Defendant
Marshall County, Alabama

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

- Craig A., Defendant
Foley, Alabama

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strength these individuals add to our advocacy efforts. Through this collaborative effort, we have gained much greater influence with the Legislature. Please join us in thanking Hal Bloom, Perry Roquemore, Jr. and Allen Sanderson of The Bloom Group; Martin Christie and Maeci Martin of Christie Strategy Group; Beth Marietta Lyons of Lyons Law Firm; Britton Bonner and Mark Gaines of Adams and Reece; Steve Raby of Direct Communications; Michelle Jordan, Economic and Legislative Affairs Director for the City of Huntsville; Greg Jones of the Jones Group; Daryl Perkins of Master Solutions; Ryan Welch with Forbes Tate; D. Curt Lee, Attorney at Law; John Guthrie, Jr. of Governmental Affairs Consultants; Michael Cole with Wilmer & Lee; and Bobby Tom Crowe of RT Crowe and Associates.

Relationships Matter Year-Round

The 2014 Session concluded early so legislators could begin working the campaign trail – which means many of you will be hearing from state officials as they seek continued support for office. Please keep in mind that the relationships you forge are not about party affiliation but about building partnerships between those who serve in the Legislature and the communities they represent. These relationships

matter because they are essential for grass roots advocacy – and ultimately passing (or defeating) legislation. You, as a local government official, are a bridge between Alabama’s legislators and their local constituents.

Once your relationships are established, *use them*. Keep your legislators informed and on task – not just when the Legislature is in session, but when they visit your communities asking for support. Make sure they understand the effects of legislation on your municipality and your constituents. Remind them that your constituents are also *their* constituents. Hold them accountable for what they do and how they vote. Most importantly, *thank* them for their support of the League’s bills this session. *Relationships matter*.

2015 Legislative Session

The Legislature will convene in January for their Organizational Session to select the leadership, Speaker of the House and Senator Pro Tem and to adopt rules of procedure. The 2015 Regular Session begins on Tuesday, March 3. The last possible day of the 2015 Regular Session is Monday, June 15. Should you have any legislative questions or need additional information please feel free to contact me at 334-546-9092 or by email at gregc@alalm.org. ■

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Overtime Rules Under the Fair Labor Standards Act – A Refresher Course

Daniel D. Crean, Executive Director of the New Hampshire Municipal Lawyers Association

The Fair Labor Standards Act (FLSA) includes many provisions governing overtime. Bearing in mind that state law may treat employees more favorably than the FLSA, here are some useful guidelines.

Q: If an employer pays an employee a salary, is the employee automatically exempt from overtime? A: Though salaried and exempt employees are sometimes viewed as the same, overtime must be paid even to a salary basis employee unless the employee is otherwise exempt by meeting very specific criteria, including being paid on a salary basis at prescribed levels, and meeting standards such as those set for administrative, professional, and executive employees.

Q: If overtime is not “authorized,” must overtime rates be paid? A: An employee who works overtime hours (in excess of 40 hours per week under the FLSA) must be paid overtime for the excess hours, regardless of whether the overtime was authorized. Even an employer’s policy prohibiting overtime unless authorized will not relieve an employer from paying overtime. Discipline may be imposed in accordance with personnel policies for violating the requirement that overtime be authorized, but the employer must still pay overtime.

Q: May an employee waive the right to overtime, at least if the waiver is in writing? A: Simply put, the right to overtime pay under the FLSA may not be waived by non-exempt employees by agreement with the employer.

Q: May an employee’s hours be averaged over 2 workweeks to determine if overtime is due? A: With the limited exception for first responders, the FLSA requires the use of a single workweek to determine if an employee is due overtime, regardless of the employer’s pay cycle. For example, if the pay schedule is bi-weekly, and an employee works a total of 80 hours over the two workweeks, the employee would qualify for overtime if, for example, during week 1 the employee worked 45 hours and during week 2 worked 35 hours.

Q: Are overtime pay rates based solely on the employee’s computed hourly pay rate? A: The FLSA requires correct use of an employee’s actual (“regular”) hourly rate of pay (whether paid on a salaried or hourly basis). That “regular” rate of pay is calculated by dividing the total pay for employment in any workweek by the total number of hours actually worked. In so computing this regular rate of pay, the following must be included (or may be excluded where noted), with the further caveat that some of these would likely not apply to municipal employment: salary or hourly rate of pay; reasonable cost of employer-provided room and board; tips; commissions; piece rate; nondiscretionary bonuses (bonuses promised to employees before the work begins); on-call pay; cash payments under a cafeteria plan; and shift differentials.

But there are some exclusions, including, but not necessarily limited to: gifts; discretionary bonuses; payments made for vacation, holiday, or illness; reasonable payments for traveling expenses; contributions made to a retirement, life, accident, or health insurance plan; and any value or income derived from employer-provided stock options.

Q: Must paid time off for holiday, vacation, or sick leave be included in determining when an employee is eligible for overtime? A: If an employee is permitted to take time off for a holiday, a vacation, or due to illness, the time off, even if the employee is compensated for that time, does not constitute hours worked and need not be included when determining the total hours worked for overtime purposes. [Note: State laws may differ and employers by policy, collective bargaining agreement or individual employment agreements may be more “generous.”]

Q: What about “rest” or “break” periods? A: Under the FLSA as interpreted by the US Department of Labor (DOL), rest breaks are considered hours worked and therefore must be included in computing hours worked for overtime purposes. The DOL says a rest break is any period lasting 20 minutes or less which an employee is allowed to spend away from work. However, bona fide meal periods are not considered rest periods and are not deemed hours worked that must be included in the overtime calculation so long as the meal period lasts at least 30 minutes and the employee is fully relieved of all duties for the purpose of eating a regular meal.

Q: Has the DOL produced any reference materials to assist employers with the overtime issue? A: The DOL recognizes that determining overtime pay issues is not without problems. Accordingly, it has promulgated a “Model Salary Basis Policy” under which an employer may be permitted to avoid the more drastic consequences that may arise from improper pay deductions for salaried employees. That sample policy reads as follows (taken from www.dol.gov/whd/regs/compliance/fairpay/modelPolicy_PF.htm (last visited 11/13/13)).

MODEL SALARY BASIS POLICY

Overtime Security for the 21st Century Workforce

The information below is designed to provide an example of what constitutes compliance for purposes of §541.603(d) (addressing “Effect of improper deductions from salary”) and is for illustrative purposes only. Other policies may comply with §541.603(d) which contain more or less information.

The Model Policy:

The FLSA is a federal law which requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek. However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week ... These salary requirements do not apply to outside sales employees, teachers, and employees practicing law or medicine. Exempt computer employees may be paid at least \$455 on a salary basis or on an hourly basis at a rate not less than \$27.63 an hour. Being

paid on a “salary basis” means an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee’s work. Subject to exceptions listed below, an exempt employee must receive the full salary for any workweek in which the employee performs any work, regardless of the number of days or hours worked. Exempt employees do not need to be paid for any workweek in which they perform no work. If the employer makes deductions from an employee’s predetermined salary, i.e., because of the operating requirements of the business, that employee is not paid on a “salary basis.” If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

Circumstances in Which the Employer May Make Deductions from Pay

Deductions from pay are permissible when an exempt employee: is absent from work for one or more full days for personal reasons other than sickness or disability; for absences of one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness; to offset amounts employees receive as jury or witness fees, or for military pay; or for unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions (see Company Policy on penalties for workplace conduct rule infractions). Also, an employer is not required to pay

the full salary in the initial or terminal week of employment; for penalties imposed in good faith for infractions of safety rules of major significance; or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. In these circumstances, either partial day or full day deductions may be made.

Company Policy

It is our policy to comply with the salary basis requirements of the FLSA. Therefore, we prohibit all company managers from making any improper deductions from the salaries of exempt employees. We want employees to be aware of this policy and that the company does not allow deductions that violate the FLSA.

What To Do If An Improper Deduction Occurs

If you believe that an improper deduction has been made to your salary, you should immediately report this information to your direct supervisor, or to [insert alternative complaint mechanism(s)]. Reports of improper deductions will be promptly investigated. If it is determined that an improper deduction has occurred, you will be promptly reimbursed for any improper deduction made. ■

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2014 Convention Quick Guide

Arthur R. Outlaw Convention Center • Mobile, Alabama • May 3-6

www.alam.org

Meetings and/or events are subject to change. CMO credits can be earned.
See convention program for details.

Saturday, May 3

10:00 a.m. - 5:00 p.m.	Registration
11:00 a.m.	Resolutions Committee Meeting
1:00 p.m.	AMIC Annual Meeting
3:00 p.m. - 5:00 p.m.	OPENING SESSION: Welcome; ALM President's Address; Lt. Gov. Kay Ivey Quality of Life Award Presentations
5:15 p.m. - 6:15 p.m.	ABC-LEO Reception
6:30 p.m.	City of Mobile Welcome Reception

Sunday, May 4

7:30 a.m.	Annual Municipal Golf Tournament • TimberCreek Golf Club, Daphne
10:00 a.m.	Prayer Service
1:00 p.m. - 5:00 p.m.	Registration
1:30 p.m. - 3:00 p.m.	Peer-Led Discussion Groups: Using Social Media to Reach Citizens; Improving Mayor/ Council Relations; Budgeting and Finance for Municipal Officials; Council/Manager Government Roundtable; Street Festivals, Food Trucks and Related Issues
3:15 p.m. - 4:30 p.m.	Concurrent Sessions: Long Term Disaster Recovery Panel; Retail America: What's Ahead for Your Community; Municipal Liability (CMO Core Session); Council/Manager Roundtable cont.; Maximizing the Value of Your Rights of Way
5:00 p.m. - 6:30 p.m.	Exhibitors Showcase and Reception (Expo Hall) *

Monday, May 5

8:00 a.m. - 5:00 p.m.	Registration
8:30 a.m. - 9:30 a.m.	Clerks Breakfast and Business Meeting
8:30 a.m. - 5:00 p.m.	Alabama Association of Public Personnel Administrators: Developing Personnel Polices/Procedures
9:30 a.m. - 11:00 a.m.	Spouses Breakfast
8:30 a.m. - 11:45 a.m.	Roundtables by Population
10:00 a.m. - 10:45 a.m.	Municipal Clerks Session
Noon - 2:00 p.m.	Luncheon in the Expo Hall *
2:15 p.m. - 3:30 p.m.	ASK YOUR ATTORNEY PANEL
3:45 p.m. - 5:30 p.m.	ANNUAL BUSINESS SESSION
6:00 p.m.	Reception
7:15 p.m.	President's Banquet and Entertainment (Jeff Allen, Comedian)

In honor of the 20th Anniversary of the League's Certified Municipal Official Program, Monday is "CMO Pin Day". The League encourages all CMO graduates to wear their lapel pins!

Tuesday, May 6

8:00 a.m. - Noon	Registration
8:30 a.m. - 10:00 a.m.	Concurrent Sessions: Avoiding Negligent Employment Claims; General Powers of Municipalities; Economic Development Considerations for Municipalities
10:15 a.m. - Noon	GENERAL CLOSING SESSION: NLC Update; Keynote Address – Joyce E. Brooks: "Board Management and Effective Communication"; Passport Prize Drawings (must be present to win) *
Noon	Adjourn

* **NEW THIS YEAR! Passport Prize Program:** The League has developed a fun opportunity for our members and vendors during the 2014 EXPO. Our inaugural Passport Prize Program is uniquely designed to give convention delegates the opportunity to speak more directly with participating vendors during convention EXPO hours (May 4-5) as well as the chance to win a prize during the Tuesday morning closing general session. Delegates **MUST** be present to win! See convention program for additional details.

Sales and Use Tax

What constitutes “nexus” for obligating a business to collect and remit municipal sales and use taxes?

On January 1, 2014, a new rule implemented by the Alabama Department of Revenue went into effect addressing a business’s obligation to collect and remit a local jurisdiction’s sales or use tax. This rule applies regardless of whether the business is physically located in the municipality or in the state. The rule does not obligate the business to pay a business license, nor does it obligate the business to pay any other local tax.

The threshold used to determine if a business must collect and remit sales or use taxes to a municipality is the same threshold used to determine whether a business must collect and remit the state sales or use tax associated with interstate transaction. This is done by examining the contacts the business has with the municipality. For example, if a store physically located only in Montgomery delivers goods to Greenville by common carrier (such as UPS or FedEx) and has no other contact with Greenville (such as no sales people in Greenville), the Montgomery store is not obligated to collect and remit sales tax for Greenville. As always, however, the purchaser in Greenville is still responsible for the payment of sales and use tax. If the business delivers to Greenville in its own delivery trucks or if the sale occurred because of a salesperson soliciting within the Greenville, the business would be obligated to collect and remit sales and use taxes to Greenville.

Rule 810-6-5-.04.02 provides other examples of the type of activity that would establish a taxable presence in a local jurisdiction. This rule is accessible at the following web link <http://www.alabamaadministrativecode.state.al.us/docs/rev/index.html> . For more information, please contact the Alabama Department of Revenue Sales and Use Tax Division at 334-242-1490. ■

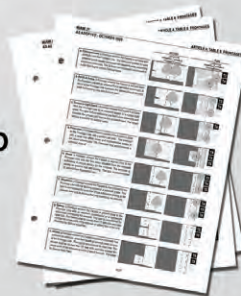


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