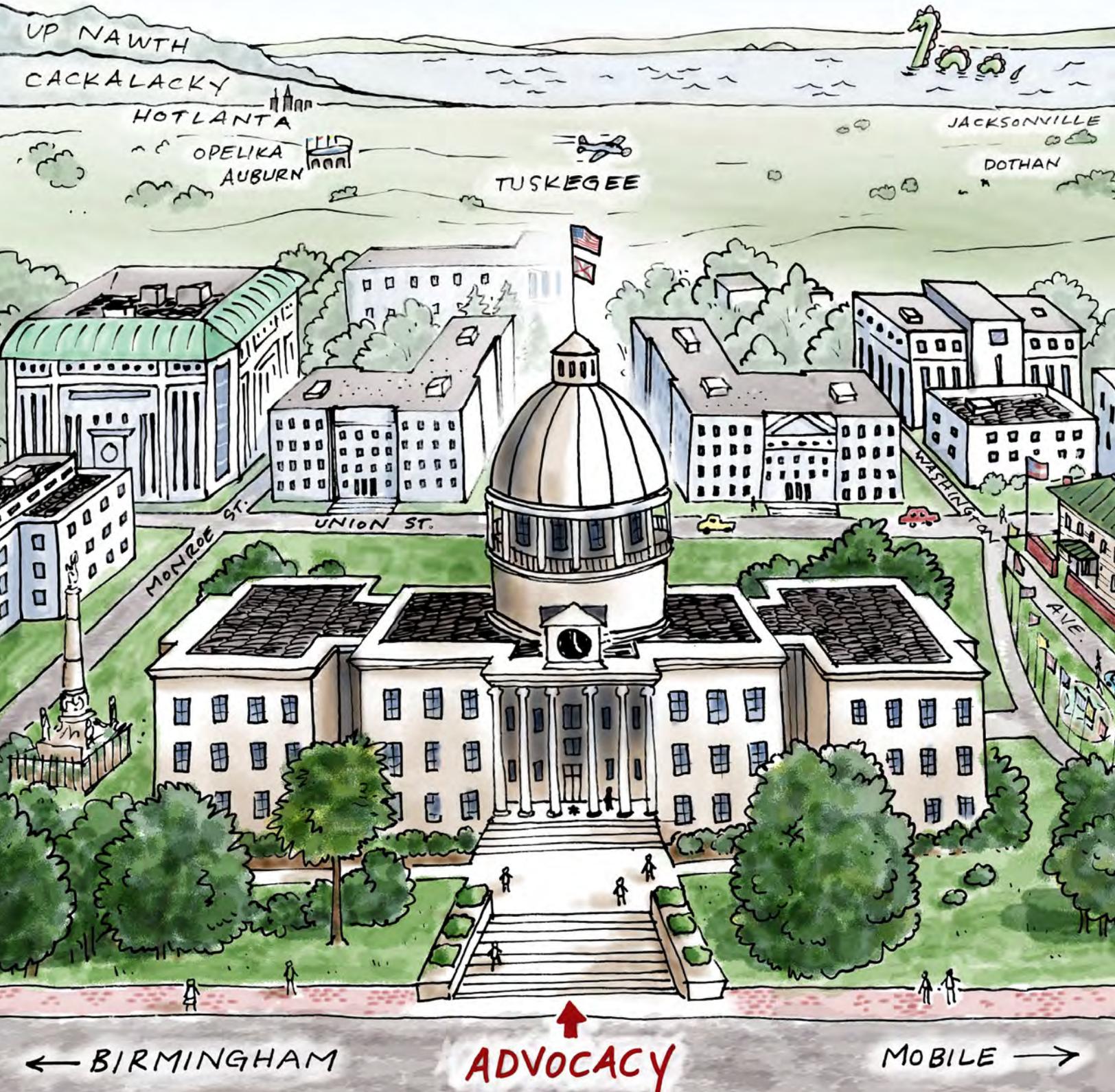


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January/February 2016

Volume 73, Number 4



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On the Cover:

The 2016 Regular Session begins February 2nd. This *Journal* issue explores legislative advocacy, building relationships, legislative goals as well as the League's annual CMO Legislative Advocacy Session scheduled for February 16 in downtown Montgomery. Original cover art by Karl Franklin.

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A Message from the Editor

Happy New Year from the staff of the Alabama League of Municipalities! We closed out 2015 with a very successful Municipal Leadership Institute and CMO Graduation Ceremony and now 2016 is off to a swift start as we prepare for the Regular Session of the Alabama Legislature to begin on February 2nd. To that end, the League will hold its annual Legislative Advocacy CMO program on February 16th at the City Hall Auditorium in downtown Montgomery. An agenda is available on page 25. Visit www.alalm.org to register for this important session. You will also need to make appointments to visit with your legislative delegation ASAP on the afternoon of February 16th between 1 and 4 p.m. To visit House members, call 334-242-7600 and to visit Senate members, call 334-242-7800.



Congratulations to League President Councilmember Sadie Britt of Lincoln and League Vice President Mayor Phil Segraves of Guin on receiving their CMO Emeritus designations during the 2015 CMO Graduation Ceremony this past December!

Are you receiving the League's weekly e-newsletters?

If you're not, I encourage you to subscribe immediately by clicking on the link in the blue box near the top left of our home page at www.alalm.org. *This Week* is emailed to subscribers every Tuesday morning and features upcoming meetings as well as other information of interest to municipal officials and employees. Once the Regular Session begins, subscribers will also receive the *State House Advocate*, which is emailed on Monday afternoons and is the best way for you to stay informed on what's happening at the Legislature throughout the Session as well as our way of letting you know when critical, immediate action is needed from our membership. Please encourage all elected officials and key staff from your municipality to sign up for these important League notices.

Congratulations to our 2015 CMO Graduates!

The League's Certified Municipal Official (CMO) Program was implemented in 1994 and consists of a series of continuing education programs designed for elected municipal officials – mayors and councilmembers – who voluntarily wish to receive formal training in municipal government. Officials who complete 40 credit hours of training are awarded the professional designation of Certified Municipal Official. Those who have already received their CMO designation and complete an additional 40 credit hours of training are awarded the Advanced Certified Municipal Official designation. Those who have received both their CMO and Advanced CMO designations have the opportunity to obtain the Certified Municipal Official Emeritus designation, which is awarded to those who complete a minimum of 120 credit hours of Continuing CMO Education plus 15 points.



This past December, 76 municipal officials received their CMO certification; 43 officials received their Advanced CMO certification; and 24 officials received their CMO Emeritus certification. See pages 45-46 for a complete list of graduates. Photos from the graduation ceremony can be downloaded from three different photo albums posted on the League's Facebook page at www.facebook.com/ALALM/. The albums are titled 2015 CMO Emeritus Graduates, 2015 Advanced Graduates and 2015 Certified Municipal Official Graduates. To download a file, open the photo in Facebook, right click on the photo and select "Save image as ...". The next opportunity to earn CMO credit will be at the February 16th Legislative Advocacy program. We look forward to seeing you there!

Carrie

The President's Report

By Councilwoman Sadie Britt, Lincoln



Advocacy Matters!

I begin my column this issue with a well deserved *congratulations* to three Alabama cities and active League members. LaFayette, Prattville and Selma each received the prestigious Five Gold Medal Award from Let's Move Cities, Towns, and Counties (LMCTC) this past November during the NLC Congress of Cities in Nashville.

Launched by the First Lady in February 2010, Let's Move! is a comprehensive initiative dedicated to solving the problem of obesity within a generation, so that children born today will grow up healthier and able to pursue their dreams. As part of this initiative, LMCTC calls upon local elected officials to adopt long-term, sustainable and holistic approaches to addressing childhood obesity. Local governments that sign up as an LMCTC site are willing to commit to five goals developed with the role of local elected officials in mind and designed to promote sustainable strategies intended to improve the health of local constituents.

LaFayette, Prattville and Selma diligently pursued their goals and now join an elite group of 59 cities and counties across the country that have earned gold medals in each of the five goal areas. This is truly an honor and I'm extremely proud of their accomplishments – not only for the quality of life of their citizens, but for the national recognition they brought to our state. I'm also proud to serve with Mayor Barry Moody of LaFayette, Mayor George Evans of Selma and Mayor Bill Gillespie of Prattville on ALM's Executive Committee.

In addition, I want to congratulate Councilwoman Dejerilyn King Henderson of Troy on her election this past November to a two-year term on the Board of Directors for the National League of Cities. I look forward to working with Councilwoman Henderson as she represents Alabama on the board of our national organization!

Advocacy Matters

Alabama's 2016 Regular Legislative Session begins Tuesday, February 2. We rely heavily on the League to advocate on behalf of local government – especially in protecting our cities and towns from legislation that, even

though might be well intended, would ultimately be damaging to our communities and the quality of life of our citizens.

Alabama is once again facing a significant shortfall in the General Fund Budget which means there's a greater chance for unfunded mandates to be passed to local governments. We have already seen in recent years the responsibilities for transportation, corrections and mental health shifting more and more to local governments while little is done to increase revenue sources – a trend that can not be allowed to continue. I keep returning to my President's acceptance speech and my initial message on the importance of unity. The strength of the League, particularly throughout the legislative process, is derived through a *unified* and *engaged* membership. It is our *duty* as elected officials to remain active in this process – from building and strengthening relationships with our local legislative delegations to responding swiftly and cohesively to requests from the League regarding specific legislation. Please be vigilant. Pay attention to the *State House Advocate*, the excellent e-newsletter that the League staff emails weekly throughout the Session. (If you aren't receiving *State House Advocate*, you can sign up online through the link near the top left of the League's home page at alalm.org.) Contact the League staff and ask questions if you don't fully understand an issue or if you need additional information. Also, please be sure to register for the League's February 16 Legislative Advocacy CMO Session in Montgomery and plan to visit with your legislative leaders that afternoon. The more municipal officials we have at the State House, the greater our impact.

I want to close by congratulating the League staff, particularly Richard Buttenshaw, on the successful December launch of the League's newest program – Municipal Intercept Services (MIS), a debt recovery service allowing municipal entities to attempt to recover delinquent debts owed by individuals by collecting this debt from the individual's state tax refund via the Alabama Department of Revenue. I've no doubt MIS will prove to be extremely beneficial for our cities and towns and I encourage you to research the program further by visiting the MIS website at www.alintercept.org and registering for a regional training session.

Here's to a prosperous 2016 for all our municipalities! ■



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Municipal Overview

By Ken Smith, Executive Director



The Unified Voice of Alabama's Municipalities

Although the word “lobbying” leaves a nasty taste in the mouths of many, most of us engage in some form of the lobbying process every day. The word literally refers to the process of persuading a person or a group of persons to make a decision in your favor. When you asked your parents to borrow the keys to the car on a Saturday night, and had to explain why you needed it and how you would use it, you were engaged in lobbying them for permission.

Similarly, when we attempt to convince members of the Alabama Legislature to support or oppose legislation affecting municipalities, we have to explain how that legislation impacts local government and why it should or should not pass. The process of lobbying the Legislature is one of the primary functions that the League performs for its members.

However, the League cannot perform this alone. When the Legislature is in session, our legislative staff has two paramount responsibilities: (1) to advocate our members' interests directly to senators, representatives and other state officials; and (2) to keep municipal officials informed of – and involved in – municipal-related developments at the Capitol. In many ways, keeping officials involved in the League's lobbying efforts is the most important to these two objectives, because the success of the League during each Legislative session depends upon the collective efforts of the League's legislative staff and our municipal officials and employees.

The 2016 Alabama Regular Legislative Session begins Tuesday, February 2, 2016. Over the years, League lobbyists have often benefitted from the direct participation in the lobbying process by League members. More importantly, legislators are most interested in the opinions of their constituents back home. Therefore, the most effective legislative communications come from the mayors, council members and other city officials and employees to whom the legislator is locally accountable.

The League Team

The League's legislative efforts are headed by our Director of Advocacy and Public Affairs, Greg Cochran. Greg keeps track of daily developments at the Statehouse and communicates the League's positions on bills to legislators. He also coordinates our legislative responses. He is aided at the Statehouse by Hal Bloom and members of the Bloom Group, as well as lobbyists from municipalities across Alabama.

But the League's legislative approach is truly a team effort. Greg is aided by members of our Legal Department, led by our General Counsel, Lori Lein. Lori and our other attorneys, Rob Johnston, Teneé Frazier and myself, review and draft legislation, help Greg negotiate bills and amendments, frequently testify at legislative hearings and help draft the *Statehouse Advocate*, the League's weekly legislative electronic publication.

The League Communications Department, directed by Carrie Banks and aided by Karl Franklin, put together the *Statehouse Advocate*, as well as other updates and publications. They also post legislative updates and bills the League is following on our website, www.alalm.org. We hope you often check our website for important legislative information. The Communications Department also works closely with our Member Services Department to send time-sensitive information by e-mail blasts to those who have requested to receive these updates.

We are proud that the success of our legislative approach has been recognized by our peers. In 2015, the Alabama League of Municipalities was ranked as one of the Top 5 Lobbying Associations in the state of Alabama based on results of an online survey by the *Southern Political Report* sent to lobbyists and government affairs specialists across 13 Southern states.

You and the League - A Team

The League's lobbying success is not our own. We fully

acknowledge that passing or defeating legislation requires teamwork. This is one reason why the League places a strong emphasis on promoting grassroots lobbying by our municipal officials. Contacts and input from our members have enabled the passage of many positive bills and, perhaps more importantly, prevented the passage of uncounted negative bills. We know that when the Legislature again goes into session this January, the participation of our members will once again produce a successful session for Alabama municipalities.

Beyond the League's package, we anticipate legislation on many other issues will directly and indirectly impact municipalities. It is important to know that other associations have their lobbyists poised and ready to present their views to members of the Legislature. Often, we seek to find common ground with these lobbyists and manage to find solutions to problems by working together. But other times, we find ourselves unable to resolve the differences between our views and have to simply work extra hard to try to make sure members of the Legislature agree with us when the votes are taken. Input from other officials that a Legislator knows and respects can make all the difference in passing or defeating legislation.

We will, of course, provide additional information and updates on these proposals and other legislative developments during the session.

How You Can Assist

The following suggestions can help you know that your municipality's views are heard – and listened to by the Legislature during the upcoming session:

1. Keep Well Informed. Our electronic publication, the Statehouse Advocate remains our primary means of communicating legislative information. This publications highlights bills affecting municipalities and includes brief summaries, legislative developments, and occasional requests for assistance, such as the impact specific legislation may have on your municipality and requests for contacts supporting or opposing legislation. Of course, as discussed above, we will contact our members in other ways as well. The Statehouse Advocate is posted on our website on Friday during the session. Check the web each week for the most recent publications. Most of our other legislative contacts will also be made electronically, generally by e-mail. If you are a League member and you aren't already receiving these communications, please let us know.

2. Put Someone in Charge. Our electronic communications are sent individually to our officials, not to the city. Therefore, we hope each official will take the time to review these publications carefully. Many find it helpful to make sure that at least one person in the municipality is responsible for immediately reviewing the Statehouse Advocate and other publications and for initiating a timely response by the city. This person may be the clerk, mayor, the city manager or administrator, the finance officer or someone else. This person should have an awareness of how legislation may impact your municipality and know who to contact in the municipality that may need to know about a particular bill and who may be able to make contacts or compile any needed data. This person can also help coordinate follow up with the League to make sure that your municipality speaks with a singular voice. During the busiest periods of the legislative session, a response from your municipality may be needed very quickly, so it is important that someone have the responsibility for ensuring your municipality is aware of legislation and responds appropriately.

3. Get Personally Acquainted with Your Legislators. Make it your business to become personally acquainted with your senators and representatives. Take a sincere interest in them, and get to know their political philosophy. If you contact your legislators only when you want their support on a legislative matter, it might be too late. It's better to stay in touch with your senators and representatives throughout their terms of office.

4. Respond to the League's Requests for Assistance. Our electronic publications will frequently ask for your assistance in analyzing the effects of a bill or in communicating with legislators. Please respond in a timely manner to League requests for bill reviews and letters, phone calls, faxes or other action in support or opposition. Keep track of your positions and responses. We would also appreciate it if you would send the League a copy of any letter or communication that you write in response to a League request.

5. Act Quickly. Establish a procedure for urgent (one-day) action on bills. Occasionally, a new bill is introduced or an important amendment is proposed that requires immediate response. The League will request that you take immediate action, or the League staff may contact municipal officials in key legislative districts and ask them to call their legislators right away. You'll need a quick

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and simple method to get that call made. Having a person in charge of reviewing legislative information from the League, and letting us know who that person is, will help us expedite this action.

6. Express Yourself. Surprisingly few people ever contact their legislators. This reluctance usually results from the belief that legislators have no time or inclination to answer their phones or read their mail, and that one single contact won't make any difference anyway. In most cases, these views are incorrect. Thoughtful, factually persuasive contacts can cause legislators to review their positions and even change their minds. Although a telephone call or a letter can be very effective, personal face-to-face contact is the most effective approach. Try to talk to your legislators when they are back home in the districts; they are more likely to listen and respond positively in a local environment.

Also, when you are in Montgomery during the session, don't miss the opportunity to drop by and talk to your senators and representatives. While members of the legislature are extremely busy, don't assume that they won't have time to see you. After all, they are there to represent your interests and views. Your senators and representatives need to be directly exposed to people they represent – including you. They need to know what you think about the issues facing your city or town and how pending legislation affects you. That's why they're in the legislature.

The League holds a number of meetings in Montgomery during the session, offering our members time visit with their legislators. We urge you to take advantage of these opportunities.

Be sure to have accurate facts and good arguments about any issues you discuss with your legislators. Make sure you understand the particular bill in question. And if you have questions, please don't hesitate to contact the League's legislative staff for assistance.

7. Write Letters Carefully and Thoughtfully. Each letter you write should address only one bill and should reference the bill number in a separate line at the top of the page. Otherwise, your letter may get lost in the system. Present your position logically and base it on facts. If you have a council resolution, include it with your letter. But don't rely on just the resolution to convey your opinion. The time you take to personally address a bill by drafting a letter often makes the most significant impression. So, if you have a council resolution, don't just send the resolution itself.

Identify the bill you are writing about. Give both the number of the bill and a brief description of its subject matter. Thousands of bills are introduced during a session, and legislators cannot be expected to immediately recall every one of them merely by a number or a vague description. Often, there are many different bills introduced on the same issue and they may confuse the bill you mean with another one. Be brief, specific, and to-the-point. Many issues are complex, but your opinions and arguments have a better chance of being read if they are stated as concisely as the subject will permit.

Remember that your letter will be competing for time and attention with countless others. Most viewpoints can be adequately set forth in a carefully written, one-page letter. Feel free to use background material provided by the League as a basis for your own letters, but please don't simply copy the language. Give facts and opinions concerning the effects of a particular measure on your municipality. Again, the time you spend drafting an individual letter can make an important impact. The importance of contacting a legislator on time cannot be overemphasized. The most eloquent letter does no good if it arrives after a vote.

8. Keep the League Staff Informed. Always forward copies of your letters and emails to the League. Your League staff needs to know to whom you write, when you write, and what you say. And if you receive a response from a legislator, let us know about that, too. The League's legislative staff reads your letters and may incorporate your arguments and local circumstances into League testimony. The League legislative staff may also cite your letters when we talk with your legislators.

9. Recognize the Potential Problems Legislators Face. Legislators are often caught in a crossfire between conflicting interests and opinions. Consequently, their votes may be contrary to your opinion as a municipal official. Your legislators represent all the constituents in your area - even those who may not share your views. Their duty is to represent all the people to the best of their ability. There may be times when you think your legislators are on the wrong track, but they may have facts that are not available to you. Try to understand their problems, outlook, and objectives.

Never threaten political or other consequences if the senator or representative refuses to see an issue your way. Most controversial legislation is the result of compromise – that's the way the system operates. There will be times when legislation does not go your way, so don't be too

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The Legal Viewpoint

By Lori Lein, General Counsel



Conflicting Offices and Interests

As election season approaches, the Legal Department receives many calls relating to problems with the legal incompatibility of elected or appointed offices and conflicts of interest. Even after elections are over, these issues continue to nag public officials and employees. Under the common law (our system of law developed through cases decided by the courts as opposed to strict statutory law), offices were considered incompatible if their functions were inconsistent, one being subordinate to and interfering with the other so as to induce the presumption that they could not be executed impartially by the same officer. Also, at common law, the Biblical admonition that “no man can serve two masters” has been applied to prevent public officers from doing public business with themselves.

In addition to these heritages from the common law, there are definite provisions on the subject found in the Alabama Constitution of 1901 and the Code of Alabama. From a practical standpoint, these laws are the principal guides. Few cases construing these laws exist, but conscientious officials have requested numerous opinions of the Attorney General’s office over the years relating to conflicting offices and conflicts of interest.

This article is a summary of constitutional and statutory provisions dealing with the compatibility of offices and conflicts of interest together with a collection of related opinions from the Attorney General and the courts.

Offices of Profit

State laws which prevent the holding of two offices of profit by the same person at one time have generated more opinions from the Attorney General than any other aspect of this subject. Section 280 Alabama Constitution, 1901, states: “No person holding an office of profit under the United States except postmasters, whose annual salaries do not exceed two hundred dollars, shall, during his continuance in such office hold any office of profit under this state; nor, unless otherwise provided in this constitution, shall any person hold two offices of

profit at one and the same time under this state, except justices of the peace, constables, notaries public and commissioners of deeds.”

In addition to this provision, Section 36-2-1(b), Code of Alabama 1975, provides that:

“No person holding an office of profit under the United States shall, during his continuance in such office, hold any office of profit under this state, nor shall any person hold two offices of profit at one and the same time under this state, except constables, notaries public and commissioners of deeds.”

What exactly does the term “office of profit” mean? The lack of a concise definition for the term has caused most of the trouble in construing these laws. The Alabama Supreme Court gave this guidance: “We are of the opinion and so hold, that any state, county, and municipal office, whether elective or appointive, carrying as a necessary incident to its exercise some part of the sovereign power of the state, the term and salary or prerequisites of which are fixed by law, is an office of profit within the purview and meaning of Section 280, Alabama Constitution, 1901.” *State v. Wilkerson*, 124 So. 211 (1929). Stated another way, an office of profit is one that “derives its authority directly from the state by legislative enactment; its duties and powers are prescribed by law; and its holder is vested with a portion of the powers of government, whether it be legislative, judicial or executive.” *Opinion of the Clerk No. 27*, 386 So. 2d 210 (Ala. 1980).

In *Montgomery v. State*, 107 Ala. 372, 18 So. 157 (Ala. 1895), three tests were established by the court to determine if an office is one of profit:

- whether the sovereignty, either directly or indirectly, as through a municipal charter, is the source of authority;
- whether the duties pertaining to the position are of a public character; that is, due to the community in its political capacity; and
- whether the tenure is fixed and permanent for a definite period by law.

To this might be added that the office must carry with it a

right to compensation for the performance of its duties. See *Opinion of the Justices No. 64*, 13 So.2d 674 (1943).

It is important to understand that these provisions of the law do not prevent a person who holds an office of profit from being a candidate in an election for another office of profit, nor from continuing to hold the first office after election to the second office up to the time the duties of the second office are assumed. *Shepherd v. Sartain*, 185 Ala. 439, 64 So. 57 (Ala. 1913). Acceptance of the second office of profit automatically vacates the first office. *State v. Herzberg*, 141 So. 553 (Ala. 1932). This, of course, is true whether the second office of profit is elective or appointive.

Ruled Offices of Profit

The following positions have been held to be offices of profit either by the courts or by the Attorney General: **Mayor**, 1 Q. Rep. Att. Gen. 85, 88 Q. Rep. Att. Gen. 8, and AGO to Hon. Bentley Hill, July 21, 1972; **members of county board of registrars**, AGO to Hon. W. H. Olvey, July 23, 1959 and AGO 2005-031; **municipal judge** (see exception below), AGO to Hon. Arnold Teks, July 13, 1960, and Hon. P. M. Johnston, September 11, 1964; **county solicitor**, 64 Q. Rep. Att. Gen. 108, and AGO to Hon. P. M. Johnston, September 11, 1964; **member of county board of education**, 77 Q. Rep. Att. Gen. 77 and AGO 1988-114; **supernumerary probate judge**, AGO 1980-518 (to Hon. Don Siegelman,

August 19, 1980); **register of circuit court**, 52 Q. Rep. Att. Gen. 238 and 103 Q. Rep. Att. Gen. 8; **circuit solicitor**, AGO to Hon. Glenn Manning, August 23, 1956; **state docks director**, 88 Q. Rep. Att. Gen. 8, and AGO to Hon. K. L. McRae, July 8, 1957; **member of board of equalization**, 82 Q. Rep. Att. Gen. 20; **member of state legislature**, *Smith v. State*, 162 So.2d 473 (Ala. 1964), and Biennial Reports of the Attorney General, 1928-30, page 636; **councilmembers where their salary has been established by ordinance or resolution**, 103 Q. Rep. Att. Gen. 8 and AGO 1988-114; **holder of any elective office of the county**, 77 Q. Rep. Att. Gen. 47 and AGO to Mayor of Cherokee, August 2, 1956; **police chief**, *Alexander v. State*, 150 So.2d 204 (1963) and AGO to Hon. Larry Moody, November 18, 1975; **county license inspector**, AGO to Mr. T. C. Almon, April 17, 1964; **coroner**, AGO to Hon. Moran Baxter, February 21, 1975; **county commissioner**, AGO to Hon. Charles R. Adair, Jr., January 27, 1975; **district attorney**, AGO to Hon. John Starnes, September 26, 1973; **deputy district attorney**, AGO to Hon. John T. Reid, April 9, 1974; **deputy coroner**, AGO 1979-221 (to Hon. William J. Murray, June 11, 1979); **member of water improvement commission**, AGO 1979-160 (to Hon. Robert Gulledege, April 26, 1979); **supernumerary probate judge**, AGO 1980-518 (to Hon. Don Siegelman, August 19, 1980); **fire chief**, AGO 1981-235

continued page 14



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MAXIMUM VALUE FOR TOWER LEASES



Greg Fender, Local Government Services, LLC

Typically, cellular companies prefer to lease space for their equipment on city property rather than on private property. In most cases, the companies want to lease space on a water tower or a communications tower (e.g., where a city has its 911 operations). When negotiating a tower lease, city officials should keep several things in mind to get the maximum value in exchange for these companies using the city's property.

Tower Leases

- It is not uncommon for the company's initial rent offer to be substantially lower than the market rate and not unusual for initial offers of \$500/month to be ultimately negotiated to \$2,000/month or more. Most water tower leases are, at a minimum, in the \$2,000+/month range, depending on coverage density and traffic routes.
- Include an inflation escalator clause ranging from 3-5 percent each year.
- Know the number of antennas and equipment the company wants to attach to the tower before negotiations begin. Do not give the company a general lease to add equipment without city's prior approval and more rent consideration.
- Negotiate for higher compensation for any term longer than the typical five years with two five-year term extensions. Include an early termination fee if the company removes its equipment before the lease expires.

- Require the company to pay for moving their equipment if the tower needs painting or maintenance. Do not have the city assume the cost.

- Require cellular companies to reimburse the city for any outside expertise used to negotiate the lease.

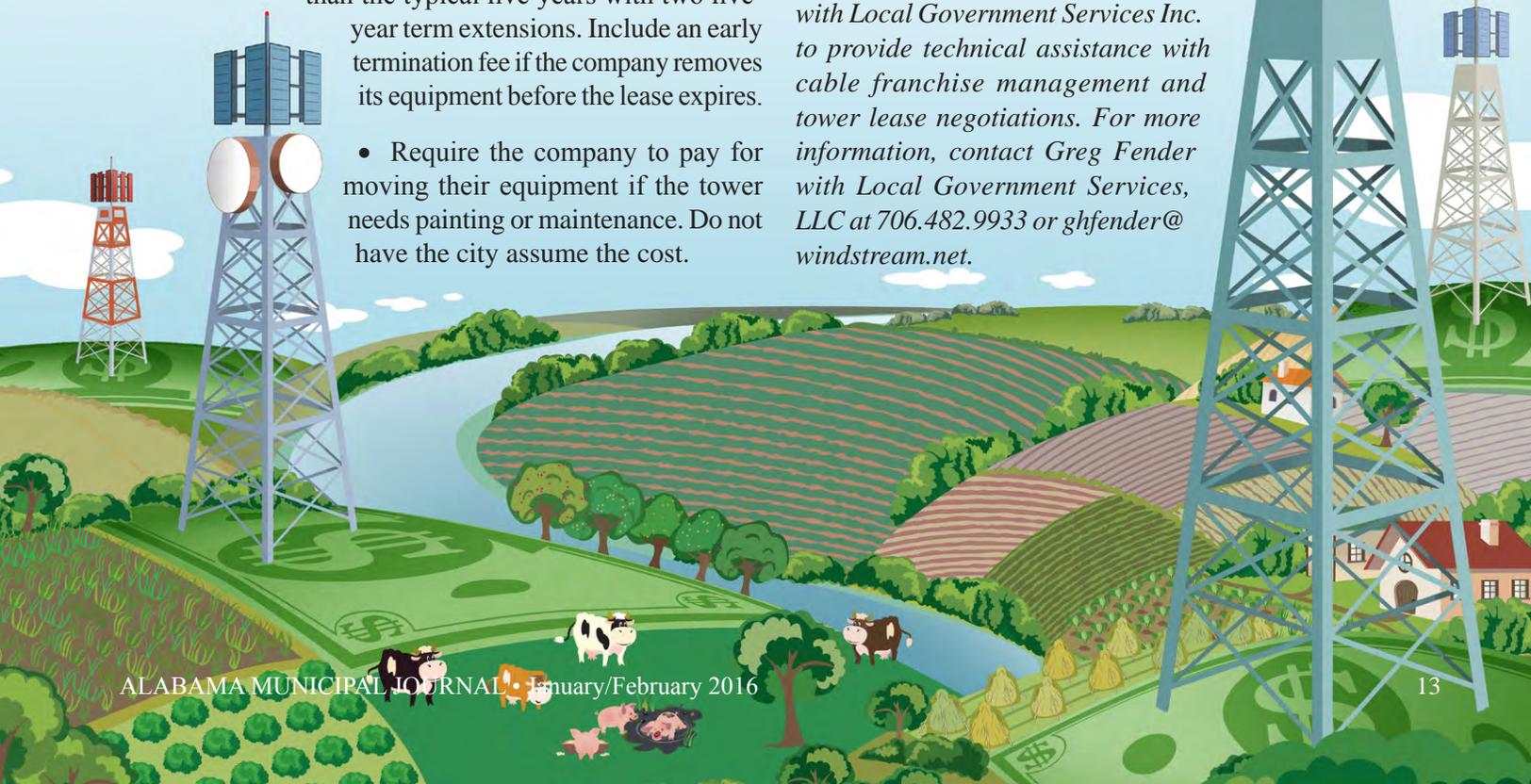
Land Leases

- Include a revenue sharing provision in every land lease as towers are usually constructed with the capacity to add antennas from additional companies on the tower.
- The provision should require the city's approval for all subleases and provide the city with 20-40 percent of the sublease as collocation revenue.

Additional Considerations

Occasionally, companies ask for a rent reduction, claiming that technological advances may make the need for your tower obsolete or because of industry consolidation. A more recent trend involves companies offering a lump sum payment in return for the city abating future rent. In most cases, city officials should reject these types of proposals as they are often not in the city's best interest and far below the value cities should receive. ■

ALM has a strategic partnership with Local Government Services Inc. to provide technical assistance with cable franchise management and tower lease negotiations. For more information, contact Greg Fender with Local Government Services, LLC at 706.482.9933 or ghfender@windstream.net.



(to Hon. Charles A. Nix, February 10, 1981); **postmaster**, AGO to Hon. Berniece T. Clark, July 14, 1972; **city school superintendent**, AGO 1982-066 (to Hon. Bob M. English, November 6, 1981); **supernumerary district attorney**, AGO 1982-309 (to Hon. Joseph M. Carlton, April 29, 1982); **clerk of the State Supreme Court**, AGO 1984-136 (to Hon. John F. Tanner, January 27, 1984); **member of the board of Alabama Board of Funeral Services**, AGO 1993-212; **member of State Board of Education**, AGO 2003-065; **member of Macon County Racing Commission**, AGO 2004-199; **members of the State Oil and Gas Board**, AGO 1994-132.

Section 280, Alabama Constitution, 1901, does cover a municipal councilmember who is entitled to receive a salary. If the councilmember is not entitled to receive a salary, then he or she does not hold an office of profit. The Attorney General has ruled that a councilmember entitled to receive compensation cannot waive that compensation in order to make the position one that is not an office of profit. AGO to Hon. John A. Denton, March 8, 1974; AGO 2000-064. Neither Sections 145, 147, nor 280, Alabama Constitution,

1901, prohibit a municipal judge from also serving as a city council member. AGO 2006-060.

Ruled NOT Offices of Profit

On numerous occasions the courts or the Attorney General have ruled that certain public positions are not offices of profit. Caution must be used in this aspect of the discussion of offices of profit. Simply because a position is not an office of profit does not necessarily mean it may be held simultaneously with an office of profit. Conflicts of interest statutes might prevent an officer of a municipality from being employed in a position not deemed to be an office of profit. Any position with a governmental unit which is a matter of contract is not deemed an office of profit.

The following is a list of positions held **not** to be offices of profit: **Councilmembers whose salary or compensation has not been set by ordinance or resolution**, 103 Q. Rep. Att. Gen. 8 and AGO 1992-400; **school principal**, AGO to Hon. William Olvey, August 31, 1956; **delegate to political party convention**, 83 Q. Rep. Att. Gen. 32; **city attorney**, AGO to Hon. Donald Burtkiewicz, September 28, 1964; **vocational teacher**, AGO to Hon. W. W. Weatherford, August 16, 1960; **jury commission clerk**, AGO to Hon.

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Outlook: 2016 Regular Legislative Session

Greg Cochran • Director of Advocacy and Public Affairs • ALM

The 2016 Regular Session of the Alabama Legislature opens Tuesday, February 2nd. After *two* Special Sessions this past summer, the Legislature was able to pass a conservation budget with only moderate revenue increases. Therefore, many predict the Legislature will continue to face challenges in meeting the needs of additional resources to address the skyrocketing operating costs of Medicaid and prisons, as well as funding for a long list of critical state services.

Do they eliminate the federal deductions from state income tax filers? Raid the State Oil and Gas Trust Fund? Propose gambling or a state lottery? Increase the state sales tax rate? Following last year's three heated legislative sessions, advocacy on behalf of our cities and towns matters now more than ever. Whatever stopgap measures legislators pursue to reduce state government and fill an expanding void with shrinking resources, the pressure to find new funding will be felt by all stakeholders. Municipal officials must remain vigilant to ensure their revenue sources are not part of the discussion in solving the State's challenges.

Meanwhile, the League's Committee on State and Federal Legislation convened in September and crafted five municipal initiatives for passage during the 2016 Regular Session ranging from tax credits for improvements to historic structures to penalties for parking violations. Even though this package is very straightforward, significant effort by the League's leadership, our members and our staff will be required for these priorities to pass. Therefore, we need you to engage immediately in the legislative process by reaching out to the members of your legislative delegation and seeking their commitment to proactively support our legislative initiatives. Additionally, please encourage your representatives to seek your position on any legislative issues affecting municipal government that arise during the Session.

2016 Legislative Package

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

Civil Penalty for Parking Violations. This proposed legislation will clarify the authority of municipalities to

enforce civil penalties for parking violations.

Historic Tax Credits. Current legislation provides a credit against state income taxes for developers who make qualifying improvements to historical property. The current historic tax credit authority approved by the Legislature three years ago has reached its cap. This proposed legislation will seek to have the tax credit cap raised allowing more projects to qualify.

Repealing Commission Form of Municipal Government. This proposed legislation will repeal the commission form of municipal government from the Code of Alabama – an early form of municipal government that is no longer relevant nor being used in the State of Alabama.

Jurisdictional Consolidation Bill. Many of our municipalities have land *entirely within* their jurisdictional boundaries that is not part of the municipality, leading to regulatory issues and confusion. This legislation would allow municipalities to consolidate their municipal limits, clarifying which property is inside the municipal limits.

Legislative Advocacy CMO February 16

Please join us in Montgomery on February 16 for the League's annual Municipal Legislative Advocacy CMO. This is an excellent opportunity for you to visit with your legislative delegation in their State House offices so be sure to call and set up afternoon appointments with your House and Senate members. See page 25 for contact information as well as the day's agenda and visit our website at alalm.org to register.

Conclusion

As was the case last year, the 2016 Regular Session will be intense. Even as we attempt to pass the legislation outlined above, we anticipate that significant mobilization of our members will be required to *defend* our local governments from unfunded mandates and funding cuts for critical services. As you well know, municipal officials are the leaders closest to their communities and, therefore, bear the brunt of defending against legislative efforts that would negatively impact the quality of life for Alabama's citizens. Because you will ultimately be held accountable by your constituents, you must be active in the legislative process.

If you have not subscribed to our weekly legislative e-newsletter, *State House Advocate*, you can do that very quickly through the designated link at the top left of the homepage of our website. *State House Advocate* is sent every Monday afternoon during the Session and will provide you with updates as well as any necessary action alerts. This is how we communicate with you so please subscribe to ensure that you're always part of the process. Of course, feel free to call (334-546-9092) or email (gregc@alalm.org) me with your questions and concerns. ■



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Legislative Primer

by Lori Lein • General Counsel • ALM

One of the prime functions of the Alabama League of Municipalities is to represent the interests of municipal government at the legislative level by informing members of legislation introduced that might affect municipal government and by presenting bills to the Legislature on behalf of Alabama's municipalities.

Whether this is your first term in municipal office or you've been in office for multiple terms, it is extremely important to have a good, basic understanding of the legislative process in Alabama. This article briefly explains the workings of the Alabama Legislature and how legislation is passed by that body.

Constitutional Provisions

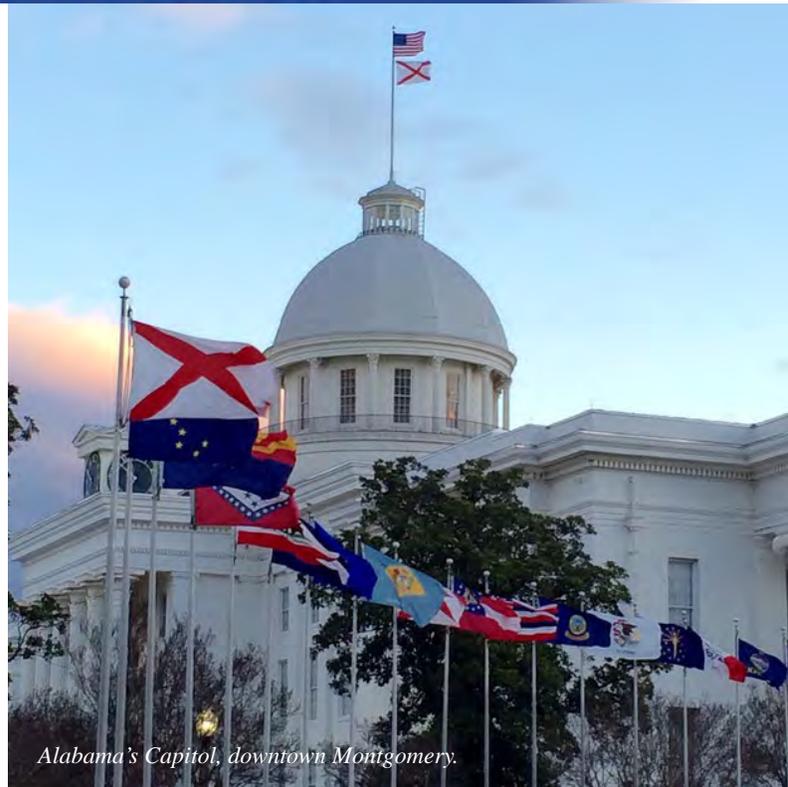
Article IV of the Alabama Constitution of 1901 (Sections 44 through 111) establishes the legislative department of state government. Section 44 states that the legislative power of the state shall be vested in a legislature composed of a Senate and a House of Representatives. Section 44 has been construed by the Alabama Supreme Court to give plenary power to the state legislature. *State v. Lane*, 181 Ala. 646, 62 So. 31 (1913).

According to the Court, the Alabama Legislature possesses all of the legislative power which resides in the state under the United States Constitution, except as that power is expressly or impliedly limited by the Alabama Constitution. This differs from the powers granted to the United States Congress in that Congress can exercise only those powers enumerated in the Constitution of the United States or implied therefrom.

Article IV prescribes the manner of drafting bills, the organization and qualifications of members of both houses, authorizes each house to determine the rules of its proceedings and establishes procedures for the enactment of laws. Due to space limitations, only the provisions most applicable to the interests of municipalities will be discussed in this article.

Composition of the House and the Senate

The state legislature consists of 35 Senators and 105 members of the House of Representatives. This number was established by order of a three-judge federal district



Alabama's Capitol, downtown Montgomery.

court for the Middle District of Alabama, Northern Division, in the case of *Sims v. Amos*, 336 F. Supp. 924, aff'd, 409 U.S. 942 (1972). In the decree, the court divided the state into 105 House districts and 35 Senatorial districts. Each House district is entitled to one Representative and each Senate district is entitled to one Senator. Each district has approximately the same number of people as any other district.

Qualifications of Legislators

Section 47 of the Alabama Constitution of 1901 states that Senators must be at least 25 years of age at the time of their election and Representatives must be at least 21 years of age at the time of their election. Both Senators and Representatives must also have been citizens and residents of Alabama for three years and must have lived in their respective districts for at least one year immediately preceding their election.

Section 60 of the Alabama Constitution of 1901 states that no person convicted of embezzlement of public money, bribery, perjury or other infamous crimes is eligible for membership in the state legislature.

Each house has the authority, given by the Alabama Constitution, to punish its members. With the concurrence of two-thirds of either house, a member may be expelled. A member who has been expelled for corruption is not thereafter eligible for membership in either house. Sections 53 and 54, Alabama Constitution of 1901.

continued next page

Election and Terms of Members

Members of the House and the Senate are elected, for four-year terms, on the first Tuesday after the first Monday in November in the even years which are not leap years. Their terms begin on the day following their election. Their terms expire on the day after the election of their successors four years later. Section 46, Alabama Constitution of 1901. Amendment 57 to the Alabama Constitution of 1901 provides that each house shall judge the qualifications of its members.

Organizational Session

The state legislature meets in Organizational Session on the second Tuesday in January following the election of members. The only business that may be transacted at such a session is the organization of the legislature for the ensuing four years, the election of House and Senate officers, the appointment of standing and interim committees, the canvassing of election returns and the determination of contested elections.

During the Organizational Session, the House membership elects a Speaker who has the duty of presiding over the House of Representatives. The House membership also elects a Speaker Pro Tem to preside over the House in the absence of the Speaker.

The Senate is presided over by the Lieutenant Governor. During the Organizational Session, the Senate chooses a President Pro Tempore to preside in the absence of the Lieutenant Governor.

Pursuant to Section 53 of the Alabama Constitution of 1901, the House and the Senate adopt rules of procedure for the next four years.

Legislative Committees

The standing committees of each house are established by the rules of each house. These committees, which are required by the Alabama Constitution, operate throughout the session for the consideration of legislation assigned to them.

Committee members are named at the Organizational Session and hold membership throughout their terms. The members of House standing committees are appointed by the Speaker of the House. A rules change approved by the Senate this year provides that the members of Senate standing committees are appointed by the Senate President Pro Tem.

Length of Sessions

Amendment 339 to the Alabama Constitution of 1901 requires the state legislature to meet in annual regular sessions. Each regular session is limited to 30 legislative days within 105 calendar days. Each special session called by the Governor is limited to 12 legislative days within 30 calendar days.

A legislative day is a day on which either house of the legislature is actually in session. Normally, the legislature will meet in session two days per week and schedule committee work on the other days.

Types of Bills

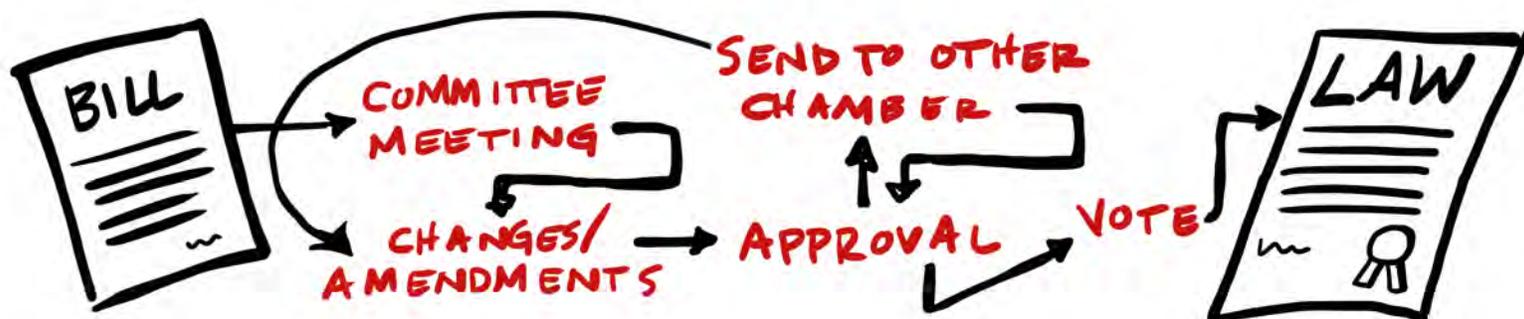
Amendment 397 to the Alabama Constitution of 1901 states that a general law is a law which in its terms and effect applies either to the whole state or to one or more municipalities of the state less than the whole in a class.

A special or private law is one which applies to an individual, association or corporation. A local law is a law which is not a general law or a special or private law.

Section 11-40-12, Code of Alabama 1975, establishes eight classes of municipalities based on population. The legislature has the authority to pass measures which affect only those municipalities within a specified class or classes. Such classification legislation is defined as general law by Amendment 397 to the Alabama Constitution. Any such legislation which has application to only one municipality must be advertised prior to introduction according to the provisions of Section 106 of the Alabama Constitution.

Section 106, as amended by Amendment 341, of the Alabama Constitution of 1901 states that notice of all local bills must be published, prior to introduction, at least once

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Relationships Matter for Effective Grass Roots Advocacy & Legislative Success

Greg Cochran

Director of Advocacy and Public Affairs • ALM

The 2016 legislative session begins February 2nd – meaning it’s now time for you, as a locally elected official representing the citizens of your community, to reach out to those state legislators who also represent your constituents. **Your** relationships with your legislators will be extremely important to the success of your League during the 2016 Regular Session.

Relationships matter.

It’s no surprise that the vital relationships between local and state officials start at home – in church and at the grocery store; at sporting events and the post office; and in offices, restaurants and community events throughout the state. After all, you represent the same people, the same region. You share similar goals for your communities. Successfully achieving those goals is often a direct product of teamwork – and a team cannot be effective unless the relationship between all the members is dynamic and resilient. In all situations, *relationships matter*.

Relationships are the bridge to success in grass roots advocacy and legislative achievements. Once your relationships are in place, *use them*. Keep your legislators on task. 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. *Relationships matter*.

The ALM staff is a team fused together by many years of professional experience and a strong, interactive relationship. This becomes readily apparent each legislative session as we work diligently with you on behalf of Alabama’s municipalities. Our ability to navigate the political landscape is built on relationships – both at the State House and throughout Alabama. However, it’s not just the staff that relies on solid relationships. As locally elected officials, you also understand their significance – and that it’s never too early to build upon existing relationships or to forge new ones. **Relationships matter.**

League Efforts to Build Relationships

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. These meetings have been extremely successful and allow us to add more voices to the process. Working together is always critical; however, it will be even more imperative this session as we navigate a legislative cycle where lawmakers will be searching for ways to deal with tremendous budget deficiencies – which could generate unfunded mandates as well as other significant burdens for Alabama’s municipalities.

Therefore, we need **you** to be vigilant in this year’s legislative efforts– not just in working your six League legislative priorities, but in making sure municipal interests are protected as the session progresses. Please subscribe to the League’s weekly legislative e-newsletter, *State House Advocate*, if you’ve not done so already and be ready to respond to Legislative Alerts from the League. You can subscribe through the homepage of our website at www.alalm.org. We will only send an alert when immediate action is needed.

Relationships matter.

Building Relationships with Your Legislators Is a Year-Round Effort

Meet with him/her in person. If you don’t know your legislator, make an appointment to introduce yourself. You will have a unique opportunity to speak with your legislator(s) in person on the afternoon of February 16 immediately



photo by Elmore DeMott

following the League's Legislative Advocacy CMO session in Montgomery. If you have not already done so, please call the State House and make appointments to visit with your legislators between 1:00 and 4:00 p.m. **To visit House Members** call 334-242-7600. **To visit Senate Members** call 334-242-7800. And please register to attend our Legislative Advocacy Session (see information on page 25). This workshop is extremely important to every municipal official. You can download registration information at www.alalm.org.

Offer assistance to your legislators. Be sure to ask: "What can I do for you?" Don't wait until you need their assistance on an issue. This will go a long way in strengthening your legislative relationships.

Prepare a brief summary of legislative issues that are important to your municipality. If your city or town has a particular issue (or issues) that you wish to discuss, prepare a one-page summary of the issue that you can leave with your legislator(s). Don't forget to also provide this same information to his or her legislative assistant.

Invite legislators to attend local and regional meetings. This will give them an opportunity to meet with their constituents and to discuss priorities.

Become personally acquainted with the legislative staff. Always be courteous. They are your link to getting an appointment and can help you with your legislative issues. **Brief legislators on what's going on in your community.** Add legislators to your city mailing list (both electronic and snail mail) for important issues.

Invite legislators/staff to visit. This is a critical factor in building strong relationships. Show them your quality of life projects, such as water treatment plants, parks, schools, transportation projects, revitalization efforts, etc.

Publicly recognize legislators for good deeds and remember to *personally* thank them for their support.

Relationships matter. ■

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A Brief Conversation with Governor Robert Bentley

Governor, tell us about the newly established Office of Broadband Development - what is its mission, how is it structured and what do you hope to achieve for Alabamians, particularly in the rural areas, over the next three years?

Broadband development is critical to Alabama's continued economic growth, and I am confident that this newly created office will help us reach our statewide goals in the areas of public safety, healthcare, education, e-Government, agriculture, tourism, economic development and more. Broadband infrastructure has been set up in many Alabama communities, but too many areas still lack adequate and affordable access to this important resource. The basic requirements for successfully accessing resources made available through broadband include (1) access to reliable broadband services at affordable costs and at speeds adequate for current and future applications, (2) access to computers and related devices, and (3) knowledge to effectively use these devices and the Internet.

The Office of Broadband Development will work to assess broadband coverage and gaps in service across the state. The Office will research grants on behalf of state agencies and local governments for the development of broadband in Alabama. It will also collect and share information with stakeholders, such as challenges, opportunities, resources, webinars, maps and public policies that enhance or hamper Broadband deployment and usage.

Our members are always concerned that local control over revenue streams and the authority to regulate issues of local concern will be diminished. What steps will your administration take throughout the next year to protect and maintain local authority in these areas?

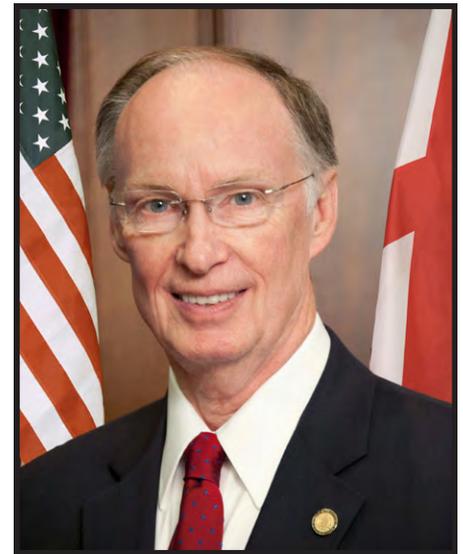
My administration has worked over the past five years to support and work with local governments. We have made it easy for monthly sales tax returns to be filed in "One Spot" through the Alabama Department of Revenue. This streamlined approach makes it easier for taxpayers to file returns and payments. We recognized that implementing this change could cost local government's payroll and programming costs so we provided grants to local governments to pay for implementation of One Spot.

Another new program set to go live is called OPPAL. OPPAL is an optional internet portal that will be available to taxpayers late next year for filing business property tax. It acts like a conduit and captures the return information in one place for all the counties in the state and then distributes the return information to the counties. OPPAL is another example of how we are leveraging technology paid for by the state that improves how taxpayers interact with state and local governments.

OPPAL and One Spot included advisory councils made up of representatives from local governments who worked with the State to ensure local concerns were heard and addressed.

Local government is closest to the people, and my Administration will continue to work with cities and municipalities on important issues.

continued next page



Governor Bentley*continued from previous page*

You've said Alabama should fundamentally change the way it budgets state government – that the state must provide growth money in the General Fund. What are your recommendations for addressing the expected \$30 to \$50 million shortfall legislators will be faced with during this Regular Session?

We made significant progress in 2015 to fundamentally change the way the General Fund is funded. For the first time ever, we placed growth revenue into the General Fund by transferring a portion of our state's Use Tax revenues. We will continue to work with members of the Alabama Legislature to focus on additional budget reform and balance the General Fund for FY2017.

Over the last five years, your administration has made progress in creating new jobs throughout the state. What are your plans for job creation over the next three years?

Job creation is my top priority, and we experienced significant economic development success in 2015. Top investments in our state for 2015 include:

- Polaris — \$127 million ATV plant in Huntsville
- Google — \$600 million data center in Jackson County
- Mercedes — \$1.3 billion expansion for future SUVs

continued on page 27

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Legislative Session to Focus on Education, Making Government **More Efficient**

Senator Del Marsh • President Pro Tempore



There is little doubt that 2015 was a challenging year to be in the Alabama Legislature. Although much of the focus was on the General Fund budget, the Legislature had a very successful session and was able to pass legislation which will authorize charter schools, right size government and create long term reforms to the prison system.

Alabama will become the 43rd state to have charter schools as an educational opportunity for parents and their children. Because we were so late to the game we were able to evaluate charter schools from around the country to find out what worked, and maybe more importantly, what did not. I truly believe that we have created the most accountable and measurable charter schools system in the United States. We all understand that there is no “silver bullet” when it comes to education, but it has always been my philosophy to give parents as many options as possible to provide the best education for their children.

I am also pleased with the steps taken in the last session to alleviate overcrowding in the Alabama prison system. There was little doubt that this was an issue with respect to the safety of Correction Officers. I want to congratulate Sen. Cam Ward for taking the lead and working with the Dept. Corrections and members of the Legislature to make sure this was done in a fair and appropriate way without any intervention from the Federal Government. Although we took great steps to correct the flaws in the prison system, our work is far from finished so look for this to be an issue for the Legislature again in the near future.

Looking ahead, there are a few areas which I believe will dominate the 2016 Regular Session. As always, the budgets will be the main focus on the 2016 Regular Session. I am extremely proud of both our budget chairs. Senators Tripp Pittman and Arthur Orr have done a fantastic job guiding the Senate through both the Education Trust Fund and General Fund budgets, which have been very difficult over the past few years. My colleagues in the Legislature and I were, and will continue to be, committed to funding the essential services of government, and last year – through a reasonable compromise and cuts – we were able to do just that.

While it is our priority to adequately fund these essential services of government, changes to the process must be made. Beginning in January, the Legislature will hold hearings to open up the decision making process with respect to how agencies are funded in the General Fund. In the past, agencies have simply requested the same amount of money they received the prior year plus any additional funding they thought they might need. Going forward, they will be required to provide additional information regarding their budgets in an effort to create more transparency and accountability in how taxpayer dollars are managed.

Last year, education reforms topped the list of accomplishments and we hope to continue that trend in the upcoming session. I was pleased that the Legislature was able to pass a fully funded Education budget which actually increased the spending for each individual classroom. Now that we have stabilized the Education Trust Fund, it is my hope that for the first time in far too long we will be able to provide our teachers with a substantial raise. It is important that we keep excellent teachers and continue to recruit top prospects into the profession.

Improving the quality of education in Alabama continues to be a priority in the Alabama Legislature. We are committed to looking into anything and everything to ensure that our children are given the best opportunities we can offer. They are, after all the economic engine of the future.

Transportation should also be an issue which makes an appearance in 2016. Unfortunately, our roads and bridges are long due for an overhaul. Currently taxes collected on gasoline at the pump go to road and bridge infrastructure. At this time the rate at which gas is taxed was set in 1992 so as you can imagine the need for money has outpaced the actual growth in revenue. This problem can be alleviated by an adjustment to the way Alabama collects its gas tax which is something that the Legislature currently looking into. This is an economic development issue as many companies looking to build in

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Alabama House: Budget Reform Tops List

House Speaker Mike Hubbard



In any other year under any other circumstances, the 2015 Regular Session would be considered among the most successful in recent history. The Legislature passed sweeping education reforms, brought a new measure of accountability to our economic incentive structure, moved towards protecting our prisons from being taken over by the federal courts and implemented protections for individual freedoms and liberties.

Our continued efforts to create jobs and grow the Alabama economy have resulted in some of the lowest unemployment numbers our state has seen in years. 2015 was no exception and the passage of the ‘Alabama Jobs Act’ was yet another step forward on our journey to be the most business friendly state in the nation.

Under this revamped system, the state will award economic incentives by moving from an ‘up-front’ model based on the promise of jobs to a ‘pay-as-you-go’ basis that kicks in once jobs have been created and economic benefits begin flowing to the state. In addition, the ‘Alabama Veterans and Rural Jobs Act’ provides specific incentives for companies who hire military veterans or for developing projects in rural areas of the state.

While recruiting new industry is vital to our economy, it’s important to also recognize the contributions of our existing businesses who are such important community members. The passage of the ‘Alabama Reinvestment and Abatements Act’ offers incentives to existing businesses and industries that choose to expand, providing tax abatements and worker training for existing industries for reinvestment projects.

We’ve been equally as committed to ensuring Alabama has a highly skilled and trained workforce to fill the jobs that are being created. That effort starts the moment our children step foot in our classrooms. This year’s Education Budget was lauded by education groups across the state for prioritizing funding directly into classrooms and local school districts and setting proven programs as a priority. Thanks to sound budgeting practices undertaken by Republicans during the last quadrennium, additional funding was available for textbooks, transportation, classroom supplies, professional development, technology, and other items vital to running a school system.

In addition to increased funding for existing schools, we passed legislation to provide even more quality public school options for our students. The ‘School Choice and Student Opportunity Act’ allowed Alabama to join 42 other states in offering charter school options to students and parents. Charter schools are open to any student and have unprecedented flexibility in return for being held to the highest levels of accountability. This landmark legislation provides our students and parents even more choice when it comes to their child’s education.

Despite these major accomplishments, the 2015 Legislative Session will, unfortunately, be principally remembered for the debate on the FY2016 General Fund budget. Despite the call for \$541 million in new revenue, the Legislature approved only \$82 million with no broad-based taxes that would negatively impact the average Alabamian. These targeted revenue measures coupled with major budget reforms and funding cuts resulted in the adoption of a lean and balanced budget which maintained the essential services of state government.

In 2016, our largest obstacle will continue to be the state’s General Fund budget. Current estimates of this year’s shortfall are between \$30-50 million to level-fund existing agencies. A number of taskforces and committees have continued to work since the end of the last special session on issues like pension reform and unearmarking and budget reform. These groups have been tasked with providing bold new ideas and reform recommendations prior to the next session.

New budget reform efforts have already gone into effect with the House and General Fund Budget Chairmen’s announcement of a zero-based budgeting approach. In the past, agencies have simply requested the same amount of money they received the prior year, plus any additional funding they thought they might need. From this point forward, agencies will start from zero and provide a line-item, department-by-department breakdown of their budget in order to justify their total request. In addition, the agencies that consume the vast majority of general fund budget appropriations will take part in pre-session budget hearings and be required to submit more detailed information than in previous years. This approach

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MUNICIPAL LEGISLATIVE ADVOCACY

Montgomery City Hall Auditorium • Downtown Montgomery

Tuesday, February 16 • 8:30 a.m. until 4:00 p.m.

Registration – \$125 • Four (4) CMO Credit Hours (Basic, Advanced, Emeritus)

www.alam.org to register

The League's Annual Municipal Legislative Advocacy CMO is specifically designed to allow municipal officials to share their ideas and concerns with the state's political leadership. It is important that the vital role our municipalities play in economic development, community enhancement and quality of life is repeatedly articulated to our state representatives. The League's Municipal Legislative Advocacy Session provides a unique opportunity each year for municipal leaders to take their messages to the State House – and for the power of the ALM membership's collective voice to be heard. A strong municipal presence at the State House demonstrates the effectiveness of the state's cities and towns in building a stronger Alabama economy.

- | | |
|--------------------|--|
| 8:30 – 9:00 a.m. | Registration |
| 9:00 – 9:15 a.m. | Welcome: Councilwoman Sadie Britt, Lincoln, President, ALM
Councilmember Donald Myers, Guntersville, Chair, Committee on State & Federal Legislation
Ken Smith, Executive Director, ALM |
| 9:15 – 9:45 a.m. | Legal Review/Supreme Court: Lori Lein, General Counsel, ALM |
| 9:45 – 10:15 a.m. | Ethics Update: Tom Albritton, Executive Director, Alabama Ethics Commission |
| 10:15 – 10:30 a.m. | Refreshment Break |
| 10:30 – 11:00 a.m. | State and Federal Update: Hall Bloom, The Bloom Group
Britton Bonner, Adams and Reese |
| 11:00 – 11:30 a.m. | ALM's 2016 Legislative Agenda: Greg Cochran, Director,
Advocacy and Public Affairs, ALM |
| 11:30 – 12:30 p.m. | Lunch |
| 1:00 – 4:00 p.m. | Legislative Visits: Alabama State House |

Please make appointments ASAP to visit with your legislators on February 16 between 1 p.m. and 4 p.m.

To visit House Members call 334-242-7600. To visit Senate Members call 334-242-7800.

Senator Marsh

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Alabama will look at the infrastructure of the state when making a decision on where to locate their businesses.

Next session, in addition to enacting pro-growth economic policies and working to improve the quality of education in our state, making state government more efficient and improving taxpayer services will be a top legislative priority. Our state leaders are firmly committed to right-sizing state government and controlling spending. While we have seen great progress over the last five years, there is still more work to be done.

The state Legislature greatly appreciates your commitment to serving the people of Alabama. ■

Del Marsh represents Calhoun County and portions of Clay and Talladega Counties. He has served as President Pro Tempore of the Alabama Senate for the previous four years. You may reach Senator Marsh by phone at (334) 242-7877, or by e-mail at Del.Marsh@alsenate.gov.

Speaker Hubbard

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will provide legislators with more in-depth information to ensure cuts are strategic and taxpayer dollars are being spent in the most efficient and effective manner possible.

This legislature is not afraid of tackling tough issues with bold ideas and those efforts will continue this year. Alabama is moving in the right direction, but our work is not done. We will continue to right-size government, create jobs and expand the economy, and ensure the next generation is prepared for the workforce of tomorrow. Our door is always open and we look forward to working with you towards accomplishing your goals. ■

Mike Hubbard (R-Auburn) serves as Alabama's Speaker of the House and represents District 79, which encompasses much of Lee County. Follow Speaker Hubbard on Twitter @SpeakerHubbard and Facebook at [facebook.com/MikeHubbard79](https://www.facebook.com/MikeHubbard79).

Join us in
Huntsville for
our 39th EXPO!

EXPO



Huntsville
May 15-16

On May 15, the 2016 EXPO Hall doors will open to more than 50,000 square feet of city solutions! This unique showcase offers an excellent opportunity for the League's 1,000+ delegates and guests to network and make valuable connections with more than 300 vendor representatives. The EXPO will offer convention attendees several events and extended time for face-to-face interaction with exhibitors.

The League will kick off its 39th annual EXPO on Sunday evening at 5:30 p.m. with the Exhibitors Showcase – a casual reception with heavy finger foods and an open bar in the EXPO Hall. Monday the Hall will be open from 8:00 a.m. to 3:00 p.m. for a full day of exhibiting, Passport Prize Program, break service and meals. Breakfast will be served beginning at 8:00 a.m. for all attendees. The Monday Luncheon will be held in the EXPO Hall with plenty of seating.

ALM vendors are here for you! This one-stop shopping opportunity only happens once a year. Take the time to experience the entire EXPO Hall and visit ALM's vendors to get answers to questions, learn solutions for problems and return home with key information for your municipality. **A vendor listing for this year's EXPO can be previewed at www.alalm.org. To reserve a booth space in Huntsville, contact Cindy Price at (334) 262-2566, or via e-mail at cindyp@alalm.org.**

Governor Bentley

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- GE Aviation — \$200 million for advanced materials in Huntsville
- Auto supplier projects around the state involving more than \$800 million in investment

More jobs are being created, Alabama's unemployment rate continues to drop and our economy is growing. Wage and salary employment was at its highest level for the year at the close of 2015. It has not been this high in almost seven years. We are one step closer to full employment, and my effort to create jobs will continue until every Alabamian who wants a job has an opportunity to obtain one.

How will you protect Alabama's hospitals and increase access to healthcare throughout the state over the next year?

As Governor and a physician, the health of Alabamians is extremely important to me. Alabama faces serious problems with chronic conditions. Many of our health issues are related to lifestyle choices, poverty and access to quality health care. In April, I created the Alabama Health Care Improvement Task Force to look at areas to address options to improve the health of Alabamians, including strategies to have more-accessible and more-affordable health care in the state. Focus areas of the task force included telemedicine, medical resources in rural areas and scope-of-practice laws for nurse practitioners and other professionals.

I am reviewing the recommendations of the task force in preparation for the 2016 Regular Session.

A long-term infrastructure plan is critical to the future of Alabama. Several programs administered by ALDOT provided fundamental improvements throughout the state; however, there are still many roads and bridges in dire need of attention to generate economic growth and meet the 21st Century mobility needs of our citizens. What are your plans for addressing these infrastructure challenges and what are your thoughts on the proposed new index tax to raise funding levels?

There are more than 59,000 miles of roads and 8,650 bridges across Alabama. Thousands of these bridges are in desperate need of rehabilitation, and many of our roads are crumbling. There is no question that the infrastructure in Alabama needs major improvements. That's why I created the Alabama Transportation Rehabilitation Improvement Program (ATRIP) to help repair some of our roads and bridges. The ATRIP program is the largest road and bridge improvement program in Alabama's history and has benefited every county in Alabama. Since August 2012, more than 1,100 projects have been approved for ATRIP funding. Through December 2015, 584 projects have been 'let' and of that amount 552 contracts were awarded to Alabama-based contractors. We estimate it will take another three years to complete all the ATRIP projects providing the local sponsors are committed to completing the projects.

However, with the ATRIP improvements, work still needs to be done on our transportation infrastructure. I agree with raising funding levels for these infrastructure repairs, and will be supportive if the Legislature chooses to address this in the 2016 Regular Session. ■

Dr. Robert Bentley was elected to the Alabama House of Representatives in 2002 and served two terms in the State House. He was elected Governor of Alabama on November 2, 2010, and re-elected in 2014. To contact the Governor's Office, call (334) 242-7100. Visit his website at governor.alabama.gov.

Legislative Primer

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a week for four consecutive weeks in some newspaper published in the county. If no newspaper is published in the county, then the notice must be posted, prior to introduction, for two consecutive weeks at five different places in the county.

Steps in Passing Legislation

If a member of the legislature decides that a proposal has merit and that legislation should be enacted, the legislator prepares a bill or has a bill prepared for introduction into the house of which he or she is a member. That legislator then becomes the sponsor of the bill. All bills introduced must be prepared by either the Legislative Reference Service (LRS) or the Legislative Fiscal Office (LFO) as directed by a member of the Legislature.

The LRS is the principal bill drafting and legal research office serving the Legislature of the State of Alabama. LRS is a great source of information to the citizens of Alabama on all things relating to legislation. In addition to bill drafting, the duties of the LRS office include:

- Responding to questions concerning the organization and administration of state government or the operation of constitutional or statutory law.
- Rendering assistance in the drafting of bills and amendments to bills at the direction of a member of the Legislature.
- Making studies and reports on problems of state and local government in Alabama, either upon request or on one's own initiative.
- Conducting a continuous analysis of the scope, effect, and methods of federal, state, and local government operations in Alabama and making recommendations to the Legislative Council as appropriate.
- Preparing, when directed by the Legislature, a compilation or code of the statutes of Alabama.
- Acting as Code Commissioner in determining the content of the Code of Alabama 1975 and any supplements thereto and preparing an annual codification bill to adopt changes to the code enacted at prior sessions of the Legislature.
- Entering into a printing contract on behalf of the State of Alabama, when approved and directed by the Legislative Council, to publish the official code of the statutes of Alabama.
- Publishing the Alabama Administrative Monthly and the Alabama Administrative Code.

The LFO was established for the purpose of providing

independent, accurate and objective fiscal information to members of the Alabama Legislature. They also provide bill and amendment drafting services much like the LRS. Additional duties of the LFO include:

- serving as primary staff for the House Ways and Means Committees and Senate Finance and Taxation Committees;
- fiscal analysis of legislative proposals and preparation of fiscal notes on bills which are introduced;
- analysis for the legislature of executive budget, tax and revenue proposals;
- drafting of legislative budget, tax and revenue proposals and related legislation;
- tracking of budget, tax and revenue legislation;
- analysis of agency budgets and budget requests;
- monitoring of state tax and other receipts;
- revenue estimating;
- certification (in conjunction with a separate certification by the Director of Finance) by the Legislative Fiscal Officer of projected growth in the Education Trust Fund by the third legislative day of each regular session (as required by Act 2000-732- the "National Average for Teachers' Salaries" Act);
- special evaluations of programs or agencies as designated by the Joint Fiscal Committee;
- general research upon request of legislative committees or individual legislators; and
- publication and distribution of materials to communicate fiscal information to legislators and the public.

Once bills are prepared by either LRS or LFO, they are often introduced in both houses of the legislature on or about the same date. This practice is not prohibited except the Alabama Constitution, in Section 70, requires that all bills to raise revenues shall originate in the House of Representatives. There is no limitation upon the number of sponsors that may sign a particular bill.

After introduction, the bill is assigned a consecutive number, for convenience and reference, and is read by title only.

This action is known as the first reading of the bill. The Speaker of the House of Representatives or the President Pro Tempore of the Senate, depending on the body where the bill was introduced, refers the bill to a standing committee of the House or the Senate.

Section 62 of the Alabama Constitution of 1901 states that no bill shall become a law until it has been referred to a standing committee of each house, acted upon by such

committee in session, and returned therefrom.

Standing committees are charged with the important responsibility of examining bills and recommending action to the full House or Senate. At some time when the House or Senate is not in session, the committees of each house will meet and consider the bills which have been referred to them and decide whether or not particular bills should be reported to the full membership. It is during these committee sessions that members of the general public are given an opportunity to speak for or against the measures being considered by the standing committees.

Bills which are favorably acted upon by the standing committees are reported to the entire house for consideration and are placed on the regular calendar. Bills reported unfavorably are placed on the adverse calendar. If a committee fails to act, the membership of each house, by a vote, may require the committee to act and report its action to the body at its next meeting.

The committee reports a bill to the full house when the reports of the committees are called. The bill is given its second reading at that time and is placed on the calendar. The second reading is by title only.

Section 63 of the Alabama Constitution of 1901 requires that every bill be read on three different days in each house and that each bill be read at length on final passage.

Bills are listed on the calendar by number, sponsor and title in the order in which they are reported from committee. Bills are considered for a third reading (passage) in the order of the calendar unless action is taken to consider a bill out of regular order.

Important bills can be brought to the top of the order by special order or by a suspension of the rules. Special orders are recommended by the Rules Committee and must be adopted by a majority vote. In the final days of a session, both houses usually operate daily on special orders. When a bill comes up for consideration, the entire membership of the house considers its passage. The bill is read at length, studied and debated. In general, regular parliamentary rules of procedure apply when a bill is being debated on final passage. Each house has special rules which limit debate.

A majority vote in each house is necessary for passage of legislation except in cases where the Constitution requires more than a simple majority. For example, a proposed Constitutional Amendment must receive the vote of three-fifths of all members elected. Section 284, Alabama Constitution of 1901. In a special session, any legislation not covered in the Governor's call, or proclamation, must receive a two-thirds vote in each house. Section 76, Alabama Constitution of 1901.

After a bill has been voted on, any member who voted



with the prevailing side may move to reconsider the question, but the time within which bills may be reconsidered is limited in both houses. Bills passed in one house are sent to the other house by a formal message and the bills then receive their first reading in the second house. Proposals go through the same procedure in the second house committee study and report, second and third readings and floor debate and votes.

If the second house passes the bill without amendment, it goes back to the originating house for enrollment. If a bill is amended in the second house, it must be returned to the first house for consideration of the amendment. The first house may vote to concur or not to concur, in which case the bill dies. The first house may vote not to concur and request a conference committee to work out the differences between the two bills. If the other house agrees to a conference, the presiding officers of each house appoint members to the conference committee.

The conference committee meets and tries to reconcile the differences in the two versions of the bill. If agreement is reached and both houses adopt the conference committee report, the bill is finally passed.

Sometimes a house may refuse to adopt the report of the conference committee and ask for a further conference. If the committee is still unable to reach an agreement, it may ask to be discharged and request the appointment of

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Twenty-seven Alabama municipalities have taken steps to protect residents from heart disease and lung cancer by enacting comprehensive smokefree protections.



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Legislative Primer

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another conference committee to begin the process again. If the conferees never agree, the bill is lost.

When a bill is passed in both houses in identical form, it is enrolled or copied in its final form and sent to the house of origin for signature by the presiding officer in the presence of the members. The measure is then sent to the second house where it is also signed by the presiding officer in the presence of the members. Then the bill is sent to the Governor. The Governor is not required to sign proposed Constitutional amendments, they are sent directly to the Secretary of State for submission to voters for ratification at the time prescribed in the legislation.

Action by the Governor

When a bill reaches the Governor, he or she may sign it and thus complete the enactment of a bill into law. However, if the Governor objects to the bill, he or she may veto it or suggest amendments to the bill and return it to the house of origin. The bill is then reconsidered, first by the originating house and, if passed, by the second house. If a majority of the members elected to each house agree to the proposed amendments, the bill is returned to the Governor for his or her signature. If both houses cannot agree to the Governor's amendments or if the Governor proposes no amendments but returns the measure, the bill has, in effect, been vetoed. The houses then may try to override the Governor's veto. An affirmative vote of 18 Senators and 53 Representatives is required to override the Governor's veto.

If the Governor fails to return a bill to the house of origin within six days after it is presented to him or her, Sundays excepted, the bill becomes law without the Governor's signature, unless the return was prevented by recess or adjournment. In such a case, the bill must be returned within two days after the legislature reassembles or the bill becomes law without the Governor's signature. Bills which reach the Governor less than five days before the end of the session may be approved by him or her within 10 days after adjournment. Bills not approved within that time do not become law. This is known as the pocket veto. The Governor has the authority to approve or disapprove any item or items of an appropriation bill without vetoing the entire bill.

Budget Isolation Resolutions

Amendment 448 to the Alabama Constitution of 1901 states that the Governor must submit a proposed budget to

the legislature by the second day of each regular session. The legislature must make the basic appropriations necessary for the current budgetary period before passing any other legislation. However, if three-fifths of a quorum adopt a resolution declaring that this restriction does not apply to a certain bill, that bill may proceed to final passage. This is known as the budget isolation resolution and permits the legislature to enact legislation prior to adopting a budget.

Unfunded Mandates

The Alabama Constitution provides that any general law whose purpose or effect is to require a new or increased expenditure of funds held or disbursed by the governing body of a municipality or county, or instrumentality thereof, shall not take effect unless (1) it is approved by the affected governing bodies or (2) the legislature provides funding to pay for the mandate or (3) the legislature passes the legislation by the affirmative vote of two-thirds of those voting in each house. Amendment 621 of the Constitution of Alabama of 1901.

The amendment does not apply to: (1) local laws; (2) acts requiring expenditures of school bonds; (3) acts defining new crimes or amending definitions of crimes; (4) acts adopted prior to the ratification of the amendment; (5) acts adopted to comply with federal mandates, only to the extent of the federal mandate; (6) acts determined by the Legislative Fiscal Office to have an aggregate insignificant fiscal impact on affected governments; or (8) acts of general application prescribing the minimum compensation for public officials. The term "aggregate insignificant fiscal impact" shall mean any impact less than \$50,000 annually on all affect governments statewide.

Conclusion

The purpose of this article is to give the reader a basic understanding of the Alabama Legislature as well as the process for introducing and passing legislation. It is important for municipalities to have a good basic understanding of the Alabama's legislative process. For further questions relating to Alabama's Legislature and the legislative process, contact the Legislative Reference Service or the Legislative Fiscal Office. For questions relating to legislation affecting municipalities, please contact ALM's Governmental Affairs Department or the Legal Department. ■

H. F. Koonce, February 9, 1961; **Civil Defense director**, AGO to Hon. W. M. Griffin, October 7, 1964; **assistant city attorney**, *State v. Wilkinson*, 124 So. 211 (Ala. 1929); **assistant director of vocational trade and technical school**, AGO to Hon. Herman Thompson, June 25, 1966; **city clerk**, 15 Q. Rep. Att. Gen. 350; **city treasurer**, 15 Q. Rep. Att. Gen. 350; **member of State Planning Board**, 46 Q. Rep. Att. Gen. 82; **superintendent of school bus transportation**, 52 Q. Rep. Att. Gen. 268; **member of municipal water board**, 81 Q. Rep. Att. Gen. 32; **school teacher**, AGO to W. H. Olvey, August 31, 1956 and AGO 1984-108 (to Hon. Fred M. Scoggins, January 4, 1984); **director of municipal utility board**, AGO to Hon. Robert S. Milner, June 5, 1967; **county attorney**, AGO to Hon. L. H. Boden, November 5, 1970; **president of a state university**, AGO to Hon. Robert Guillot, March 13, 1972; **rural mail carrier**, AGO to Ms. Martha Lawrence, June 29, 1972; **deputy sheriff**, AGO to Hon. E. H. Graves, Jr., June 15, 1972; AGO 2009-048; **bailiff**, AGO to Hon. Curtis Wright, February 6, 1976; **unpaid member of city board of education**, AGO to Mr. Clifford S. Smith, August 1, 1977; **special assistant attorney general**, AGO to Hon. James D. Evans, December 20, 1977, and February 2, 1978; **county RSVP director**, AGO 1982-166 (to Hon. William B. Duncan, February 5, 1982); **assistant district attorney**, AGO 1985-084 (to Hon. John C. Jay, Jr., November 20, 1984); **members of utility board, housing authority and industrial development board**, AGO 1985-137 to Hon. R. C. Hagood, December 27, 1984; **classified employees elected to county office**, AGO 1986-010 (to William G. Hause, October 8, 1985); **County Clerk**, AGO 1986-384; **employees of separately incorporated electric corporations**, AGO 1992-309; **members of the board of commissioners of an emergency management communications district**, AGO 1992-375; **retired probate judge receiving retirement pay**, AGO 1992-497; **distribution clerk with U. S. Postal Service**, AGO 1980-586 (to Hon. Thomas E. Manning, September 15, 1980); **Water Authority board member**, AGO 2004-193; **county legislative coordinator**, AGO 2004-224; **uncompensated member of local volunteer fire department**, AGO 2006-138; **uncompensated reserve police officer**, AGO 2004-174; and an **uncompensated volunteer fire chief**, AGO 1993-012; **uncompensated county park and recreation board members** serving on a board created pursuant to Section 11-22-1, et seq., Code of Alabama, 1975, AGO 2009-064; a **supernumerary circuit clerk** employed with a unit of local county government in a clerical non-policy-making position, AGO 2013-22; the position of **judicial secretary**, AGO 2014-19.

Nepotism

The question often arises as to whether employees of cities and towns may be related to officers of the municipality by blood or marriage. In an opinion to Hon. L. C. Grigsby, dated December 21, 1959, the Attorney General ruled that his office could find no general laws which prohibit a relative of the municipal governing body from holding a position with the municipality. The state nepotism statute applies **only** to state officials and employees. AGO to Hon. Elizabeth O. Thomas, January 12, 1976; AGO 2002-168, AGO 2004-149 and AGO 2015-005.

It should be pointed out, however, that several municipalities have local civil service statutes which prescribe conditions under which relatives may *not* be employed. The Attorney General's office has determined that absent local civil service prohibitions, a council member's spouse may be employed by the municipality as long as the council member does not participate in the employment decision or any other issue specifically concerning the spouse's employment. AGO 2000-181.

Membership on Boards

Alabama laws provide for the establishment of boards which act as agencies of municipalities. Notwithstanding any other provision of law, employees of any separately incorporated public corporation authorized to be created by a municipality pursuant to state law are employees of that separately incorporated entity and are not employees of the municipality authorizing the creation of the entity. Section 11-40-24, Code of Alabama 1975. These statutes invariably prescribe restrictions upon the persons who may serve as directors. Care must be used by a municipal governing body or other appointing authority, to comply with these restrictions in each case. Examples of these restrictions are revealed in the following Attorney General and court opinions:

- A municipal councilmember may not be appointed to serve as a member of the municipal housing authority because Section 24-1-24, Code of Alabama 1975, provides that "None of the commissioners may be city officials." AGO to Hon. E. E. Wakefield, December 11, 1956.
- A councilmember may not be a member of a zoning board of adjustment. AGO to Hon. John B. Nisbet, Jr., February 24, 1970.
- A mayor cannot serve as a member of the State Ethics Commission. AGO 1979-344 (to Hon. Leslie S. Wright, January 25, 1979).
- A councilmember may be employed by a separately incorporated utility board if he or she does not hold a managerial position with the board. AGO 2004-213.

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Municipal Debt Recovery at Your Fingertips!

www.alintercept.org

In 2014 the Alabama Legislature enacted an amendment allowing municipalities and counties to attempt to recover delinquent debts owed by individuals to local governments by collecting this debt from the individual's state tax refund. As part of the 2014 legislation, the Alabama Department of Revenue (ADOR) agreed to process these debts through only two clearinghouse entities: the Alabama League of Municipalities (ALM) for municipal entities and the Association of County Commissions of Alabama (ACCA) for county entities. In 2015, ALM formed Municipal Intercept Services, LLC (MIS) as its clearinghouse entity to act as a conduit between participating Alabama municipal entities and ADOR. The MIS system does *not* serve as a debt collection service or agency. It only exists as the conduit between participating entities and ADOR and is designed to complement any existing collection efforts.

Participating entities input their delinquent debt information into the MIS web-based system thereby certifying that the debt data is correct, the debts are, indeed, delinquent and the debts are final. The data submitted to the MIS system is then formatted to ADOR's specifications and submitted to the department for processing. ADOR will then use this data to attempt finding a matching Alabama State tax refund for the debtor based on the debtor's Social Security Number. This process of matching and collecting a debt from a refund is what ADOR calls an "intercept".

NOTE: If the debtor is not eligible for an Alabama State tax refund, no money can be collected.



www.alintercept.org

- Section 11-50-313, Code of Alabama 1975, has been amended to permit councilmembers serving on utility boards organized pursuant to said law to receive a fee for this service, provided the board of directors of the utility approves it first. However, a utility board cannot pass a resolution allowing a municipal officer to receive retroactive compensation for serving on the board. AGO 1986-268.

- A member of a city gas board may serve on the city medical clinic board, although Section 11-54-8, Code of Alabama 1975, prohibits a city officer from serving on a medical clinic board. However, the Alabama Supreme Court concluded in *Mobile v. Cochran*, 276 Ala. 530, 165 So.2d 81 (1964), that a member of a separately incorporated municipal utility board is not an officer or employee of the city. AGO to Hon. Louis P. Moore, November 3, 1978.

- A municipal officer or employee may serve as a director of a downtown redevelopment authority. Section 11-54A-7, Code of Alabama 1975.

- A councilmember may serve as a director of a county hospital association. AGO 1981-003 (to Hon. W. D. Scruggs, Jr., October 2, 1980).

- A member of a County Board of Human Resources created pursuant to Section 38-2-7 of the Code may not also serve as a municipal official. AGO 2009-017.

- A member of the State Board of Human Resources may serve as a councilmember. AGO 2009-017.

- Section 11-54-86 of the Code of Alabama, prohibits a member of the industrial development board serving both as an officer or employee of the municipality and as a director on an industrial development board. AGO 2006-104.

- A member of the Walker County Civil Service Board (“Board”) vacates his or her position on the Board at the time he or she files qualifying papers for an elective office, due to a provision of Act 80-673 which authorized creation of the board. The board member’s subsequent withdrawal as a candidate for elective office does not reinstate the board member. A vacancy exists on the Board that may be filled by appointment in accordance with section 5 of Act 80-673. AGO 2008-086.

At times, questions are raised as to the legality of professionals serving on municipal boards. Section 36-25-9, Code of Alabama 1975, states that nothing in that section shall prohibit real estate brokers, agents, developers, appraisers, mortgage bankers or other persons in the real estate field or other state-licensed professionals from serving on any planning boards or commissions, housing authorities, zoning board, board of adjustment, code enforcement board, industrial board, utilities board, state board or commission. The statute further provides that all municipal regulatory boards, authorities or commissions currently comprised of any real estate brokers, agents, developers, appraisers, mortgage bankers or other persons in the real estate industry

may allow these individuals to continue to serve out their current term if appointed before December 31, 1991, provided that, at the conclusion of such term, subsequent appointments shall ensure that membership of real estate brokers and agents shall not exceed one less of a majority of any municipal regulatory board or commission effective January 1, 1994.

The mayor, as a member of the city council and of the planning commission and who is also a realtor with a client affected by a vote, is prohibited from voting on any matter defined in Sections 11-43-53 and 36-25-9, Code of Alabama 1975. AGO 1993-193.

Public Utility Employees

Section 11-43-11, Code of Alabama 1975, states the following:

“No officer of any municipality shall, during his term of office, be an officer nor employed in a managerial capacity, professionally or otherwise, by any corporation holding or operating a franchise granted by the city or the state involving the use of the streets of the municipality. This section shall not apply to or affect any attorney or physician employed by the municipality, and any municipality incorporated or organized under any general, special or local law of the state of Alabama may employ an attorney or physician, or attorneys or physicians, employed by a public utility.”

The Alabama Supreme Court in *State v. Morrow*, 162 So.2d 480 (1964), held that the legislative intent and purpose of this section is clear. The court stated that this provision of law was enacted on the theory that employment by a public utility holding a franchise granted by the city involving the use of the city’s streets could be incompatible with serving as an officer of the municipality at the same time. The real basis of such incompatibility is the possibility of a conflict of interest between the interest of the municipality and the interest of the public utility. The Attorney General has ruled that the law does not prevent a person covered by its provisions from running for municipal office and being elected thereto. But before assuming the duties of the office that person must resign from employment with such utility, even though that employment is not within the municipality. AGO to Hon. Charles R. Cain, September 22, 1960. This section prohibits the treasurer of the Northwest Alabama Gas District from serving as mayor or councilmember where the district serves the municipality. AGO to Hon. M. C. Hollis, Jr., July 24, 1956. A cable television company which holds a franchise issued by the city is within the coverage of the section. AGO to Hon. W. K. Little, May 12, 1972.

This statute does not prohibit the mayor of a municipality from being appointed superintendent of utilities as such

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The League - - For Service

BY HON. M. L. ROBERTSON, Speaker Pro Tem
Alabama House of Representatives

It was inevitable that the continued increase in urban population and the growing importance of the municipality as a unit of government should in time bring about some organization among those intrusted with the welfare of the various cities and towns, and although Alabama was not the first to develop such an organization, her progress at this time compares very favorably with that of any other state in the Union.

Although a feeble attempt to organize city officials was made about twenty-five years ago, it remained for the good year 1926 to see the founding of an organization which seems to grow stronger with age, and to be meeting very consistently the requirements for such an organization.

In 1926, Anniston had as its Mayor a robust, healthy, six-foot enthusiastic official who, early in his administration, found that he did not know all that should be known about municipal government, and he conceived the idea that an organization of the heads of the various city and town governments could become a real force in the state on behalf of better cities for better people to reside in. That official's name was Sidney J. Reaves and at that time no more indefatigable and no more interested an official could be found. He was deeply interested in giving his city the type of government it deserved.

At that time, M. W. Pratt was Mayor of the City of Fairfield, a suburb of Birmingham, who also had become interested in the idea of organization and an agreement was perfected between Pratt and Reaves whereby the latter would furnish the officials and the former the city for the meeting place to perfect the first organization. So, in June of that year nearly one hundred municipal officials met in Fairfield, most of whom were met in Birmingham and carried to Fairfield in Automobiles, and the citizens of Fairfield took the visiting officials into their homes and cared for them without cost during the days of the convention.

After a couple of days spent in speechmaking, handshaking and logrolling, a committee brought in a constitution and by-laws, calling the organization the Alabama Association of Mayors and City Commissioners, the membership being confined to those who held the highest official position in their respective municipalities, although associate members, confined to minor employees, would be received with no voting power.

Naturally, Sidney J. Reaves was elected the first president of the organization, and the writer, who at that time was Mayor of Cullman, was elected secretary-treasurer, a place he has retained up to the present time.

Before the convention adjourned, many good talks were made along the lines of the need of an organization of this type. Among the pressing needs discussed were: the demand for uniformity in traffic laws among the various cities; more effective means of collecting taxes, the crying need for

better recognition of the municipalities at the hands of the state governing powers, the distribution of information of a general nature to all cities and towns, the need for revision of the bond laws of the state affecting cities and towns; the demand for more revenue for cities to meet ever-growing demands of citizens; the need of a clearinghouse for news of interest to the cities; longer terms for officials; need for fellowship among those engaged in a common undertaking and many more problems of equal importance.

It will be of interest to recall just who, among Alabama's municipal officials, were present for the organization meeting. Montgomery sent its popular Mayor W. A. Gunter; Mobile sent Mayor George Crawford, who has since drowned; Birmingham's able and fearless Jimmie Jones was present as were his fine associates—Bill Dickson and John Taylor. Selma's Mayor T. J. Rowell and Russellville's Mayor W. W. Ramsey were also in attendance. The latter was later president of the League and is now a member of the State Tax Commission. It will

be interesting to know that neither Commissioner Ramsey or the writer ever missed a meeting of the League.

Among those who were loyal and devoted to the League in its early days were Mayor Will Weir of Gadsden, Mayor Harry Hartwell of Mobile, Mayor M. F. Northrop of Fairhope, Mayor P. M. Mathews of Bessemer, Judge L. L. Herzberg, Commissioner of Gadsden then and now Associate State Highway Commissioner; Mayor George P. Haslam of Piedmont, Mayor H. H. Howard of Sylacauga, Mayor Sam H. Oliver of Lafayette and Mayor A. B. Hooper of Albertsville. Mayor Henry K. Dickinson of Opelika and Mayor Bill Eastep of Florence should also be mentioned. Many of these prominent figures in municipal circles of a decade ago have since passed of the field of active service with their local governments.

It was at Selma convention in 1928 that it was decided the organization should be changed from one of the officials to one of the units of government themselves. This decision was reached due to the fact that the two-year term of office for mayors made it impossible to have a regular attendance and a sufficient number of seasoned officials to keep the organization alive. The writer offered the amendment to change the name of the organization to the Alabama League of Municipalities, keeping in effect the constitution and by-laws, except as for dues.

The high spot in the life of the League was reached at the meeting in Montgomery in 1935. Although the League had previously affiliated with the American Municipal Association, keeping in touch with current municipal developments, it was at this meeting that the national organization came to the rescue of the League by agreeing to contribute toward the salary of an all-time executive director, for

(Continued on Next Page)



M. L. ROBERTSON

Since its formal inception in 1935, the League has provided legislative advocacy for Alabama's municipalities. However, this article regarding the League's early efforts to organize, which appeared in the July-August 1938 issue of *The Alabama Municipal News* and was written by Speaker Pro Tem M.L. Robertson, Alabama House of Representatives, shows that as early as 1926 an organized effort was underway to unit and protect local governments throughout Alabama.

The League—For Service

(Continued from Page Three)

which the League had been striving from its inception. With the help of AMA, it was possible to secure the services of Ed E. Reid, then serving as Secretary to the Speaker of the Alabama House of Representatives and Consultant to the Legislative Recess Committee on Homestead Exemption and Ad Valorem Taxation. His services for the League members have been exceedingly valuable and his part in the developing the organization has been large and useful.

The 1935 meeting in Montgomery was also notable in being one of the best attended the League has ever had, an achievement due in large part to the activity of President W. W. Ramsey and to the fact that the federal emergency agencies were beginning to apportion funds to local units of government for public improvement purposes. Representatives of the agencies were on the convention program.

Some of the accomplishment of the League are direct, many more indirect. At the Anniston convention in 1927 the League went on record as favoring four-year terms for mayors in cities, instead of the two-year term then prevailing, which idea the next legislation enacted into law, and in 1935, the convention endorsed a resolution asking for the same term of office for mayors and other governing officials of towns of less than 2,000 population. The writer introduced a bill, supported by the League, to equalize the terms of towns' and cities' officials and that bill became a law in the 1935 Session of the Legislature.

Another piece of legislation the League worked for and which Commissioner John Taylor of Birmingham made his main objective when he became head of the League was a uniform drivers' license law.

The adoption of special municipal gasoline taxes in practically every municipality in the state is a result of the dissemination of information and model ordinances by the League. Although a hard fight has been made to relieve the cities and towns of the state gasoline tax levied on gasoline used for muni-

cipal purposes, no success has yet been met.

As outstanding activities of the League during the three years the present able executive secretary has been in charge of the program of the organization, one senses a gradual elevation of the standard of municipal government, due largely to the dissemination of valuable information and data on improved administration techniques; the distribution of model ordinances, the furnishing of information relative to the federal WPA and PWA program; personal contact with municipal officials; the publishing of a monthly magazine filled with news of interest to all officials.

As a direct result of the efforts of the League, officials of our municipalities are giving more time and attention to their work as public servants, especially in the smaller towns. Municipal government is gaining increased recognition from the state and federal officials and governing bodies, more friends outside the municipal government have been developed.

In conclusion, I would say that one of the finest contributions to the public affairs of Alabama made by the League is that of convincing the citizenry that the most important single level of government in the state today is municipal government. The people have been induced to feel that municipal government has a right to exist and serve.

The City of Bessemer's government is now housed in an attractive remodeled building the result of a WPA project. The project was the second to be completed this year under the WPA program, the first being the fire department quarters which underwent extensive repairs earlier in the year.

* * * *

The City of Greenville is preparing an application to be submitted to PWA for funds to build a \$100,000 electric distribution system to be municipally operated. A. U. Avera is the city's engineer for the proposed project. The city is also contemplating making additions to the waterworks system by enlarging the water storage equipment.

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As our base grows, Facebook will be another outlet for the League to provide timely information about upcoming CMO sessions, conferences, annual convention and ALM's legislative endeavors.

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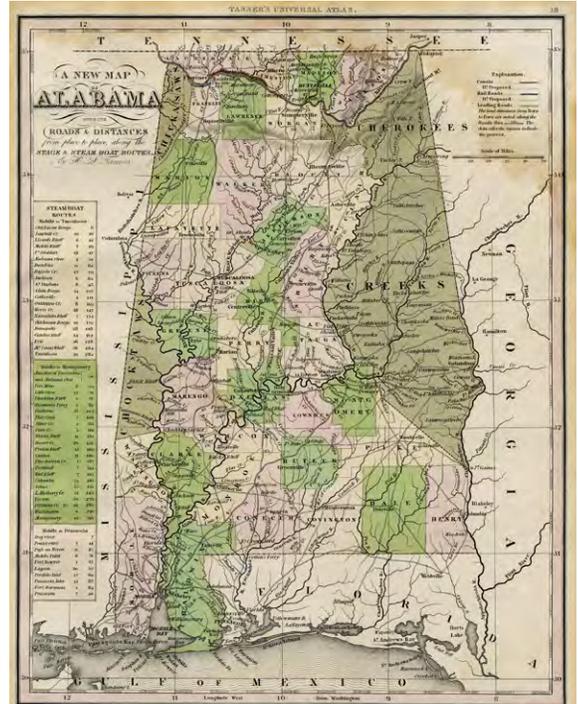


Bicentennial Community Celebration Committees Form Yours Today!



Alabama's Bicentennial, which will be celebrated 2017-2019, is a unique opportunity for our municipalities to participate in a very specific historical milestone. For example, if your community has an annual festival, you could

use the ALABAMA 200 branding to broaden your festival by incorporating the history of the festival, the history of your community and highlighting some of the elements that make your community unique and historically significant. Some communities may decide to take on a special project for the Bicentennial, such as a cemetery restoration, painting a mural on a downtown building or renovating a historic structure. The options and opportunities are endless, which is why the Alabama Bicentennial Commission wants an accurate database of what communities are doing throughout the state.



The Bicentennial Commission and the Alabama League of Municipalities encourages every city and town to be part of the Bicentennial process (2017-2019) and consider immediately forming a **Community Celebration Committee**. *To apply for grant funding or to receive ALABAMA 200 promotional and branding materials from the Bicentennial Commission, your municipality must designate an official Community Celebration Committee that is approved via special resolution by the Mayor and Council.* Download the necessary resolution at alabama200.org under the “Get Involved” tab, “Community Resources” link.

A copy of your resolution, as well as the contact information for the Chair of your Community Celebration Committee, must then be submitted to the Commission, which is forming a database to enable the Commission to send relevant information to the correct people. Community Celebration Committees can be composed of *anyone* from your community, especially people from historical, educational, cultural and/or civic and community organizations such as schools, libraries, history/heritage groups, tourism/economic development organizations, etc. We encourage you to engage your community leaders, activists and historians in this process.

Mail or email a copy of your resolution as well as your committee chair person's contact information to: Howard Graves, Alabama Bicentennial Commission, 401 Adams Street, Suite 126, Montgomery, AL 36104 or Howard.Graves@bicentennial.alabama.gov.

Alabama200.org

Legal Clearinghouse

Rob Johnston, Assistant General Counsel

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 COURT DECISIONS

Employees: Mayor's failure to attend a police dispatcher's pre-disciplinary hearing did not void the dispatcher's discipline. The county personnel board rule authorizing pre-disciplinary hearings allowed either the appointing authority or his designated representative to attend the hearing. As such, the rule did not require the official with decision-making power to attend the city dispatcher's pre-disciplinary hearing, since the members of the trial board acted as the mayor's designated representative. *Wright v. City of Mobile*, 170 So.3d 656 (Ala.Civ.App. 2014)

DECISIONS FROM OTHER JURISDICTIONS

Searches and Seizures: City's procedures for seizing, without a warrant, vehicles that were suspected of being used for hire without proper licensing, in order to ensure payment of fines, violated federal constitutional protections against unreasonable seizures, as applied to vehicle owners with no prior violations in the preceding 36 months, that is, owners whose vehicles were not subject to forfeiture. The vehicles were not contraband or instrumentalities of a crime. No exigency justified the warrantless seizures. *Harrell v. City of New York*, ---F.3d ---, 2015 WL 5729582 (S.D.N.Y.2015)

Employees – Americans with Disabilities Act: A teacher who was absent from work for four months after a car accident has no claim under the Americans with Disabilities Act (ADA) that the city discriminated against her when it gave her a bonus, based on students' achievement, that was smaller than other teachers. The School board's reduction

of the teacher's discretionary bonus after she was absent from work for four months did not constitute prohibited discrimination on basis of her disability, in violation of ADA, where teacher did not contribute to school's earning of bonuses for its teachers during her absence. The board needed to obtain another substitute teacher during her absence, and that substitute teacher contributed importantly to school's earning of bonus. *Davis v. N.Y.C. Dep't. of Educ.*, 804 F.3d 231 (C.A.2 N.Y.2015)

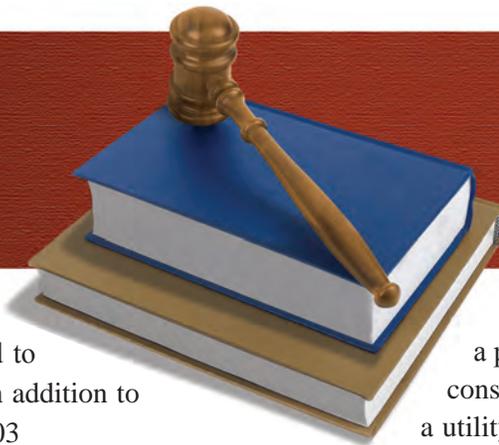
Tort Liability: Public school officials were entitled to qualified immunity over claims related to requesting a student's Facebook credentials and reading private messages in connection with a disciplinary investigation. The First and Fourth Amendment rights asserted on the student's behalf were not so clearly established when the events occurred to overcome the presumption of state officials' immunity from money damages. Qualified immunity protects state and federal officials from monetary damage awards unless they (1) violated statutory or constitutional rights and (2) the rights were clearly established at the time of their actions. *Jackson v. Ladner*, ---F.3d---, 2015WL5332664 (C.A.5 La. 2015)

Ordinances: City ordinances that fine property owners between \$300 and \$1,200 for failure to maintain their property do not impose "excessive fines" under the Eighth Amendment or forbid First Amendment expression. The weed control ordinance fulfilled legitimate governmental interests, and the owner's weeds were not expressive conduct for First Amendment purposes. *Discount Inn v. City of Chicago*, 803 F.3d 317 (C.A.7 Ill. 2015)

ATTORNEY GENERAL'S OPINIONS

Gasoline Tax: A town may not use the \$.04 per-gallon gasoline additional excise tax, the \$.05-per gallon gasoline supplemental excise tax, or the \$.06 per-gallon diesel fuel additional excise tax to fund the purchase or installation of the emergency street signs. The proceeds from the \$.07 gasoline excise tax, the \$.02 inspection fee, and the motor vehicle license tax may be used for the purchase of reflective street signs. AGO 2016-002

Franchises: Unless prohibited in the franchise agreement, a utility board is required to pay a franchise fee to a municipality. A utility board organized under



Section 11-50-310, et seq., of the Code of Alabama is required to use its revenues to pay the fee in addition to outstanding bonds. AGO 2016-003

Law Enforcement: The county sheriff and his or her deputies may enforce municipal ordinances of the town provided the contract between the town and sheriff provides for such enforcement. AGO 2016-005

Public Works Bid Law: If the Alabama Department of Transportation determines that the failure to obtain approval to bid as a joint venture and omission of a contractor identification number assigned to the joint venture in the bid, as required in the department's administrative rules, are minor irregularities not defeating the responsiveness of the lowest bidder, it may award the contract to that bidder. AGO 2016-006

Warrants: When a defendant is arrested without a warrant for an offense committed in the presence of a law enforcement officer and a complaint is issued, the judge or magistrate is not required to issue a warrant. AGO 2016-008

Competitive Bid Law: A backhoe is not a piece of equipment that is needed, used, and consumed in the normal and routine operation of a utility system. Thus, the purchase of a backhoe, even a used one, is subject to the Competitive Bid Law. AGO 2016-009

Conflicts of Interest – Boards: A county tourism and convention bureau may use the services of the bank where the treasurer of the bureau's board is employed. AGO 2016-010

ETHICS OPINIONS

Statement of Economic Interest: A part-time municipal court judge, who earns less than \$75,000 per year, while subject to the Alabama Ethics Law, is not required to file a Statement of Economic Interest form. It should be pointed out that this Advisory Opinion relates to the requestor only. As there are different circumstances regarding the appointment of municipal court judges around the state, this opinion should not be read to deal with other scenarios. AO 2015-21 ■

F.A.Q.

Your Frequently Asked (Legal) Questions Answered
by Assistant General Counsel Teneé Frazier

Elections:

Absentee Election Manager – Compensation

Can the city clerk receive additional compensation for serving as the absentee election manager?

Yes. If approved by the city council, the clerk can receive additional compensation for serving as the absentee election manager. Section 17-11-14, Code of Alabama 1975, provides that the absentee election manager is entitled to at least fifty dollars (\$50) per day or the amount of an inspector pursuant to Section 17-8-12, Code of Alabama 1975, whichever is higher. ■

is expressly authorized by law. *See*, Section 11-43-161, Code of Alabama 1975. The manager of the local office of Alabama Power Company cannot be a member of the city's incorporated utility board. AGO 1981-403 (to Hon. J. D. Falkner, June 2, 1981). A person employed by a utility holding a city franchise may serve on the city governing body unless he serves in a managerial capacity for the utility. AGO 1986-211 (to Hon. W. A. Smith, April 15, 1986).

Conflicts of Interest

A number of statutes prohibit municipal officers and employees from having specific dealings with a municipality, but the one most widely referred to is found in Section 11-43-12, Code of Alabama 1975. It provides, in part, as follows:

“No alderman or officer or employee of the municipality shall be directly or indirectly interested in any work, business, or contract, the expense, price, or consideration of which is paid from the treasury, nor shall any member of the council, or officer of the municipality be surety for any person having a contract, work, or business with such municipality, for the performance of which a surety may be required.”

This section not only prohibits officers and employees from having contracts with the municipality, it prohibits their being employed by the municipality. 53 Q. Rep. Att. Gen. 67. The following opinions indicate the wide scope of this section.

- An officer of a municipality may not hold any other salaried position in the municipality even though he receives no pay for such office. AGO to Hon. Cecil White, February 7, 1966. An officer of a municipality may not also serve as a police officer even though the only compensation provided would be payment for gasoline, oil and automobile upkeep. AGO to Hon. H. B. Wilson, December 14, 1964. However, the law does not prohibit a municipal firefighter from serving as a county commissioner. AGO 1992-277. A municipal clerk is not prohibited from serving as a director of a separately incorporated utility board or from receiving compensation for such service. AO NO. 1993-1.

- A municipal councilmember is prohibited from engaging in the bail bond business while serving on the council. A properly authorized professional bail company owned by the spouse of a councilmember may do business in the municipality. AGO 1997-084.

- A mayor has an indirect interest in the contracts of his wife who does business in her individual capacity and the municipality is prohibited from contracting with her by law. AGO to Hon. Josh Mullins, May 4, 1965. The section prohibits a municipality from doing business with

a corporation whose sole stockholder and owner is the spouse of a municipal employee. AGO 1988-275. These sections also prohibit a mayor from selling insurance to the municipality, if he or she is an agent for the insurance company. AGO to Mayor of Florence, March 14, 1952. A municipal officer may not subcontract to perform part of a contract between the city and its prime contractor without violating the section. AGO to Hon. Carlton Mayhall, October 6, 1964. An officer may not lease a water supply to the waterworks system since he would be directly interested in a contract the consideration for which would be paid from the municipal treasury. AGO to Hon. E. C. Morrison, September 2, 1964. When a municipality serves as a sponsor for a summer food service program and federal funds pass through the municipal treasury, councilmembers are prohibited by Section 11-43-12, Code of Alabama 1975, from serving as the compensated program administrator. AGO 1992-299.

- A councilmember may not lawfully sell goods, wares or merchandise to a municipality which he serves as councilmember. However, the Attorney General has ruled that an exception exists when the only newspaper in the municipality is owned by a municipal official. In this case, the city may go ahead and advertise in that paper as required by law. It is reasoned that the publication requirement overrides the conflict prohibition; it is further noted that publication rates for legal advertisements are established by law. 56 Q. Rep. Att. Gen. 108.

- A municipal employee may not use municipal facilities to conduct Tupperware or jewelry parties on a lunch break or after hours, when the party will result in a financial gain to the employee or a business with which he or she is associated. AO NO. 1996-59.

- A member of a city council, who is employed by an insurance agency, may not vote, attempt to influence or otherwise participate in any matters coming before the city council involving a client of their employer, if either the employer or the councilmember stands to benefit from council action. AO NO. 2004-07.

- Members of a city council may vote on a rezoning issue affecting the neighborhood in which they or a family member resides, as there is no personal gain, nor will the members be affected any differently than the other residents of the neighborhood. AO NO. 2004-08 and AO NO. 2008-03.

- A municipality may sell real property to a group of citizens, one of which is a councilmember, provided the city receives the fair market value of the property and the councilmember does not take any part in the consideration of the sale and does not vote on the sale of the property. It is the best public policy to sell such property by competitive

bidding. The councilmember should make a public disclosure of the potential conflict of interest. AGO 1993-194.

- In *Mobile v. Cochran, supra*, the Alabama Supreme Court ruled that members of separately incorporated boards are not officers of the city and, therefore, are not governed by the restrictions of Section 11-43-12, Code of Alabama 1975.

- The chair of a municipal water and sewer board may accept employment with the city housing board as long as the individual does not use either position to financially benefit either the waterworks and sewer board or the housing authority. AO NO. 1993-126.

- A councilmember may not hold the job of municipal clerk even though no pay is received for services as a councilmember. AGO to Hon. Lloyd Barnes, November 26, 1956. A municipal employee who is elected to the council may not continue to serve as an employee when he assumes office on the council. AGO to Hon. Charles Adams, July 31, 1956.

- Although public officials and employees may accept free athletic tickets to sporting events or other social occasions, they may not solicit these tickets. AO NO. 1999-16.

- Section 11-50-313, Code of Alabama 1975, allows councilmembers serving as directors of utility boards to receive compensation for their service. Also, Section 11-43-80, Code of Alabama 1975, specifically allows the mayor to be hired as superintendent of utilities for additional compensation. An individual may not serve on a utility board and also be employed as manager of the board. AGO 1993-052.

- An employee of a separately incorporated municipal utility board, incorporated pursuant to the provisions of Act 175 of the 1951 Regular Session of the Alabama Legislature, may serve on the board of a municipal housing authority. AGO 2006-003.

- The spouse of a city council member may serve on the board of a municipal housing authority. AGO 2006-003.

- A person may serve as a postmaster and as a part-time councilmember. AGO 2005-019.

Section 11-43-12, Code of Alabama 1975, has also been interpreted to prohibit a city parks and recreation director from simultaneously serving as mayor. AGO to Hon. T. E. Whitmore, April 6, 1976. It also prohibits the same person from simultaneously serving as city judge and as city attorney. AGO to Hon. Bobby Claunch, November 21, 1972. However, different members of the same law firm may serve as municipal judge and as municipal attorney, provided the earnings of neither position become revenues of the firm and are not taken into account when firm profits are divided. AGO 1992-044.

This section prohibits a town from purchasing land from its mayor. AGO 1981-239 (to Hon. Charles Couch,

February 10, 1981). A municipality may, however, condemn the property of a municipal officer or employee provided that the officer or employee refrains from the decision-making process regarding the condemnation. AGO 1996-231. A municipality may purchase property owned by the mayor's mother when the mother is not a member of the mayor's household, not financially dependent on the mayor and the mayor does not participate in either the discussion or the vote. AGO 1997-140. A city may enter into an agreement, which involves the mayor's son as a real estate broker, provided the mayor does not reside in the same household as his son, is not financially dependent on his son, and does not participate in the discussion or vote on whether or not to enter into the agreement. AGO 2005-181.

The section also prohibits a company in which a councilmember owns a majority of the stock from selling materials to an independent contractor who is working on a city project if such materials will be used in the city project. AGO 1981-258 (to Hon. William J. Trussell, February 19, 1981). A councilmember who is a landlord may not participate in a community block grant program in the municipality for which he or she serves. AGO 1996-323.

A councilmember may not be employed by an engineering firm as a resident inspector for a project where the engineering company is performing services under direct contract with the city. AGO 1982-077 (to Hon. Charles E. Bailey, November 16, 1981). A councilmember may participate in the appointment or election of a son-in-law or stepfather to a city board provided the relative is not financially dependent upon the councilmember and is not an employer or employee of the councilmember. AGO 1983-112 (to Hon. Fred W. Purdy, December 29, 1982). A police dispatcher cannot serve as an agent for a bail bonding business in the city. AGO 1993-116. A mayor and members of the council may receive water and cable television discounts only if granted as part of their salaries. AGO 1991-173.

Section 41-16-60, Code of Alabama 1975, states that no member of the municipal governing body or of a municipal board shall be financially interested or have any personal beneficial interest, either directly or indirectly, in the purchase of or contract for any personal property or contractual services. This section is part of the competitive bid law applicable to municipal purchases of personal property or contractual services. The office of the Attorney General has determined that a member of a municipal utility board who is the sole owner of a business may not sell trucks to the utility board, with or without bids. AGO 1999-098. Section 41-16-60, Code of Alabama 1975, precludes a member of the Water Works and Sewer Board from having any personal or financial beneficial interest, directly or indirectly, in a contract for the provision of services to the

Board. Whether a direct or indirect benefit actually exists is a question of fact for the Board to determine. AGO 2007-078.

The Alabama Firefighters' Personnel Standards and Education Commission/Alabama State Fire College may employ off-duty municipal firefighters and paramedics during their "off time" as educational adjunct fire instructors for the Commission's "open enrollment" training classes to teach educational training classes to other firefighters and paramedics, including his or her own coworkers who may also be enrolled in such classes. This employment does not violate section 11-43-12 of the Code of Alabama. AGO 2011-019.

Violation of Section 11-43-12 is deemed a misdemeanor and constitutes grounds for impeachment. A violation of Section 41-16-60 also constitutes a misdemeanor punishable by fine not exceeding \$500 or imprisonment not exceeding 12 months. Removal from office is mandatory.

Exception for Class 7 and 8 Municipalities

Exceptions to Sections 11-43-12 and 41-16-60, Code of Alabama 1975, are provided by Section 11-43-12.1 for Class 7 and 8 municipalities (under 12,000 population according to the 1970 federal decennial census). Notwithstanding any statute or law to the contrary, any Class 7 or 8 municipality may legally purchase from any of its elected officials or employees any personal service or personal property, provided the elected official or employee is the only domiciled vendor of the personal service or personal property within the municipality. The cost or value of such personal property or service shall in no event exceed \$3,000. The elected official or employee, who proposes to sell to the municipality, shall not participate in the decision-making process determining the purchase but shall make any disclosure required by the state ethics commission. The governing body of such municipality shall determine and find that the elected official is the sole vendor domiciled in the municipality and that the selling price of such service or property is lower than could be obtained from a vendor domiciled outside the municipality. In making such determination, consideration may be given to the quality of service or property proposed to be supplied, conformity with specifications, purposes for which required, terms of delivery, transportation charges and the date of delivery. The office of the Attorney General has determined that a Class 8 municipality may contract, under the provisions of Section 11-43-12.1, with a wood-waste recycling business partially owned by a council member if the provisions set out in the statute are followed. AGO 2003-014.

This law also allows any Class 7 or 8 municipality to legally purchase from any of its elected officials any personal service or personal property under competitive bid law procedures. This authority is not restricted to situations where the elected official or employee is the sole vendor within the municipality. The elected official or employee, if he or she proposes to bid, shall not participate in the decision-making process determining the need for or the purchase of such personal property or personal service or in the determination of the successful bidder. The governing body shall affirmatively find that the elected official or employee is the lowest responsible bidder as required by the state law. It shall be the duty of the municipality to file a copy of any contract awarded to any of its elected officials or employees with the state ethics commission. All awards shall be as a result of original bid taking. In the event an elected official or employee offers to sell or submit a bid to the municipality, he or she shall make full disclosure of his or her ownership or the extent of ownership in the business organization with which he or she is associated, under oath, to the municipality.

Other Exceptions

Although Sections 11-43-12 and 41-16-60 have been used as authority for prohibiting numerous activities, the courts and the Attorney General have ruled that certain exceptions, other than Section 11-43-12.1, do exist. For instance, a municipal official's son is not prohibited from bidding on a municipal contract because of kinship as long as the father has no financial interest in the son's business. AGO to Hon. James C. Wood, September 10, 1975. A person whose spouse serves as a municipal judge may serve on the municipal council provided he recuses himself from voting on issues dealing with his wife's position as judge. AGO to Hon. James H. Sims, July 8, 1975. A councilmember may serve as a volunteer firefighter for the municipality provided he receives no compensation for his services other than reimbursement for expenses incurred in the performance of his municipal duties. AGO to Hon. Paul Shipes, February 8, 1974. An incorporated water board may purchase insurance from an insurance agency owned by the municipal attorney. *Mobile v. Cochran, supra*. A municipal official may rent TV sets to patients in a municipal hospital. AGO to Hon. Oscar Peden, June 11, 1971.

These sections prohibit a municipal official or employee from doing business with the municipality, even if the contract is made on a competitive bid basis. However, the Attorney General has ruled that these sections do not prohibit a municipality from doing business with incorporated firms which have municipal officers or employees as

shareholders or corporate officers. 128 Q. Rep. Att. Gen. 30. A municipality may not, however, do business with the incorporated firm if the firm is a **family-held** corporation or if the municipal official is a majority shareholder in the corporation. *See*, AGO to Hon. Frankie J. Kucera, April 6, 1976; AGO to Hon. Wayne Harrison, December 6, 1973; AGO to Hon. Herbert G. Hughes, August 9, 1968; and AGO to Hon. Andrew J. Gentry, Jr., March 8, 1974.

These sections do not prohibit a municipal official from bidding on real property being sold by the municipality, 129 Q. Rep. Att. Gen. 48, nor does it prohibit a corporation which employs a municipal official from selling automobiles to the municipality which the official serves. AGO to Hon. Robert S. Milner, April 4, 1975.

A municipality may do business with a bank where the mayor of the city serves on the bank's board of directors and is a minority stockholder, provided, however, that the mayor does not vote on matters relating to the bank that are brought before the city council. AGO 1993-168 and AGO 2005-047.

Political Activity of Public Employees

Section 17-1-4, Code of Alabama 1975, provides that no city employee, whether classified or unclassified, shall be denied the right to participate in county and state political activities to the same extent as any other citizen of the state, including the endorsing of candidates and contributing to campaigns of his or her choosing. The statute gives county employees the right to participate in city and state elections and gives state employees the right to participate in county and city elections.

Section 17-1-4, Code of Alabama 1975, allows municipal employees the right to participate in municipal elections. To be a candidate, the employee must take an unpaid leave of absence or use personal leave or compensatory time. Employees who violate this provision must be dismissed. Employees may not use public funds or property for political activity. AGO 1993-00108. Supervisors may not coerce employees to campaign. Employees who campaign must do so on their own time.

Unpaid reserve officers do not have to take a leave of absence to run for municipal office unless the council establishes a policy requiring this. AGO 1997-00034. A personnel policy that allows employees during an unpaid leave to continue their health insurance coverage, provided they pay the premiums, would permit an employee taking time off to run for office to do the same. AGO 1998-00090.

A local act that prohibits employees of a county commission from participating in political activities at the

city, county and state levels is in conflict with Section 17-1-4 of the Code of Alabama, which sets forth the right of city, county and state employees to participate in political activities. AGO 2000-153.

The federal Hatch Act covers federal employees and officers and employees of a state or local agency if their principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States government or a federal agency. Generally, this law does not restrict activity in nonpartisan elections. Municipal elections are nonpartisan. The Hatch Act is enforced by the U.S. Office of Special Counsel. Additional information may be obtained from that office.

Other Statutory Restrictions

No officer of a municipality may be surety for any person having a contract, work, or business with the municipality for the performance of which a surety may be required. Section 11-43-12, Code of Alabama 1975. Certain exceptions exist for public works bids. *See*, Section 39-1-4, Code of Alabama 1975.

No officer or employee of a municipality, personally or through any other person, shall deal or traffic in any manner whatsoever in any warrant, claim or liability against the municipality. Violation constitutes a misdemeanor and grounds for impeachment. Section 11-43-14, Code of Alabama 1975.

A councilmember or mayor is prohibited from voting on questions which come before the council in which he or she or his or her employer or employee has a special financial interest, either at the time of voting or at the time of his or her election. Section 11-43-54, Code of Alabama 1975. The Attorney General has ruled that this section requires a councilmember whose spouse is employed as a teacher in the city's school system to refrain from voting on all matters pertaining to compensation, tenure and benefits of his or her spouse. AGO 1989-084 and AO NO. 1992-87. However, the Attorney General has ruled that a mayor whose spouse is employed by the city school system may vote on school board appointments or on appropriations to the school system if the vote of the council ends in a tie. AO NO. 1992-83. Section 36-25-5(a), Code of Alabama 1975, permits a councilmember, whose spouse is employed in a private capacity by a person who is a current member of the city board of education, to vote on the appointment of a new board member. AO NO. 1991-51.

A county commissioner may not vote on a one-cent sales tax that would benefit a city board of education which employs him or her. AO NO. 1994-33. Councilmembers who are employed by a board of education cannot vote on a proposed sales tax increase for school system capital outlays. AGO 1991-041. A councilmember may not vote on a budget which would benefit his or her spouse, nor vote on a disciplinary matter, if the vote might affect his or her spouse financially. AO NO. 1992-98.

No member of a municipal council may be appointed to any municipal office which has been created or the emoluments of which have been increased during the term for which he or she was elected. He or she may not be interested, directly or indirectly, in any contract, job, work, material or the proceeds thereof or services to be performed for the municipality, except as provided by law. Section 11-43-53, Code of Alabama 1975.

Chapter 10 of Title 13A, Code of Alabama 1975, as amended, sets out a number of offenses against public administration, such as obstructing governmental operations, refusal to permit inspection, failure to file a required report, tampering with governmental records, bribery of public

officials, failure to disclose conflict of interests, trading in public office, misuse of confidential information and perjury. Municipal officials should become familiar with these statutes.

The Theft of Honest Services Act did not make criminal undisclosed self-dealing by a public official or private employee, i.e., the taking of official action by the employee that furthers his own undisclosed financial interests while purporting to act in the interests of those to whom he owes a fiduciary duty. The honest services statute covers only bribery and kickback schemes. *Skilling v. U.S.*, 561 U.S. 358, 130 S. Ct. 2896, 177 L.Ed.2d 619 (U.S.2010).

Conclusion

As this article demonstrates, conflicts of interest for municipal officials and employees are not always straight forward and often determining whether or not a particular situation presents a conflict of interest may require the interpretation of the Attorney General or the courts depending on the specific facts presented. Please contact the League Legal Department with any questions. ■

Unified Voice

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critical when it happens. Remember that you can civilly agree to disagree. Be very wary of publicly criticizing your legislator's actions. Some legislators rarely vote with municipalities, yet come through on crucial votes. Taking them to task in a public forum for a series of votes on relatively unimportant issues can lose their votes permanently on much more vital issues. It's much more effective to sit down with a legislator in private to discuss areas of disagreement.

10. Say Thank You. Remember to thank legislators regularly and publicly for their work, support and votes. Never discount the importance of a thank you; it really can make a difference. This is one of the most important things you can do, because so few people remember to thank their legislators – and legislators will remember those who do.

11. Do Unto Others. Approach legislators the way you, as a city official, want to be approached by your constituents - with courtesy and respect.

Conclusion - The Unified Voice

The goal of taking a team approach to our legislative efforts is to have the League's membership speak with a

unified voice. We are all better served if municipal officials either support or oppose the same legislation. Of course, the same bill may affect municipalities in different ways. Some bills have a positive effect on one municipality and a negative effect on another. Clearly, officials from those municipalities will have different views and ask legislators to take different positions on that bill. Further, each municipality is composed of individuals. The officials who are elected or appointed to serve that municipality all have their own views and interests.

From the League's legislative viewpoint, though, it is important that our members speak with a unified voice. It does us little good to approach legislators as a house divided. As the Bible says, a house divided against itself cannot stand. If League members take different stands on the same legislation with their legislators, our position on that legislation is weakened.

Fortunately, League members generally find themselves in agreement regarding the impact of most legislation and can speak as one. One of the League's roles is to be the point of the spear for that unified voice. Working together, we can ensure the continued to have success on behalf of our Alabama municipalities before the legislature. ■

This past year, 76 municipal officials successfully completed the requirements to receive their CMO certification; 43 received their Advanced CMO certification; and 24 were awarded CMO Emeritus certification. The 2015 CMO Graduation was held December 9th in Montgomery.



2015 CMO Emeriti

Council Member Marva Gipson, Aliceville
 Council Member Jesse Matthews, Bessemer
 Mayor Tom Henderson, Center Point
 Council Member Bess Yarbrough, Centre
 Mayor Billy Joe Driver, Clanton
 Council Member Tayna Rains, Dutton
 Mayor Gary Lewis Livingston, Eva
 Council Member Ben Reed, Gadsden
 Mayor Charles Gilchrist, Glencoe
 Mayor Phil Segraves, Guin
 Council Member John McGee, Killen

Council Member Sadie Britt, Lincoln
 Mayor Claude “Bud” Kitchin, Lincoln
 Council Member Billy Pearson, Lincoln
 Mayor Leon Smith, Oxford
 Mayor Fred McNab, Pinckard
 Mayor Roberta Jordan, Pine Hill
 Mayor Melvin Duran, Priceville
 Mayor Charles Murphy, Robertsdale
 Mayor Howard Rubenstein, Saraland
 Mayor Wally Burns, Southside
 Council Member Charles Allen, Thomasville
 Council Member Alberta Dixon, Thomasville
 Council Member Don Moore, Uniontown

2015 Advanced CMOs

Mayor William R. McKinzey, Jr., Aliceville
 Council Member Ralph Wells, Andalusia
 Council Member Betty Bradley, Argo
 Council Member Ann Brown, Argo
 Council Member Lonnie Murry, Sr., Brighton
 Mayor Jon Graham, Calera
 Mayor Joe Lancaster, Carrollton
 Council Member Walter E. “Ted” Hazen, Chatom
 Council Member T. Dale Neuendorf, Chelsea
 Council Member Robert M. Cleckler, Jr., Childersburg
 Council Member Sammy Wilson, Clanton
 Council Member C. Rick Blackwell, Foley
 Former Mayor Othell Phillips, Gardendale
 Mayor Wade Williams, Hamilton
 Mayor Rudy Rooks, Heflin

Mayor Alberta McCrory, Hobson City
 Mayor Jeff Cheatwood, Hokes Bluff
 Council Member Gary Wayne Whitt, Hokes Bluff
 Council Member Vivian Holt Bean, Lake View
 Council Member Shannon Phillips, Lake View
 Mayor Daniel Bruce Wade, Lake View
 Mayor Jason Q. Ward, Lisman
 Council Member Jocelyn Tubbs-Turner, Marion
 Mayor Virgil Skipper, Midland City
 Council Member Patricia A. “Patsy” Jones, Opelika
 Mayor John Bartholomew, Opp
 Council Member Charles M. Booth, Opp
 Council Member Mary H. Brundidge, Opp
 Council Member Arlin B. Davis, Sr., Opp
 Council Member Charlotte Hubbard, Oxford
 Council Member Arthur L. Day, Jr., Phenix City

(continued on next page)



2015 Advanced CMOs *(continued)*

Council Member Gail Head, Phenix City
Council Member Foyel Brunson, Pinckard
Mayor Bill Gillespie, Jr., Prattville
Council Member Wayne Biggs, Saraland
Council Member Mike Butler, Satsuma

Council Member John Hatley, Southside
Mayor William Isley, Springville
Council Member Darrell Wilson, Tallassee
Council Member Henry L. Cooper, Valley
Council Member Fred Lynch, West Blocton
Council Member Patricia Johnson, Wilsonville
Council Member Rusty Barnes, Winfield

2015 Certified Municipal Officials

Council Member Charles Z. Bailey, Albertville
Council Member Jill Oakley, Albertville
Council Member Thomas (Tony) A. Goss, Alexander City
Mayor Charles Shaw, Alexander City
Council Member Bobby Tapley, Alexander City
Council Member Billy Wall, Alexander City
Council Member Strong Bruner, Jr., Ashford
Council Member Denise Herndon, Ashford
Council Member Reed Harper, Athens
Mayor Jim Staff, Atmore
Mayor Annette Johnson, Bayou La Batre
Council Member Ron A. Mason, Butler
Council Member Alan Watts, Calera
Council Member Ezell Smith, Camp Hill
Mayor Joe Lancaster, Carrollton
Council Member Tony Picklesimer, Chelsea
Council Member Ralph Rich, Childersburg
Council Member Angesa Twymon, Childersburg
Council Member Connie Robinson, Citronelle
Council Member Sammy Wilson, Clanton
Council Member Leslie LeAnne Greene, Creola
Council Member James M. Tarpley, Dadeville
Council Member Gary Hammon, Decatur
Council Member Jack Burrell, Fairhope
Council Member Andrew Betterton, Florence
Council Member Josh Bryant, Fultondale
Council Member Glenda N. Winters, Gantt
Mayor Stan Hogeland, Gardendale
Council Member Jerry Gann, Guin
Council Member Randall Whitaker, Guntersville
Council Member Richard Bittinger, Haleyville
Council Member Randy Curtis, Hayden
Mayor Rudy Rooks, Heflin
Council Member Will Culver, Huntsville
Council Member John W. London, Irondale
Council Member Dana Tolbert Ford, Jackson's Gap
Mayor Daniel Bruce Wade, Lake View
Former Council Member Gwen Barber, Lincoln
Council Member Shelly L. Barnhart, Lincoln
Council Member Jerry Sipper, Luverne
Mayor W.C. Hayes, Jr., Maplesville
Council Member Bobbie McKenzie, McIntosh
Council Member Michael Gay, Millbrook
Council Member Earl Monroe, Millbrook

Council Member Samuel P. Rayburn (deceased),
Millbrook
Council Member Stanley Allred, Millport
Council Member Cynthia Lacey Hood, Millport
Council Member Tracey Wriley, Millport
Mayor Hollie Cost, Montevallo
Council Member Mike Lockhart, Muscle Shoals
Council Member Thomas D. Morgan, Sr., Opp
Council Member Charlotte Hubbard, Oxford
Council Member Anthony Hill, Ozark
Council Member Jay H. Jenkins, Pell City
Council Member Dot Wood, Pell City
Mayor Edward Manuel, Pennington
Council Member James Prestage, Pennington
Council Member Arthur L. Day, Jr., Phenix City
Council Member Jim Cartee, Phil Campbell
Council Member George Roberts, Pinson
Council Member Denise Brown, Prattville
Council Member Lorenzo A. Martin, Sr., Prichard
Council Member Frank Riddle, Riverside
Council Member Ruthie Campbell, Robertsdale
Council Member William Hamblin, Satsuma
Mayor Paul Murray, Satsuma
Council Member Edward Pollard, Shorter
Mayor Willie Mae Powell, Shorter
Council Member Lisa Sconiers, Slocomb
Council Member Michael Rea, Somerville
Council Member Dejerilyn K. Henderson, Troy
Council Member Lawrence Haygood, Tuskegee
Council Member Geneva Jones Watts, Uniontown
Council Member Dianne Green, York
Council Member Berlinda Hood, York
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