



# The Alabama Municipal JOURNAL

January/February 2017

Volume 74, Number 4

# Advocacy

(ad-və-kə-sē)

“Advocacy means persuading people who matter to care about your issue. It is about getting listened to, being at the table when decisions are made, being heard by people who make decisions. It is about facing and overcoming resistance. It is about speaking and writing in compelling ways that make decision makers want to adopt your ideas.”

— John Daly, *Advocacy: Championing Ideas and Influencing Others*



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# The Alabama Municipal JOURNAL

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## On the Cover:

The 2017 Regular Session begins February 7th. This *Journal* issue explores legislative advocacy, building relationships, legislative goals as well as the League's annual CMO Legislative Advocacy Session scheduled for February 21st in downtown Montgomery. Original cover design 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 2016 with a very successful Municipal Leadership Institute and CMO Graduation Ceremony and now 2017 is off to a swift start as we prepare for the Regular Session of the Alabama Legislature to begin on February 7th. To that end, the League will hold its annual Legislative Advocacy CMO program on February 21st at the Alabama State House in downtown Montgomery.

An agenda is available on page 18. Visit [www.alalm.org](http://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 21st between 1 and 4 p.m. To visit House members, call 334-242-7600 and to visit Senate members, call 334-242-7800.

## *Are you receiving the League's legislative e-newsletter, State House Advocate?*

If you're not, be sure the League has your correct email address and that any email you receive from us isn't going in your "Junk" or "Clutter" folders. Once the Regular Session begins, we will email you the *State House Advocate*, (either Monday or Friday afternoons depending on the Legislature's weekly meeting schedule). This e-newsletter 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. In addition, be sure to read the overview on p. 23 about ALISON (Alabama Legislative Information System Online), the Legislature's website. Built in-house by the Legislature's tech staff, not only is ALISON the resource we will direct you to most often for information the League is tracking, you may also find that you want to independently research a legislative action, read a bill or know how your local representatives voted on certain legislative actions.

## **Congratulations to our 2016 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, 24 municipal officials successfully completed the requirements to receive their CMO certification; 49 officials received their Advanced CMO certification; and 14 officials were awarded their CMO Emeritus certification. See pages 37 -38 for a complete list of graduates. The next opportunity to earn CMO credit will be at the February 21st Legislative Advocacy program. We look forward to seeing you there!

Carrie



*Greg Cochran, Director of Advocacy and Public Affairs, discusses Legislative priorities during the Legislative Committee meeting on December 15th.*

# The President's Report

By Dr. Howard Rubenstein, Mayor, Saraland



## 25 Pearls from the President

**M**y name is Howard Rubenstein; my friends call me Doc. I'm starting my 21<sup>st</sup> year of service as a municipal elected official having served as councilmember, council president and mayor during this time. I also still practice as a family physician. It is an honor to serve as the President of the Alabama League of Municipalities, where I've spent more than two decades interacting with my colleagues from across the state, honing relationships with legislators and state leaders and learning how to be a more efficient and effective municipal leader. During the November League Orientation Sessions, I shared a few "pearls of wisdom" I've gathered over the years and at both the Huntsville and Montgomery sessions I was asked to provide them for our entire League membership. Therefore, I now share with you 25 of my "pearls". Please use them daily – these are not just for special occasions!

1. Use the resources the League offers. These include legal advice, educational opportunities, municipal advocacy and networking.

2. During the year as well as at the Annual League Convention, CMO educational sessions are offered in various locations around the state. This provides an excellent opportunity to learn all the facets for excelling as a municipal elected official. *Participate!!*

3. The press/media can be an ally or an enemy. Try to establish good relationships with your local reporters and media representatives. Provide them with your contact information and respond in a timely manner to requests for information or clarification. This is your opportunity to "drive the narrative". Be positive about your community no matter what side of an issue you are on.

4. Your city/town attorney is a valuable asset to you. Seek out his or her advice **BEFORE** you commit to a course of action. Do *not* shop around to other attorneys looking for the answer you want. If you do think you need a "second opinion" feel free to use the League's legal staff. If their opinion should differ from your municipal attorney, encourage your local attorney to contact the League and discuss the issue. Please make sure you share **ALL** information about the situation with

your legal advisors as this can and will affect the quality of the information you receive.

5. Your municipal clerk is another outstanding resource at your disposal. Treat him or her with respect as he or she has a great responsibility for ensuring that your town or city functions appropriately.

6. Volunteer for League Policy Committees. They consist of the Committee on Finance, Administration and Intergovernmental Relations (FAIR); Committee on Energy, Environment and Natural Resources (EENR); Committee on Transportation, Public Safety and Communication (TPSC); Committee on Human Development (HD); and Committee on Community and Economic Development (CED). Spaces are still available on the various committees. By serving, you will have a great opportunity help shape League Policy and priorities while networking with fellow municipal elected officials.

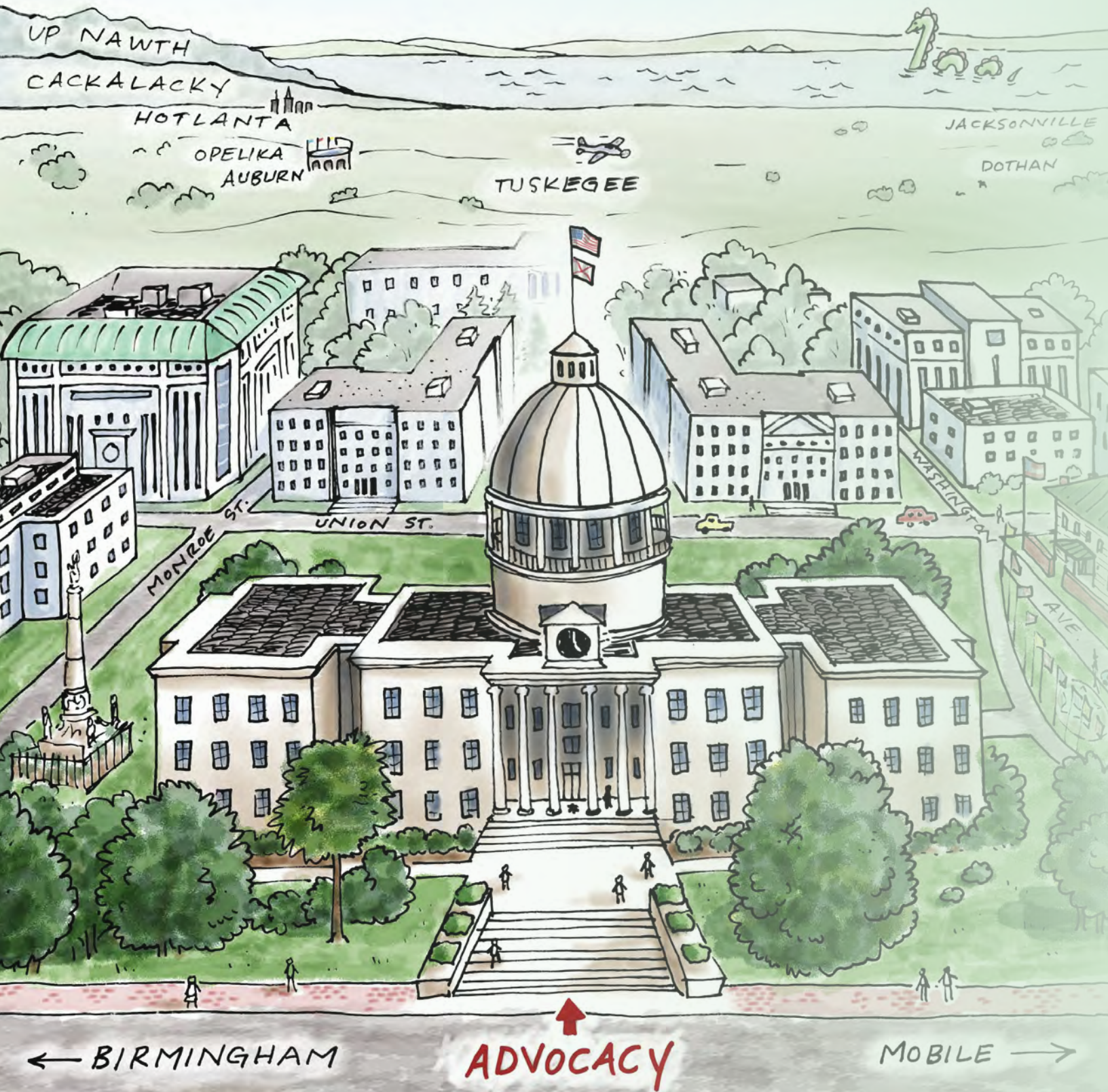
7. Mayors: Please share all information you receive with **ALL** of your Councilmembers. The Mayor's Office serves as an interface for a great deal of information your municipality receives. Please be considerate of your councilmembers in sharing this information as it will help develop good Mayor/Council relationships.

8. Councilmembers: Please "stay in your lane". You function as the legislative and policy making arm of your city or town. The Mayor is responsible for the day-to-day operation of your municipality and supervising its employees. You should **NEVER** give a direct order to any municipal employee. When speaking to employees, be careful how you phrase things. "You really need to clean that ditch today" will be interpreted as an order by an employee although you may have meant it as a suggestion. If you see specific tasks that you feel need to be done, please contact your mayor to discuss with him or her.

9. Social media, particularly Facebook, is here to stay. You can ignore it, but I guarantee a great deal of your

*continued on page 36*

# Bills and Laws: A



# 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 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.

## 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 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.

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# Municipal Overview

By Ken Smith, Executive Director



## Speaking with One Voice

The Alabama League of Municipalities has long been recognized as one of the most effective lobbying organizations in Montgomery. Over the years, our legislative process has steadfastly worked to retain existing municipal authority and, where needed, expand and improve the ability of our municipal governments to meet the needs of their citizens.

We are proud of this success, and the recognition we've received. In 2015, the Alabama League of Municipalities was ranked as one of the top five 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. This success is due to a number of factors that I'd like to discuss today.

When the Legislature is in session, our legislative efforts are geared to achieve two paramount objectives: (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 of 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.

But the League's legislative efforts don't begin when the session starts. We constantly update our members regarding legislative expectations. Our legislative advocates, our attorneys, our Communications Department work very closely together throughout the year developing our legislative strategy, maintaining contact with legislators, attending interim and ad hoc committee meetings and planning.

Our internal committee process is designed to help us determine the desires, interests and needs of our members. Our standing committees meet each year with Resource Advisors from state and federal agencies to advise them on developments in several key municipal areas. These committees then develop the League's Policies and Goals. This document helps our staff decide how we should confront developments at the Legislature.

It also serves as a guide to the Committee on State and Federal Legislation when they meet to set the League's legislative agenda.

The 2017 Alabama Regular Legislative Session begins Tuesday, February 7, 2017. Despite the past success of the League's legislative advocacy efforts, *we cannot take this success for granted*. Maintaining this record will require a great deal of effort by our staff, and, especially our members. While the League communicates directly with legislators throughout the year, 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.

In addition to Greg, the League contracts with the Bloom Group for legislative assistance. The Bloom Group is led by Hal Bloom, who – like Greg – has decades of experience working with the Alabama Legislature. Including himself, Hal's staff of five legislative advocates meets regularly with our legislative staff and helps us advocate for municipal interests. Having access to Hal and his staff expands our ability to communicate our positions effectively.

The League also works closely with lobbyists who represent municipalities. We meet weekly with these lobbyists during the session, both to help them with their legislative efforts, and to enlist their help with ours. In most cases, we find that the interests of our members are in-line with their local needs, which makes sense because their clients are also League members. These lobbyists help us communicate our position to legislators, while we do the same for them.

The League's legislative approach is truly a team effort. Working with the Bloom Group and the municipal lobbyists broadens the scope of our legislative efforts tremendously,

*continued page 26*



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The University of Alabama College of Continuing Studies is proud to support the Alabama League of Municipalities as their **2017 Capstone Sponsor**. Here's what's happening in 2017:

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*Alabama Association of Municipal Clerks and Administrators*

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<b>FALL MUNICIPAL CLERKS INSTITUTE</b>	August 23 - 25, 2017, Tuscaloosa
<b>MUNICIPAL CLERKS WINTER CONFERENCE</b>	December 6 - 8, 2017, Florence
<i>IIMC approved webinars coming soon!</i>	

### MUNICIPAL REVENUE OFFICERS TRAINING

*Alabama Municipal Revenue Officers Association (AMROA)*

<b>SPRING REVENUE TRAINING INSTITUTE</b>	April 12 - 14, 2017, Tuscaloosa
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Questions? Contact Pamela Harvey at 205-348-6605 or [pharvey@ccs.ua.edu](mailto:pharvey@ccs.ua.edu).

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# Outlook: 2017 Regular Legislative Session

Greg Cochran • Director of Advocacy and Public Affairs • ALM

The 2017 Regular Session of the Alabama Legislature opens Tuesday, February 7th. There is no doubt 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 such as roads, bridges and high-speed broadband access.

How they accomplish this is key to municipalities and, ultimately, the people of Alabama. Do they eliminate the federal deductions from state income tax filers? Raid the State Oil and Gas Trust Fund? Continue to argue over legalizing gambling or a state lottery? Increase the state sales tax rate? Following several years of intense and contentious 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 at League Headquarters in Montgomery on December 15th and crafted seven municipal initiatives for passage during the 2017 Regular Session ranging from again attempting to secure 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.

## 2017 Legislative Package

**Motor Fuel Excise Tax.** To increase the motor fuel excise tax to address the shortfall in infrastructure needs of Alabama's municipalities and counties.

**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.

**Municipal Zoning Appeals Reforms.** To require the appeals of zoning boards decisions to be filed with the court rather than the board.

**Municipal Court Reforms.** To join with other stakeholders to support codification of Alabama law to ensure

*continued page 14*



ALM's Legislative Committee met in Montgomery on Dec. 15 to determine 2017 legislative priorities.

- 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;

*continued page 20*

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# NAFECO

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Storefront Blitz Waterway

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# For Effective Grass Roots Advocacy & Legislative Success, *Relationships Matter.*

Greg Cochran • Director of Advocacy and Public Affairs • ALM

The 2017 Regular Session of the Alabama Legislature begins February 7<sup>th</sup> and *your* relationships with your legislators will be extremely important to the success of your League throughout this next legislative marathon. As a locally elected official representing the citizens of your community, it is important that you take the time and make the effort to reach out often to those state legislators who also represent your constituents.

## **Relationships matter.**

Your 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.*

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 – at the grassroots level, where shared values and relationships are critical. Therefore, 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. No one can localize and personalize a situation facing your community – or discuss it at the grassroots level with your legislators – better than *you*. *Relationships matter.*

Relationships are the bridge to success in grassroots 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.*

## **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 once again 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 with the League's 2017 legislative priorities, but in making sure municipal interests are protected as the session progresses. Please carefully read the League's weekly legislative e-newsletter, *State House Advocate*, which is emailed directly to you during the session, and be ready to respond to Legislative Alerts from the League when immediate action is needed.

***Relationships matter.***

*continued next page*

## 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 21st immediately 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 18). This workshop is extremely important to every municipal official. You can download registration information at [www.alalm.org](http://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.* ■

## Outlook 2017

continued from page 11

municipal court judges have the authority to waive fines and fees of indigent defendants and issue bench warrants.

**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 21

Please join us in Montgomery on February 21 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 18 for contact information as well as the day's agenda and visit our website at [alalm.org](http://alalm.org) to register.

### Conclusion

As was the case last year, the 2017 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.

We will begin emailing our legislative e-newsletter, *State House Advocate*, just before the 2017 session begins. *State House Advocate* is sent weekly during the Session and will provide you with updates as well as any necessary action alerts. This is how we communicate with you throughout the session so please make sure the League has your correct email address on file and then be ready to act quickly when we reach out to you. Of course, feel free to call (334-546-9092) or email ([gregc@alalm.org](mailto:gregc@alalm.org)) me with your questions and concerns. ■

## Q&A with Senate Pro Tem Del Marsh

### **Aside from the budget, what do you predict will be the most difficult issues facing lawmakers when the Legislature convenes in February?**

I anticipate legislation dealing with new prison construction and addressing Medicaid to be the two biggest issues facing the Legislature in the Regular Session. Last session the Governor came out with a plan to overhaul the states prison system to address overcrowding and update the system as a whole to make it safer for both inmates and especially for corrections officers. While ultimately the plan was not successful (passed the Senate but failed in a vote in the House), I anticipate that he will come back with a similar plan that will be addressed earlier in the Session. There is no doubt that the prison system needs to be addressed. Senator Cam Ward has done a great job taking a deep dive into this issue, but there is still work to be done and I look forward to working with everyone involved to fix this problem.

It seems as though Medicaid has been an issue looming for the past several years and I anticipate it taking a large portion of the session this year as well. There is hope that the Regional Care Organizations (RCOs) would be implemented with help from the Federal government to curb the rapid increase in costs and provide better local care. We will continue efforts to further reform Medicaid, which will hopefully reduce costs and ease the burden on the General Fund.

### **As you know, many of Alabama's roads and bridges are in critical condition. ATRIP yielded unprecedented transportation improvements for all 67 Alabama counties yet many communities still lack the resources to adequately address the state's road and bridge deficiencies. Now that the ATRIP program is nearing its end, what is the outlook on creating a sustainable new revenue source for solving this problem? How do you anticipate the Senate moving forward on this issue?**

There has been some question as to an increase in the gas tax. Alabama has not seen any change in the gasoline tax since the early '90s. Since then, the cost of materials and labor have gone up while the funding has not changed – not to mention today's cars are more efficient, with less gasoline being purchased by consumers. This means there is less money going to widening highways, repaving county roads and adding safety measures on the roadways. I am fine with presenting this as an option to the Senate Republican Caucus to see what the will on the body is on this matter. Like many issues over the past two years, getting opinions from all across the spectrum will be the key in coming up with a plan that works for everybody involved.

### **Internet access is rapidly evolving the way business is conducted throughout the world. When companies look to locate or expand in Alabama, broadband accessibility is a factor in making that decision. Additionally, hospitals require top-of-the-line Internet technology to develop and administer telemedicine programs, and, in order to ensure Alabama's schools are technologically-driven for the future, the infrastructure must be in place to support it. How can the State and local governments partner with industry to expand the availability of broadband to our communities?**

When it comes to issues involving infrastructure and technology on the local level, cooperation and collaboration is key. Bringing all parties to the table on these matters – providers, local leaders, state agencies and members of the Legislature – is the best way to move forward and make sure everyone has what they need to be successful and, most importantly, that we figure out what is best for our citizens. We are fortunate to live in a time where, because of technology, geography is no longer the number one determining factor in where companies choose to locate themselves. Places that seemed remote even 15 or 20 years ago are suddenly on the map for businesses from around the world to locate because of technology. However, we must make sure that we are providing the infrastructure to remain competitive – and that will take strong collaboration between all interested parties.

### **How does the Legislature address the constant pressure of delivering critical services, such as Medicaid, prisons, law enforcement and infrastructure, without having the adequate resources to fund these demands?**

There is no doubt that the demands on the budgets are enormous. I believe that this Legislature has taken unprecedented step as it relates to our budget shortfalls. In years past, we have found money to plug holes in the budget temporarily while never actually solving the spending problem. Legislators understand that this is not a solution that is sustainable, and in the past two years they have been committed to looking into fundamentally changing the way the state writes both of its budgets. Last year

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## Q&A with Speaker Mac McCutcheon

### **Aside from the budget, what do you predict will be the most difficult issues facing lawmakers when the Legislature convenes in February?**

The General Fund budget will continue to be the greatest obstacle to tackle when the session convenes. With that said, major programs tied to that budget will be some of the most difficult issues the Legislature will face. Building consensus for a solution to our prison issues will become increasingly important as rulings are imminent in court cases dealing with our corrections programs. It is imperative that we work together to find a solution before a federal judge forces our hand. Additionally, ensuring the solvency of our state retirement program for our more than 30,000 state employees and over 23,000 state retirees remains a priority. While there is agreement among Republicans that budget reform is necessary, the exact reform measure is still unclear. The work of the Joint Taskforce on Budget Reform is a priority for me and I look forward to hearing their recommendations next year.



### **As you know, many of Alabama's roads and bridges are in critical condition. ATRIP yielded unprecedented transportation improvements for all 67 Alabama counties yet many communities still lack the resources to adequately address the state's road and bridge deficiencies. Now that the ATRIP program is nearing its end, what is the outlook on creating a sustainable new revenue source for solving this problem? How do you anticipate the House moving forward on this issue?**

The need to improve and maintain Alabama's infrastructure is incredibly important to me. Aging roads and bridges are a detriment to our economy and lessen the quality of life for Alabamians across the state. I have been engaged on this issue for 10 years and I am committed to continuing the conversation. At this juncture, education is key. There is still a great need to inform people of the impact our aging infrastructure has on the state in the short term and will have in the long term. While I'm not sure what the final solution will be, I'm optimistic that with all of the ideas and proposals being discussed we will find a solution to this problem.

### **Internet access is rapidly evolving the way business is conducted throughout the world. When companies look to locate or expand in Alabama, broadband accessibility is a factor in making that decision. Additionally, hospitals require top-of-the-line Internet technology to develop and administer telemedicine programs, and, in order to ensure Alabama's schools are technologically-driven for the future, the infrastructure must be in place to support it. How can the State and local governments partner with industry to expand the availability of broadband to our communities?**

When there is a statewide issue like broadband access, I believe it's important to look at the areas that have been successful and emulate this success. Just last session, the Legislature passed the Wireless Infrastructure Renovation for Education (WIRED) Act which created a funding framework to put wireless broadband infrastructure in every K-12 school across the state. The program created grants to local school systems which could be used for the purchase, installation and/or upgrade of wireless broadband infrastructure. If a school already had the infrastructure, the funding could be used to repay debt or further enhance the digital learning environment. This program has been wildly successful with more than 119 of Alabama's 137 school districts submitting applications and receiving funding for their proposals. Having this infrastructure in every school and classroom is one giant step towards expanding broadband access across the state. I am confident that we can take best practices from this approach and tie them to the needs of hospitals and rural communities across Alabama.

### **How does the Legislature address the constant pressure of delivering critical services, such as Medicaid, prisons, law enforcement and infrastructure, without having the adequate resources to fund these demands?**

The most important task we must take on as legislators when it comes to budget discussions is separating the facts from the fiction. All 135 members are inundated every day with letters, emails, and phone calls with information on a myriad of issues. It's just like your kitchen table at home, before you can make a decision about your household budget, you've got to have all of the correct information in front of you. Before major reforms can be made, we are narrowly focused on determining exactly where every single dime of taxpayer dollars is spent across state government. We understand the tremendous importance that



our state programs play in the lives of Alabamians across the state, which is why we are so committed to ensuring that your taxpayer dollars are being spent in the most effective and productive way possible. Knowledge is power, and these accurate facts and figures will educate the Legislature's decision-making moving forward.

**Like the State, many Alabama municipalities face crucial financial shortfalls while having to address increasing demands to meet the safety, health and welfare needs of their citizens. How can the Legislature effectively work with municipal governments to assist them with these needs?**

Legislators must often look at the issues facing them from a 30,000-foot view. What may be the most expedient solution to an issue in their district may be detrimental to a longer term solution that could not only benefit their district but many more across the state. This commitment to the betterment of Alabama requires a lot of patience but even more so a commitment to collaboration. It is important for municipalities and legislators to communicate about the broader impact of their local issues. If everyone's goal is to move Alabama forward, the individual needs of municipalities across the state will be addressed.

**What do you consider to be the best strategies for local officials to work with the House on issues affecting local government?**

Communication is critical. Every legislator I know has an open door policy and wants to hear the needs and concerns of their constituents – take advantage and reach out as often as needed on your issues. ■

*Mac McCutcheon (R-Capshaw) serves as Alabama's Speaker of the House and represents District 25 which encompasses the communities of Madison City, Huntsville, Capshaw, Monrovia and East Limestone. Follow Speaker McCutcheon on Twitter via @MacDistrict25 and Facebook at [www.facebook.com/speakermccutcheon](http://www.facebook.com/speakermccutcheon).*

## Del Marsh

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we held committee hearings starting in January to assess how state agencies come up with their budget requests, and this year the Joint Task Force on Budgeting was created to look into the process itself. We are all hopeful that both of these actions will provide us with a way to provide these critical services in a responsible and sustainable way, and without creating new taxes on hardworking Alabamians.

**Like the State, many Alabama municipalities face crucial financial shortfalls while having to address increasing demands to meet the safety, health and welfare needs of their citizens. How can the Legislature effectively work with municipal governments to assist them with these needs?**

At the state level, the Legislature has made it a top priority to make sure that actions taken with respect to the budgeting process are done in a responsible and sustainable way. Our goal was to end the days when one-time money was used as a security blanket from year to year while avoiding the main problem of spending. The state and the localities are at their best when we can speak with one another (and within localities) and decide what actions have been tried and whether they worked or not. For our state to reach its potential, we must have strong cities and counties, which I have no doubt is achievable if we work together to figure out how to create a sustainable budget for all that meets the basic demands of our citizens and ensures the long term solvency for required services.

**What do you consider to be the best strategies for local officials to work with the Senate on issues affecting local government?**

My advice to local officials is to stay involved with their Senators. Ultimately we are responsible to the people back home and communicating with those people on a regular basis is key. Local officials know what issues are affecting their localities so they are the best resource to help Senators know the best course of action to take in order to improve situations within a locality, and, in most cases, Senators are more than happy to assist. This past year there were 14 Amendments on the election ballot, many of them local issues that were developed after a conversation between local officials and state legislators. Whether that is some kind of a weekly update or just visiting them when you come to Montgomery. ■

*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](mailto:Del.Marsh@alsenate.gov).*

# MUNICIPAL LEGISLATIVE ADVOCACY

Alabama State House and RSA Plaza Terrace • Downtown Montgomery

**Tuesday, February 21 • 8:30 a.m. until 4:00 p.m.**

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

**[www.alalm.org](http://www.alalm.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.   | <b>Registration (Alabama State House, Room 200)</b>  |
| 9:00 – 9:10 a.m.   | <b>Welcome:</b> Council President Jesse Mathews, Bessemer, Chair<br>Committee on State & Federal Legislation<br>Ken Smith, Executive Director, ALM |
| 9:10 – 9:45 a.m.   | <b>Legislative Challenges &amp; Opportunities</b><br>Greg Cochran, Advocacy & Public Affairs, ALM  |
| 9:45 – 10:15 a.m.  | <b>Legislative Leadership/Session Outlook</b> (speakers TBA)   |
| 10:15 – 10:30 a.m. | <b>Break</b>   |
| 10:30 – 11:15 a.m. | <b>Are We Being Heard? Importance of Messaging</b><br>Carrie Banks, Communications Director, ALM   |
| 11:15 – 11:45 a.m. | <b>Municipal Officials Grassroots Strategies</b><br>Mayor Walt Maddox, Tuscaloosa, ALM Past President  |
| 11:45 – Noon       | <b>Walk to RSA Plaza Terrace (next door)</b>   |
| Noon – 12:30 p.m.  | <b>Lunch at RSA Plaza Terrace</b><br><b>Keynote Speaker:</b> Paul Myers, Executive Director, North Carolina League of Municipalities               |
| 1:00 – 4:00 p.m.   | <b>Legislative Visits:</b> Alabama State House   |

**Please make appointments ASAP to visit with your legislators  
on February 21 between 1 p.m. and 4 p.m.**

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

# The Legal Viewpoint

By Lori Lein, General Counsel



## Forms of Municipal Government in Alabama

On August 1, 2016, Alabama had 462 incorporated municipalities located in 67 counties. These entities are designated by state law as either **cities** (2,000 or more population) or **towns** (under a population of 2,000). These municipalities range in size from the state's largest city, Birmingham (population 212,237) to the town of McMullen (population 10). Alabama is predominantly a state of small municipalities. This is illustrated by the following population breakdown:

Cities more than 100,000	4	.8658%
Cities between 50,000-100,000	5	1.08%
Cities between 25,000-50,000	11	2.38%
Cities between 12,000-25,000	34	7.36%
Cities between 6,000-12,000	40	8.66%
Cities between 2,000-6,000	86	18.61%
Towns between 1,000-2,000	79	17.10%
Towns between 500-1,000	78	16.88%
Towns less than 500	125	27.06%

There are 281 municipalities with a population less than 2,000 with 123 out of the 281 with a population less than 500. The Code of Alabama authorizes two distinct forms of municipal government for Alabama municipalities. This article presents a general discussion of these two forms of municipal government and the legal variations of each one.

### Classification of Municipalities

Section 104(18) of the Alabama Constitution, 1901 prohibits the Legislature from creating or amending by local legislation the charter powers of municipal corporations. The only exception to this restriction on the Legislature is the power to change or alter the corporate limits of cities and towns by local acts. Because of this constitutional provision, the laws governing the incorporation, organization and operation of cities and towns in Alabama are general in nature and either apply to all municipalities in the state or to all municipalities within a specified population group. The basic statutes providing for the creation, organization and functioning of cities and towns are found in Title 11, Code

of Alabama 1975, and amendments thereto.

Prior to 1978, the state Legislature adopted numerous statutes to provide powers for municipalities with very narrow population ranges. These laws were known as **general laws of local application**. In 1978, the Alabama Supreme Court, in the case of *Peddycoart v. Birmingham*, 354 So. 2d 808, held that the state Legislature could no longer adopt general bills of local application. The court held that the Legislature could pass only statewide general bills affecting every jurisdiction in the state or local bills affecting single jurisdictions. Since Section 104 of the Alabama Constitution prevents amendment of municipal charters by local acts, another method of enacting such amendments was needed.

The League was successful in obtaining passage by the Legislature, and ratification by the voters, of Amendment 397 (Section 110) Alabama Constitution, 1901, which authorizes the Legislature to establish no more than eight classes of municipalities based on population. This provision also allows legislation to be passed which affects one or more of such classes and provides that any such legislation shall be deemed to be general laws rather than local laws.

Sections 11-40-12 and 11-40-13, Code of Alabama 1975, established the eight classes of municipalities as follows:

**Class 1** – Cities of 300,000 inhabitants or more

**Class 2** – Cities of not less than 175,000 and not more than 299,999 inhabitants

**Class 3** – Cities of not less than 100,000 and not more than 174,999 inhabitants

**Class 4** – Cities or not less than 50,000 and not more than 99,999 inhabitants

**Class 5** – Cities of not less than 25,000 and not more than 49,999 inhabitants

**Class 6** – Cities of not less than 12,000 and not more than 24,999 inhabitants

**Class 7** – Cities of not less than 6,000 and not more than 11,999 inhabitants

**Class 8** – Cities and towns with a population of 5,999 or less.

The population figures refer to the 1970 federal decennial census. Any municipality incorporated after June 28, 1979, shall be placed in one of the above classes according to the

*continued page 31*

- 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.

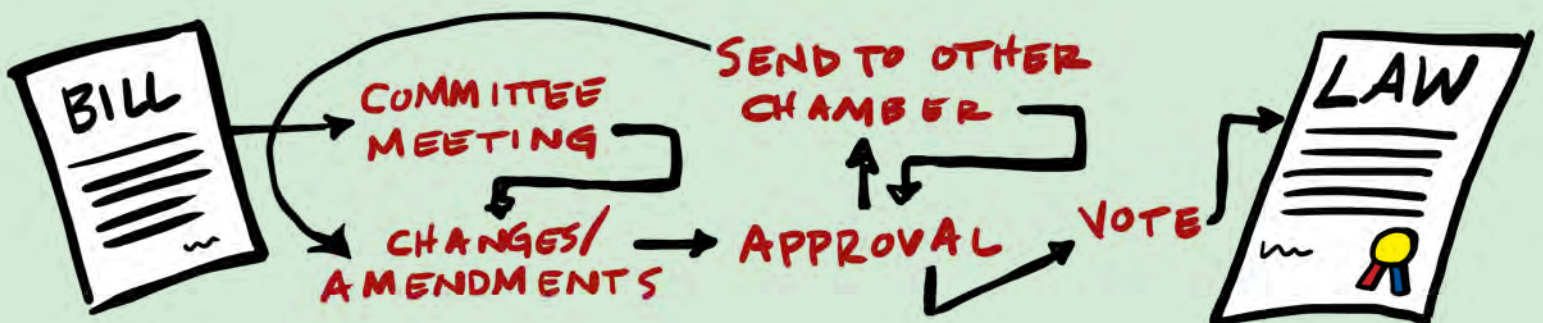
Bills which are favorably acted upon by the standing committees are reported to the entire house for consideration and are placed on the regular calendar. Bills reported unfavorably are placed on the adverse calendar. If a committee fails to act, the membership of each house, by a vote, may require the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



## Asbestos & Demolition In Alabama

**T**he Alabama Department of Environmental Management (ADEM) is pleased to provide information to local governments regarding the requirements for asbestos management and demolition in Alabama. ADEM is the regulating authority for asbestos rules in Alabama, as ADEM has fully adopted federal asbestos regulations. These regulations establish criteria for demolition and renovation activities. **As such, the regulations require thorough asbestos inspections to be conducted for all commercial structures prior to demolition and, in some instances, residential structures as well. Also, a 10-working day notification is required to be submitted to ADEM prior to the removal of any regulated asbestos, any regulated renovation, and demolitions (with some residential exceptions).**

In recent years, municipalities across the state have conducted demolition and remodeling efforts to reduce blight. It is ADEM’s responsibility to ensure that these efforts are being conducted in accordance with 40 CFR Part 61, Subpart M. Therefore, you are encouraged to familiarize yourself and/or your staff with these regulations. Some municipalities have certified asbestos inspectors on staff. Should you need information or clarification of these regulations and how they may apply, please feel free to contact any of the following: Statewide – Don Barron (334) 271-7879; Jefferson County – Craig Tucker (205) 930-3019; City of Huntsville – Scott Cardno (256) 427-5750. ■



# Meet ALISON:

## Alabama Legislative Information System Online

By Greg Cochran • Director of Advocacy and Public Affairs • ALM

For those of you who are new to municipal office, legislative advocacy is a primary function of your Alabama League of Municipalities. In fact, it's so important that the League staff relies heavily on our members to be an active part of the process. That being said, we make sure you have all the necessary information to be an effective advocate throughout the legislative session. You will receive weekly reports from our office during each legislative session via our legislative e-newsletter, the *State House Advocate*, a critical part of our advocacy process that reviews the actions taken by the Legislature the previous week and outlines what we expect to take place during the upcoming week. Often times we will ask you to personally advocate on behalf of your municipality during the session to enhance our lobbying efforts. The *State House Advocate* will provide you with key information as well as important contact information and online resources to help you with those efforts. Of particular importance is ALISON (Alabama Legislative Information System Online), the website for the Alabama Legislature.

### ALISON – A Valuable Advocacy Resource

Please familiarize yourself with ALISON, the Alabama Legislature's website and legislative tracking system: [www.legislature.state.al.us](http://www.legislature.state.al.us). Built in-house by the Legislature's tech staff, not only is ALISON the resource we will direct you to most often for information the League is tracking, you may also find that you want to independently research a legislative action, read a bill or know how your local representatives voted on certain legislative actions. ALISON provides a wealth of information, including an overview of the legislative process, House and Senate Rules, contact information for the

House and Senate, session information (House and Senate Special Order Calendars, prefiled bills, bills, resolutions, confirmation, committees, etc.), meetings and announcements as well as links to other resources.

ALISON's web address, [www.legislature.state.al.us](http://www.legislature.state.al.us), will take you to their opening page. There you will see a banner across the top with the following tabs: Home, House of Representatives, Senate, Session Info, Meetings & Announcements, Find My Legislator, Resources and Contact Us (see *Figure 1*).



Figure 1

### Who are my legislators and what committees do they serve on?

To quickly reach your legislators, click on the "House of Representatives" or "Senate" tab at the top of the opening page. Scroll down the page and you will find an assortment of buttons (see *Figure 2*) that will link you to information about your legislators. The "Members" and "Standing Committees" buttons are the most important for this purpose as they will allow you to quickly see who serves on which committee and then circle back to their contact information. These links will be particularly important when you are asked by the League to reach out to a committee to advocate for or against a bill being debated by that committee.

### Session Info

Another important resource via ALISON, is the "Session Info" tab on the homepage, which will link you to a variety of options regarding the

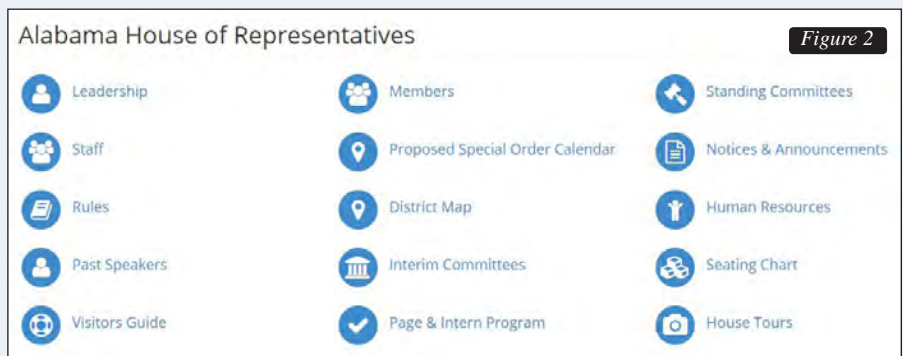


Figure 2



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legislative session. Click on “Regular Session 2017” located in the black box along the top left side of the page (see Figure 3).

This will take you to a page allowing you to quickly access several important categories via the “Quick Links” box along the right-hand side of the page (see Figure 4). For instance, you can “Search Text of a Bill,” view the Special Order Calendars, find the “Status of an Instrument (bill),” visit the “Code of Alabama” or view “Prefiled Bills.” Several House and Senate bills have already been pre-filed for consideration.

### Finding the Status of a Bill (Instrument)

Under the Quick Links from the page described above, select “Find Status of an Instrument” (“instrument” is the same as “bill”) and then click on the SB (Senate Bill) or HB (House Bill) button and enter the bill number you’re seeking in the “Instrument Number” box near the top. This will link you to the bill and provide you the names of sponsors and committee assignment (see Figure 5).

### Legislative Day

The “Legislative Day” tab along the top the ALISON website will provide you with House and Senate First Readings, Special Order Calendars (as they are adopted), Current Matter before the bodies and Legislative Audio/Video (see Figure 6).

### Conclusion

While ALISON can be somewhat counterintuitive, it is the *best* resource for staying current during the legislative session. The League will absolutely need your participation throughout the 2017 Regular Session to promote our legislative priorities and to stop any bills that threaten local government. As mentioned above, your weekly *State House Advocate* will review the session week by week and will ask for specific engagement. A link to ALISON is always prominently displayed along the right-hand side of the e-newsletter – and you will most likely find yourself visiting ALISON often during the legislative session so please take some time to become comfortable navigating the site. As always, we appreciate your engagement and thank you for your support! ■

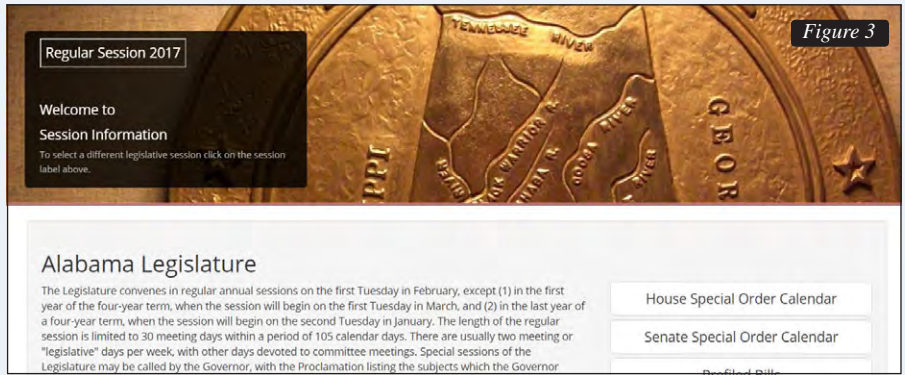


Figure 3

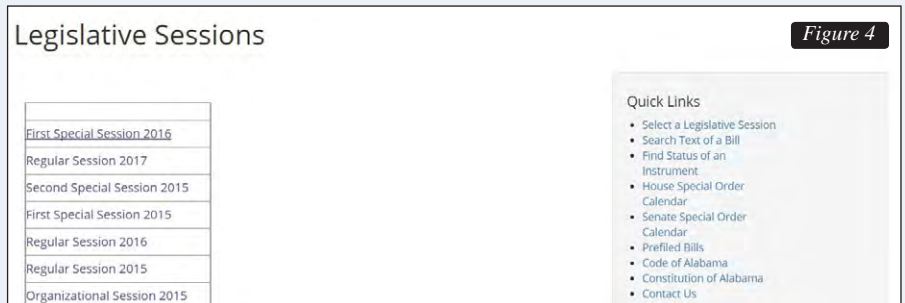


Figure 4

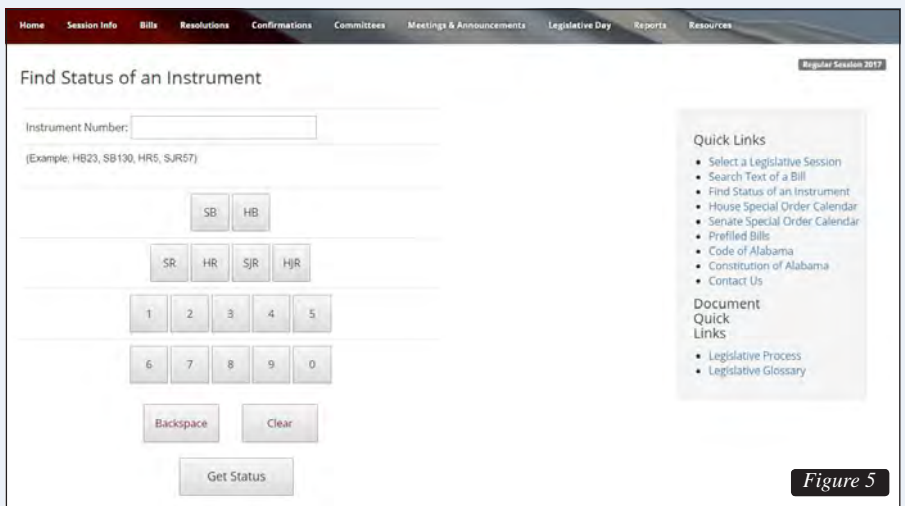


Figure 5

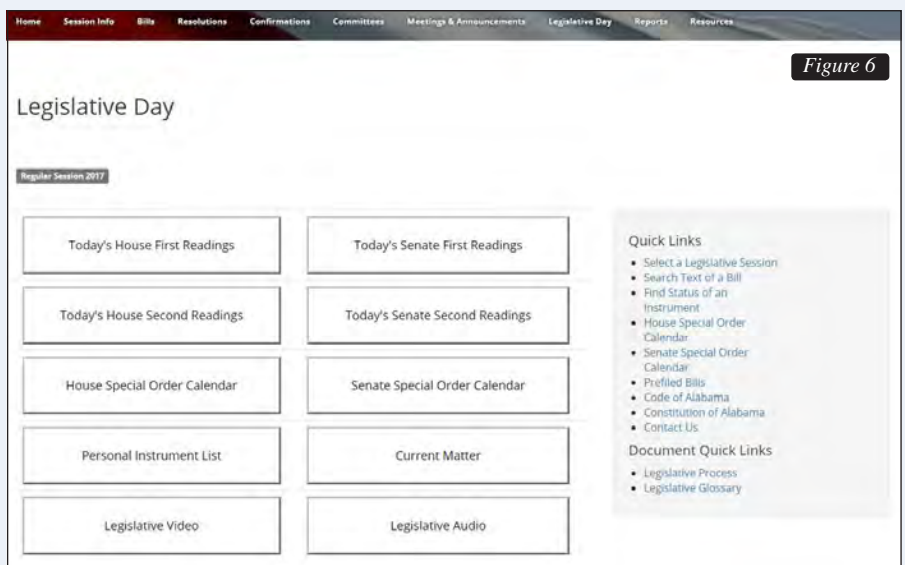


Figure 6

effectively giving us a staff of a dozen or more lobbyists expressing our views legislatively.

Our Legal Department is 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 publication. The League Communications Department, directed by Carrie Banks and aided by Karl Franklin, put together the weekly *Statehouse Advocate*, as well as other updates and publications. They also post legislative updates and bills the League is following on our website, [www.alam.org](http://www.alam.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.

### You and the League - A Team

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 February, 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.

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## 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 publication 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 Monday 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 may 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 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 to 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 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 success on behalf of our Alabama municipalities before the Legislature. ■



## How ADOR Can Help Your Municipality Cash-in on Third Party Reservation Sites

By: Lee Ann Rouse • Local Tax Liaison • Alabama Department of Revenue

Planning a trip soon? Is where to stay a top priority? What about cost? Many people asking themselves these questions look to third party reservation sites such as Airbnb, VRBO, Craigslist, etc. What is the purpose of these sites? According to Airbnb’s website, they are “a trusted community marketplace for people to list, discover, and book unique accommodations around the world.” For the purposes of this article, we will focus on the third party reservation sites as a whole, and not focus on one particular entity.

### Taxability of Third Party Reservation Sites

The purpose behind these type of sites is to provide short term rentals to individuals who want something “more” – something other than a hotel; something more with a home-like feeling. These types of rentals are popular in college towns and vacation hotspots, such as lakes, beaches, mountains, etc.

There are issues that municipalities, as well as counties, face with these types of sites, such as zoning, life safety and taxability. Zoning and life safety issues can be addressed by the city council and/or county commission utilizing the Zoning Board and Planning Commission through ordinance or resolution. However, the taxability of these types of transactions is defined by the *Code of Alabama 1975*, Title 40, Chapter 26,

Alabama Lodgings Tax, as a “privilege or license tax upon every person, firm, or corporation engaging in the business of renting or furnishing any room or rooms, lodging, or accommodations to transients . . .” The tax applies to all accommodations rented or furnished for periods of less than 180 days of continuous occupation and applies to all charges for providing such accommodations. In other words, the short-term rental of accommodations is taxable under Alabama Law, regardless of whether the person and/or host is operating as a “business” or is an individual regularly renting rooms or advertising to rent a room or rooms in their personal home.

There are some third-party reservation sites that have entered into agreements with the Alabama Department of Revenue (ADOR) to voluntarily charge, collect and remit the applicable Alabama lodgings tax. These agreements included all “state-administered” localities, as well – localities that, through resolution, have voted to allow the ADOR Sales and Use Tax Division to act as the administrator of their lodgings tax (this decision may also include sales, rental, consumers use, and sellers use taxes).

What happens if the locality has not voted to allow for state administration as defined above? What if they self-collect or a third-party entity acts as their administrator? Each locality

Collection Period	Per transaction Rate	Number of Transactions		Rate	Estimated Admin Fee
Sep-16	Lodgings Tax				
	Reported Lodgings	34	x	6.54	\$ 222.36
	Estimated Lodgings - Third Party Reservation Sites	2	x	6.54	\$ 13.08
					<b>\$ 235.44</b>
	<b>Per Percentage Rate</b>	Number of Transactions			
	Lodgings Tax				
	Reported Lodgings	\$ 378,511.20	x	2%	\$ 7,570.22
	Estimated Lodgings - Third Party Reservation Sites	\$ 38,873.34	x	2%	\$ 777.47
					<b>\$ 8,347.69</b>

that is not state administered would need to enter into an agreement with the third-party reservation site directly. This avenue could take months if not years to occur. For a more expedited solution, the locality could simply make the decision to allow the ADOR to act as the administrator for the applicable lodgings tax. Taking this route would allow the locality to start receiving the applicable lodgings tax due after 30 days of state administration.

### Why use ADOR as the administrator for the applicable lodgings tax?

As the taxing authority for the State of Alabama, the Department of Revenue already has agreements in place with certain providers for the collection and remittance of state and state-administered local lodgings taxes. Therefore, localities would have no extended delays in obtaining agreements or receiving local lodgings taxes. What would this administration service include? ADOR's administration service includes the monthly collection of lodgings tax returns as filed by the taxpayer using the Department's ONE SPOT Filing System, as well as auditing, collecting delinquent accounts and representing the locality in legal issues related to lodgings tax.

What is the cost of these administration services? The Department is mandated by law to charge for the administration services provided; however, there is a cap on

this charge. The current charge for lodgings tax returns is \$6.54 per transaction (this per transaction rate does NOT include zero remittance returns) or 2% of the monthly collections, whichever is LESS. (See the example on page 29.)

In the example on page 29, the lesser of the two calculations, the "per transaction" rate would be the amount charged. In addition, the auditing, collecting, and representing the locality in legal matters relating to lodgings tax would be included, as there is no extra fee (such as hourly audit rate charges, travel expenses, travel miles, etc.) charged.

### What does this mean to your municipality?

The issue with these types of transactions is the potential for lost lodgings tax revenue. As a municipality, you are searching for additional sources of revenue or escaped revenue. If you have a lodgings tax, you want to ensure that you are collecting the *maximum* taxes that are due. If you do not have a lodgings tax, you may want to research and see if these types of unique accommodations are occurring in your municipality. If they are, you may want to establish a lodgings tax through a resolution by the City Council.

For additional information regarding the above, please contact Lee Ann Rouse, Local Tax Liaison with the Alabama Department of Revenue Sales and Use Tax Division at 251.508.7669 or via email at [leeann.rouse@revenue.alabama.gov](mailto:leeann.rouse@revenue.alabama.gov). ■



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population of the municipality at the time of its incorporation.

Amendment 389 (Section 106.01) Alabama Constitution, 1901, validates most general acts of local application, which were enacted prior to January 13, 1978, that were otherwise valid and constitutional even though they were not advertised as required by Section 106 of the State Constitution. This provision provides that the acts shall forever apply only to the county or to the municipality to which they applied on January 13, 1978, despite changes in population. Such acts can only be amended by advertised local bills. In cases where a general law exempts cities of a certain stated population from being subject to said law, Section 106.01 will not help the city maintain its exemption when a change of population has caused them to fall outside the protected population bracket. *Birmingham v. George*, 988 So. 2d 1031 (2007).

## Mayor-Council Government

The mayor-council form of government is found in most Alabama cities and towns. This form is provided for by Chapter 43, Title 11, Code of Alabama 1975, as amended. There are two variations of the mayor-council form of government:

**In cities with 12,000 or more inhabitants**, the governing body is generally composed of a mayor and five councilmembers. These officials are elected by the voters of the city or town at-large unless the council, at least six months prior to an election, has voted to elect the councilmembers from districts. Section 11-43-2 and Section 11-43-63, Code of Alabama 1975. In Class 1, 2, and 3 municipalities where councilmembers are elected from districts, Section 11-43-63, Code of Alabama 1975, permits up to nine councilmembers. Section 11-43-64, Code of Alabama 1975, provides an additional means of increasing the size of the city council in a Class 3 municipality. The mayor and the members of the council are elected to serve four-year terms.

**In municipalities with less than 12,000 in population**, the legislative functions are exercised by the council which is generally composed of the mayor and five councilmembers. Section 11-43-63, Code of Alabama 1975, permits up to seven councilmembers in municipalities which are districted. The mayor presides over all deliberations of the council. At his or her discretion, the mayor may vote as a member of the council on any issue coming to a vote except in the case of a tie vote, in which event he or she **must** vote. Section 11-43-2, Code of Alabama 1975. However, the mayor may never vote more than once on any issue that comes before the council, even in the case of a tie vote. *Jones v. Coosada*, 356 So. 2d 168 (Ala. 1978). All of the legislative powers of the municipality are exercised by the council acting as a whole.

The mayor is the chief executive officer of the municipality and has general supervision and control over all other officers and affairs of the city or town. The council may not enact an ordinance authorizing council committees or individual councilmembers to direct or supervise the work of departments assigned to their study and observation. The

mayor has exclusive authority to supervise and control the administrative personnel of the municipality. AGO to Hon. Gilbert Watson, October 8, 1957; Section 11-43-81, Code of Alabama 1975.

The mayor has the power to appoint all officers of the city or town, but state law or municipal ordinance may provide for a different appointing authority. The mayor may remove for good cause any non-elected officer appointed by him or her and fill the vacancy permanently. The mayor may remove any officer elected by the council or approved with its consent and **temporarily** fill the vacancy. The mayor must report such removal and the reasons therefor to the council at its next regular meeting. If the council sustains the mayor's act of removal, the vacancy shall be filled permanently as provided by law. Section 11-43-81, Code of Alabama 1975. The Supreme Court of Alabama has limited this authority where the council is voting on whether or not to dismiss an employee or whether or not to uphold the mayor's dismissal of an employee. In the Court's opinion, the mayor can cast a vote on the question for the purpose of documenting his or her position on the issue. However, the mayor's vote cannot be counted in determining whether a sufficient number of those elected to the council approved the officer's removal. *Hammonds v. Priceville*, 886 So. 2d 67 (Ala. 2003).

In cities with a population of 12,000 or more and a mayor-council form of government, the legislative functions of the city must be exercised by the council. Section 11-43-40, Code of Alabama 1975, provides several alternate council structures for such cities. The number of councilmembers may vary from five to twenty persons elected for four-year terms from the city at-large or from districts. The population of the municipality may have some bearing on the council form chosen.

The council is presided over by a president who is a voting member of the council. In some cities, the council president is elected by the voters at-large. In other cities, he or she is chosen by the council membership at their organizational session. Cities with populations of 12,000 or more with five councilmembers elected from single-member districts pursuant to a federal court order may provide for eight councilmembers elected from districts and a council president elected at-large. The city council of a Class 8 municipality having a population of 60,000 or more inhabitants may provide that the city council be composed of seven members elected at large. Section 11-43-40, Code of Alabama 1975.

The mayor of a city with a population of 12,000 or more has the same powers and duties as the mayor of a smaller municipality with the exception being that he or she is not a member of the council. However, all ordinances and resolutions of general and permanent nature are subject to the veto power of the mayor. Any ordinance or resolution vetoed can be overridden by a two-thirds vote of the council. Section 11-45-4, Code of Alabama 1975.

Although the general law provides for the mayor and council to be elected at the same election for four-year terms, the state Legislature has adopted several laws applicable to specific cities and towns establishing staggered four-year terms for councilmembers. In addition, Section 11-43-40, Code of Alabama 1975, authorizes the city council of a Class 6 municipality elected citywide to provide for the election of the city council for staggered terms.

More detailed information on the mayor-council form of government can be found in the League's publication *Handbook for Mayors and Councilmembers* (2016 ed.)

### **Council-Manager Government**

Any municipality in the State of Alabama can hire a city manager as provided for in Title 11, Chapter 43, Article 2, Code of Alabama 1975. But the fact that a city has a manager hired under the provisions of this statute does not give the municipality a true council-manager form of government. In view of this fact, the state Legislature adopted the Council-Manager Act of 1982, codified at Sections 11-43A-1 through 11-43A-52, Code of Alabama 1975, as amended, to allow all Class 2 through Class 8 municipalities the option of becoming a city or town with a true council-manager form of government.

The governing body of a municipality organized under the council-manager form of government is known as a council and is composed of five members. One member shall be the mayor who is elected at-large. One councilmember shall be elected by the voters at-large. Three members shall be elected by the voters from each of three single-member districts. The officers elected shall serve for four-year terms. In Class 6 cities, the governing body may elect to have a nine-member governing body composed of a mayor elected at-large and two councilmembers from each of four dual-member wards. The mayor is the presiding officer of the council and may vote on any issue coming before that body. Section 11-43A-9, Code of Alabama 1975.

All powers of the municipality are vested in the council. The council has the power to appoint and remove a city manager and to establish other administrative departments and distribute the work of such departments. Section 11-43A-17, Code of Alabama 1975.

According to the Act, the city manager is the head of the administrative branch of the municipal government and is responsible to the council for the proper administration of all affairs of the municipality. These powers are listed at Section 11-43A-28, Code of Alabama 1975. Currently, Auburn, Tuskegee and Vestavia Hills operate under this form of government.

An additional council-manager act was enacted in 1991. This law is codified at Article 2, Chapter 43A, Code of Alabama 1975.

### **Other City Governments**

The state Legislature has adopted specific legislation to provide either a form of government for a particular

municipality or to provide a procedure by which the form of government of certain municipalities may be altered. These laws generally apply only to a single city or town. Those municipalities affected by specific enactments are:

**Anniston** – Council-Manager, Act No. 71-1049

**Phenix City** – Council-Manager, Act No. 77-71

**Montgomery** – Mayor-Council, Act No. 73-618

**Birmingham** – Mayor-Council, Act No. 55-452

**Troy** – Mayor-Council, Sections 11-44A-1 through 11-44A-16, Code of Alabama 1975

**Opelika** – Mayor-Council, Sections 11-44D-1 through 11-44D-21, Code of Alabama 1975

**Prichard** – Mayor-Council, Sections 11-43C-1 through 11-43C-92, Code of Alabama 1975

**Tuscaloosa** – Mayor-Council, Sections 11-44B-1 through 11-44B-22, Code of Alabama 1975

**Bessemer** – Mayor-Council, Sections 11-43D-1 through 11-43D-22, Code of Alabama 1975

**Gadsden** — Mayor-Council, Sections 11-43B-1 through 11-43B-32, Code of Alabama 1975

**Mobile** – Mayor-Council, Sections 11-44C-1 through 11-44C-93, Code of Alabama 1975

**Dothan** – Class 5 cities with a mayor-commission-manager, Sections 11-44E-1 through 11-44E-221, Code of Alabama 1975

**Talladega** – Council-Manager – Amendment 738 (Talladega 13), Alabama Constitution, 1901 provides that the city shall operate under the council-manager form of government authorized by Chapter 43A of Title 11 of the Code of Alabama 1975, with certain modifications.

Additional laws have been enacted to assist Class 7 and Class 8 municipalities change to the mayor-council form of government. Sections 11-44A-30 through 11-44A-32, Code of Alabama 1975, apply to Class 7 municipalities; Sections 11-44F-1 through 11-44F-3, Code of Alabama 1975, apply to Class 8 municipalities. In addition to these laws, certain cities and towns have laws applicable to them which modify the general laws pertaining to their forms of government.

### **Changes in Form of Government**

Many of these statutes provide procedures to be used in adopting or changing the form of government. Any change from one form of government to another requires compliance with the applicable statutes. AGO 1999-254. ■



# Alabama's Three-Year Bicentennial Celebration Officially Begins this Spring - Join the Commemoration and Launch ALABAMA 200 in Your Community!

JAY LAMAR, EXECUTIVE DIRECTOR, ALABAMA BICENTENNIAL COMMISSION

This spring Alabama will officially begin its three-year commemoration of statehood. After several years of planning, the Alabama Bicentennial Commission, which was formed in 2013 and chaired by Sen. Arthur Orr of Decatur, will announce ALABAMA 200 at a press conference in Montgomery on March 3, 2017, to officially recognize Alabama's Bicentennial Celebration, which is timed to coincide with the 200<sup>th</sup> anniversary of the creation of the Alabama Territory.

The March 3<sup>rd</sup> press conference will release information about the major events planned for 2017-19 and announce significant funders. Plans are also in place to announce grant opportunities at the local and county level as well. Later in the spring, following the press conference, bells will ring, balloons will fly and voices will soar as the formal launch literally lights up the skies of Mobile. Mayor Sandy Stimpson's office, along with the Mobile Launch Committee, will confirm the precise date by mid-January, and plans are already underway for fireworks, music and activities for all ages.

Mobile, the state's oldest city, was founded in 1702 and has already celebrated its tri-centennial. Plus, Mobile knows a thing or two about throwing parties. After all, it hosted the first Mardi Gras in North America. So it seems only fitting to begin the state's 200<sup>th</sup> commemoration there.

Not everyone will be able to travel to Mobile, of course, but the Alabama Bicentennial Commission hopes that everyone will participate in the official launch. One way to achieve a you-are-there appreciation of the event is to take advantage of the live streaming that will be available to schools, municipalities and counties throughout the state. More information about streaming will be available a little closer to the date.

You can also make the launch a memorable moment in your community by having the mayor or another dignitary read the official bicentennial resolution. Invite the local media and have car stickers and other promotional items on hand for those attending. Both the resolution and promotional items are available at [www.alabama200.org](http://www.alabama200.org). Schools can also get onboard by adopting their own resolution and are encouraged to hold an assembly to recognize the date while streaming the ceremony for students and staff.

Of course, you will have ideas that are appropriate for your community, and we hope you will share them with others on the Alabama200 Facebook page ([www.facebook.com/OfficialAlabama200](http://www.facebook.com/OfficialAlabama200)), on the website or via other social media. In fact, the Bicentennial Commission encourages your municipality to form an official **Community Celebration Committee** via a special resolution of the mayor and council that can be composed of *anyone* from your community. A copy of the resolution as well as additional information is available for download by clicking on the "Participate" tab at the top of the homepage of the ALABAMA 200 website, [www.alabama200.org](http://www.alabama200.org). Those municipalities with official Community Celebration Committees will be eligible to apply for one-time small grants this spring. More information on the grant application process will be available soon; however, you *must* have an official Community Celebration Committee to apply. Of course, always feel free to call the Alabama Bicentennial Commission at 334-242-4537. ■



# 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

**Criminal Appeals:** The defendant's appeal from a municipal court conviction was not perfected when he filed a notice of appeal and signed an appeal bond that was not marked as approved. *Bradshaw v. Town of Argo*, 200 So.3d 680 (Ala.Crim.App.2015).

**Forfeitures:** Federal jurisdiction over a forfeiture proceeding begins the moment the currency seized from the arrestee pursuant to a traffic stop and arrest by city police is controlled by federal agents, so long as the state court has not exercised in rem jurisdiction. Since the U.S. marshals had actual possession of the currency before the claimant filed his complaint in the state trial court, federal jurisdiction attached, and as a result, the state trial court had no in rem jurisdiction to entertain the claimant's complaint, seeking return of currency. *Ruiz v. City of Montgomery*, 200 So.3d 26 (Ala.Civ.App.2015).

**Forfeitures:** Action against a city seeking the return of a motor vehicle and property that had been seized pursuant to a search warrant was an impermissible collateral attack on forfeiture of property in federal administrative proceedings, where police surrendered property to federal agents for federal forfeiture proceedings approximately seven years earlier, and the property owner failed to file a claim to challenge the forfeiture, either directly or on appeal, despite having had notice of proceedings. *Norman v. City of Montgomery*, 200 So.3d 32 (Ala.Civ.App.2015).

**Appeals:** Defendant's substantial rights were not prejudiced by an amendment of a DUI charge for a circuit court bench trial following a conviction in municipal court.

*Hubbert v. City of Hamilton*, 197 So.3d 538 (Ala.Crim.App.2015).

**Utilities:** The Emergency Telephone Service Act gave emergency-communications districts a right of action against providers for failure to bill charges correctly. *Century Tel of Alabama, LLC. V. Dothan/Houston County Communications Dist.*, 197 So.3d 456 (Ala.2015)

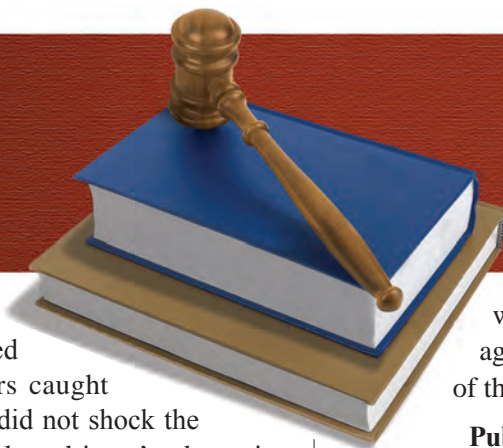
**Ordinances:** City ordinance governing offense of carrying a pistol on a premises not one's own was not in conflict with statutes allowing a municipality to make a violation of a state handgun law a violation of a municipal ordinance to the same extent as other state law violations. The penalty provided in the ordinance complied with statute governing penalties that could be imposed for violations of ordinances, and there was nothing to indicate that legislature intended to prohibit municipalities from imposing fines and sentences different than those authorized for a state conviction of the same. *Tulley v. City of Jacksonville*, 199 So.3d 779 (Ala.Crim.App.2014).

## UNITED STATES COURT DECISIONS AFFECTING ALABAMA

**Labor and Employment:** Employees who worked in city school cafeterias met their burden of producing sufficient evidence of their hours worked, in their Fair Labor Standards Act (FLSA) action for unpaid overtime compensation. While the employees did not produce documents showing precise times actually worked, they testified about their daily custom and habit of arriving and departing work at a particular time and working a specified amount of time during their lunch break. *Murray v. Birmingham Board of Education*, 172 F.Supp.3d 1225 (N.D.Ala.2016)

## DECISIONS FROM OTHER JURISDICTIONS

**Labor and Employment – Minimum Wage:** The Department of Labor, in promulgating a final rule requiring executive, administrative, and professional workers to have a minimum salary in order to be exempt from the Fair Labor Standards Act's (FLSA) overtime requirement, exceeded the authority delegated to the Department by Congress, where the Congress defined the executive, administrative, and professional exemption with regard to duties, without mention of salaries. *State of Nevada v. U.S. Dept. of Labor*, ---F.Supp.3d--- (E.D.Tex.2016).



**Traffic Cameras:** City’s traffic camera system, which issued citations automatically to drivers caught violating traffic laws on camera, did not shock the conscience, and thus did not violate drivers’ substantive due process rights. The use of the system was not so disproportionate the need presented or so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to brutal and inhumane abuse of official power, and it did not otherwise offend judicial notions of fairness. *Hughes v. City of Cedar Rapids*, 840 F.3d 987 (C.A. 8, Iowa 2016).

#### ATTORNEY GENERAL’S OPINIONS

**Purchasing:** A county commission is not authorized to enter into a commercial credit card agreement for purchases made through the procurement or purchasing program. AGO 2016-053

**Sales Tax – Common Carrier:** Local tax is due in the jurisdiction where title to the goods is transferred, which will be at the time of delivery, unless explicitly agreed otherwise. If parties to a retail sales transaction are not using a common carrier for deliver and so agree to allow title to transfer at the place of the sale, then local tax is due in the jurisdiction where the sale takes place. If, however, common carrier is the method of delivery, then local tax is due in the jurisdiction

where delivery is completed, regardless of any agreement to allow title to transfer at the place of the sale. AGO 2017-001

**Public Purpose – Economic Development:** A city may guarantee the mortgage of a nonprofit organization to support the construction of soccer fields for the purpose of promoting economic development if the city council complies with the conditions of Section 94.01(c) of article IV or Section 3 of the Local Amendments for Baldwin County of the Recompiled Constitution of Alabama. AGO 2017-006

#### ETHICS OPINIONS

**Campaign Funds:** A candidate may use campaign funds to pay for legal advice sought for compliance with the Fair Campaign Practices Act (FCPA), as well as expenses incurred when requesting an Advisory Opinion from the Commission, as a “necessary and ordinary expenditure of the campaign.” For officeholders, in order to be reimbursable as “reasonably related to performing the duties of the office held” under subsection (2), the fees and costs can only be incurred as a result of advice sought to stay in compliance with the Ethics Act and the FCPA or other state or federal laws specifically related to the performance of the officeholder’s duties. AGO 2016-30 ■

## Like the League on Facebook!

Visit [www.facebook.com/ALALM](http://www.facebook.com/ALALM) to “like” ALM on Facebook and receive timely information about ALM’s legislative endeavors; League events such as upcoming CMO sessions, policy committee meetings, annual convention and national conferences; and articles of interest for municipal officials and employees. This is also where the League posts photos from its events that you can download, share and save!



citizens, including many seniors, are using it daily (hourly!). If a “Concerned Citizens of Yourtown” Facebook page is formed, be aware of what is being discussed. Consider launching an official Facebook page for your city or town if you don’t already have one. It will help you again “drive the narrative” as well as share positive and helpful information with your citizens. You should keep in mind that if your municipality doesn’t set up an official page, a citizen or organization may decide to do it themselves – independent of the municipality and those tasked with managing your city or town. Be proactive! Communicate with your citizens via the platforms the majority of them are now using!

10. Review your organizational ordinance as it should serve as a guide for council rules and procedures. This ordinance, while adopted at the first council meeting of the term, can be amended following appropriate ordinance procedures.

11. Understand the rules for your council meeting agenda. This includes who can place items on the agenda, deadlines and procedures for considering items not on the agenda at council meetings. The League legal staff can provide guidance if needed.

12. For cities greater than 12,000 in population, council meetings are chaired by your Council President, who is typically elected at the organizational meeting. Unless your specific rules state otherwise, the Council President can be replaced at any time by a proper vote of the majority of the Council.

13. Establish procedures for citizens wanting to address the council/mayor at council meeting. Rules can include length of time someone can speak; procedure for signing up to speak prior to meetings; or clarifying that inappropriate derogatory personal comments will be not allowed by speakers.

14. Remember that chairmanship or membership on council committees does NOT allow individual councilmembers to control or direct activities of a municipal department. The purpose of these committees is to allow councilmembers to study the departments they are assigned to and make recommendations to the mayor and council based on their observations. Also remember that any meetings of council committees are subject to the Open Meeting Act.

15. Speaking of the Open Meeting Act, please become familiar with it. Understand what constitutes a “meeting” and the appropriate reasons and procedures for going into executive session.

16. Budgeting is a major responsibility of the mayor and council. Typically, the mayor compiles a budget and submits it to the council for amendments and approval. Most municipalities do this annually. Understand the budget

process and deadlines that are pertinent to your municipality. Budgets can be amended by the council during the fiscal year if needed.

17. Develop good relationships with your local, state and federal delegations. During the Alabama Legislative Sessions, the League will ask you to advocate for bills that help municipalities or oppose bills that can cause harm to our cities and towns. Please reach out when asked by the League to your local state or federal officials to make sure our voice is heard!

18. Participate in the League’s Certified Municipal Official (CMO) program. You will have the opportunity to achieve several CMO certifications, such as Advanced CMO and Emeritus, while learning a great deal in the process. Be recognized as having completed the requirements for these designations. (For more information: [www.alalm.org/cmo-program](http://www.alalm.org/cmo-program).)

19. **Treat all citizens with respect.** They are the ones who have given you the honor of serving as their elected representative.

20. Make sure to spend quality time with your family. This does NOT INCLUDE civic events or functions!

21. Remember: the deadline for the required Alabama State Ethics training is 120 days from the date you were sworn into office. If you took the training last term, you ARE required to repeat it. This can be done online if you’ve not already completed the training.

22. Check the League’s website, **[www.alalm.org](http://www.alalm.org)**, for MANY resources available to you.

23. You *will* encounter some of your citizens who are CAVE people (Citizens Against Virtually Everything). Treat them with respect and then vote your conscience.

24. Do not expect to effect change immediately in your town or city. Meaningful change can take a while. Be proactive but also be patient!

25. And finally, during council meetings: Be Nice. Be Respectful of your fellow elected officials. Listen. **REALLY LISTEN.** State your opinion on an issue succinctly, thoughtfully and without raising your voice. Vote. Move on to the next issue.

Remember, these “pearls” are practical and meant to be *used!* (After two decades, I still use them daily.) I look forward to working with you throughout this upcoming Legislative session and, again, it is my honor and privilege to serve as your League President. ■

A total of 87 Municipal Officials were honored at the 2016 CMO graduation ceremony on December 8th, 2016. The graduation ceremony was held in conjunction with the Municipal Leadership Institute at the Embassy Suites Hotel in Montgomery. The officials listed below completed the required number of hours to receive their CMO (24 recipients), Advanced CMO (49 recipients) and CMO Emeritus (14 recipients) designations.

## 2016 CMO Emeriti

Mayor Dennis Stripling, Brent  
 Former Council Member John Leo Lake, Daphne  
 Former Council Member Jean Burk, Lincoln  
 Council Member Willie Jackson, Marion  
 Former Mayor Icie Wriley, Millport  
 Mayor David H. Bradford, Muscle Shoals

Former Council Member Karyl Rice, Pelham  
 Council Member Tommy Perry, Priceville  
 Council Member Mack Bell, Roanoke  
 Council Member Brentley Kendrick, Robertsdale  
 Council Member J. Newton Cromer, Saraland  
 Former Mayor Robert E. Payne, Tallassee  
 Former Council Member Robert Herron, Thomasville  
 Former Council Member George E. Johnson, Sr.,  
 Tuscumbia

## 2016 Advanced CMOs

Council Member Charles Z. Bailey, Albertville  
 Council Member Jill Oakley, Albertville  
 Former Mayor Charles Shaw, Alexander City  
 Council Member Bobby Tapley, Alexander City  
 Former Council Member Billy Wall, Alexander City  
 Former Mayor Paul Jennings, Argo  
 Former Council Member Guy Bruner, Ashford  
 Mayor Jonathan E. Grecu, Ashford  
 Council Member Denise Herndon, Ashford  
 Council Member Harold Wales, Athens  
 Former Mayor Barbara Watkins, Brighton  
 Council Member Ron A. Mason, Butler  
 Council Member Phillip Roberts, Centre  
 Former Council Member Ralph Rich, Childersburg  
 Council Member Connie Robinson, Citronelle  
 Former Council Member James M. Tarpley, Dadeville  
 Council Member Sheila Smith, Eutaw  
 Council Member Jack Burrell, Fairhope  
 Council Member Josh Bryant, Fultondale  
 Council Member Glenda N. Winters, Gantt

Mayor Stan Hogeland, Gardendale  
 Council Member Jerry Gann, Guin  
 Council Member Stephen E. Jones, Gulf Shores  
 Council Member Ross (Rudy) Cornelius, Guntersville  
 Mayor Ken Sunseri, Haleyville  
 Former Council Member Douglas Batemon, Hanceville  
 Council Member Bobby Joe Wilson, Irondale  
 Mayor Tim Tubbs, Killen  
 Former Council Member Bobby McKenzie, McIntosh  
 Council Member Michael Gay, Millbrook  
 Mayor Stanley Allred, Millport  
 Council Member Tracey Wriley, Millport  
 Council Member Mike Lockhart, Muscle Shoals  
 Mayor Kathryn Holley, New Brockton  
 Former Council Member Thomas D. Morgan, Sr., Opp  
 Mayor Edward Manuel, Pennington  
 Mayor Steve Bell, Phil Campbell  
 Council Member Jerry Welch, Priceville  
 Council Member Anita Bedwell, Rainbow City  
 Former Council Member Nancy Keasler, Reform  
 Council Member Frank Riddle, Riverside

*(continued next page)*



## 2016 Advanced CMOs (continued)

Council Member Ruthie Campbell, Robertsdale  
Council Member Gary Scales, Sheffield  
Council Member Derrick McCloud, Shorter

Mayor Michael M. McMillan, Spanish Fort  
Council Member Dejerilyn King Henderson (deceased), Troy  
Former Mayor Johnny Ford, Tuskegee  
Mayor Lawrence Haygood, Jr., Tuskegee  
Mayor Gena Doggett Robbins, York

## 2016 Certified Municipal Officials

Mayor Jonathan E. Grecu, Ashford  
Council Member Ronnie Whitehead, Ashford  
Mayor Johnny Dyar, Baileyton  
Mayor Aaron Grubbs, Baker Hill  
Council Member Kimberly Rafferty, Birmingham  
Council Member Frankie Kelly, Centre  
Council Member Bilbo (Bo) Johnson, Clay  
Council Member Tonya Moss, Creola  
Council Member Jenny Folsom, Cullman  
Mayor Mickey Murdock, Elba  
Council Member Kent Chambers, Eva

Former Council Member Randall Ham, Fort Payne  
Council Member Cynthia W. Toles, Gadsden  
Mayor Leigh Dollar, Guntersville  
Former Council Member Douglas Batemon, Hanceville  
Mayor Scott Reeves, Hokes Bluff  
Mayor Wilbert Dixon, McIntosh  
Council Member Levon C. Manzie, Mobile  
Former Mayor Mike Kennedy, Monroeville  
Former Council Member Chris Blackshear, Phenix City  
Council Member Jerry Welch, Priceville  
Council Member Carlton Byers, Ragland  
Council Member Stan "Chilly" Cooks, Union Springs  
Council Member Percy Gill, Wetumpka

— Congratulations, graduates! —

## Perfect Attendance

Attendance at council meetings is very important and Pinson Councilmember **John Churchwell** sets a fine example! He didn't miss a single Council meeting in 12 years until a few months ago when he had to have a medical procedure that slowed him down for a few days. Since 2004,



Churchwell only missed meetings due to city business or attendance at official meetings with the Alabama League of Municipalities. "My accomplishment in itself is not that important but attendance at meetings is very important and since a new term has just started, it needs to be emphasized," he said. "Attendance at Council meetings needs to be a priority for mayors and councilmembers."

We at the Alabama League of Municipalities absolutely agree. Congratulations to Councilmember Churchwell. Well done!

## MUNICIPAL LEGISLATIVE ADVOCACY CMO

TUESDAY, FEB. 21  
8:30 A.M. - 4:00 P.M.

REGISTRATION \$125

4 CMO CREDIT HOURS

Go to [www.alalm.org](http://www.alalm.org) to register

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