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Volume 75, Number 3



Legal Pitfalls of Social Media

See Page 4

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#LiveLocallyAlabama

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On the Cover:

Social media platforms are now a critical player in how citizens, government, business/industry, tourism, news outlets, schools and every other entity communicate, update, grow and exist. See page 4 for an extremely timely article on the **legal pitfalls of social media** and what municipalities should understand.

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Legal Pitfalls of Social Media

Marcus Chafferton and Robby Anderson, Balch & Bingham, LLP

The value of engaging your community through social media is self-evident – social media done well allows a municipality to communicate with emerging and shifting community groups in real-time. And, communication is just the beginning.¹ From connecting with citizens, to broadcasting the daily weather, to coordinating disaster recovery, social media can add huge value to any municipality.

One of the most attractive aspects of social media as a “marketing” tool for Cities is the price tag – or better said, lack of one. Basic accounts on Facebook, Twitter, Instagram and SnapChat² are all free, and accounts with enhanced features are affordable. The on-ramp time can be nearly instant.

Of course, there is no secret or one-size-fits-all approach for municipalities to use social media. Each City is different in its own way, and therefore each social media site should be different. Consider that Atlanta is well known for its extraordinarily high number of parking tickets given annually. The City decided to have some fun with this fact and show some humor through its social media platform (see picture at right).³ Although this may seem like a strange post from a City, it shows how broad the possibilities are for effective social media.

Social media has evolved past its initial “social” moniker to be a trove of data and source for news. In fact, a 2015 Pew Research Center study revealed that nearly 63 percent of Facebook users get their daily news from Facebook.⁴ Municipalities can and should leverage

this fact. However, sometimes social media becomes a stumbling block for the unwary. If you lead your municipality into the world of social media – spoiler: you should – you must consider a few legal issues along the way.

Social Media Content Is Public Record

All of the content in a publicly-owned social media account likely qualifies as “public records.” Alabama’s Public Records laws are designed to guarantee that the public has access to all records of all levels of government bodies in Alabama.⁵ This makes your City’s document retention policy double-important – the records from your social media sites could be fair game either in litigation or in an open records request. The length of retention can be the same amount of time that physical documents or emails from the municipality are retained.

But how do you effectively retain posts and comments from social media sites?

Most social media providers offer a form of retention services for free. However, remember that retaining your public records is not the social media provider’s top priority. There are companies that offer “data-lock” services for a price.⁶ These companies have the ability to monitor all your social media accounts and retain all their data for whatever period you specify. As with anything, there are basic services that are inexpensive as well as complex services that can be very costly.

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The President's Report

By Dr. Howard Rubenstein, Mayor, Saraland



Strategic Plan Update, ALM Webinars and a Leadership Pearl

As a follow-up to my last article, I wanted to provide an update of the status of our League Strategic Plan process. I am currently chairing the Strategic Plan Subcommittee composed of the following elected officials:

- League VP Council President Jesse Matthews, Bessemer
- Councilmember Sadie Britt, Lincoln
- Mayor David Bradford, Muscle Shoals
- Mayor Wally Burns, Southside
- Mayor Melvin Duran, Priceville
- Mayor Gena Robbins, York

Working with ALM Executive Director Ken Smith and Director of Advocacy and Public Affairs Greg Cochran as well as General Counsel Lori Lein, we have engaged the services of Dr. Katherine J. Webb, Vice Chancellor for Business & Community Initiatives at Auburn University at Montgomery, as our professional strategic planning consultant. She brings a wealth of expertise and experience to this important process. As an initial phase, all member municipal elected officials recently received an electronic survey about ALM. I ask that if you've not yet done so, please take a few minutes to complete the survey with your candid responses. Your input is essential as we strive to continue our League's success and relevancy as the premier organization in Alabama supporting our cities and towns.

In addition, we are in the process of developing a "Live Locally Alabama" grassroots campaign to advance a favorable narrative that creates positive synergy while reminding and educating citizens that municipal government is responsible for the quality of life services (police, fire, infrastructure, parks, etc) they not only expect but demand. Much like the Retail Association's "Shop Alabama" campaign (www.shopalabama.org) and the Association of County Commission's "Drive Alabama" campaign (www.drivealabama.org), ALM is strategically working towards a Live Locally campaign that allows us to enhance the profile of municipal government and local leadership while encouraging civic engagement and mindfulness. To that end,

the League has secured the web domain livelocallyalabama.org and will, over the next few months, launch a platform that reflects the importance of Alabama's cities and towns. In addition, you will see #LiveLocallyAlabama used in our social media posts as we progress.

I also encourage all elected official to take advantage of the League's educational program opportunities. We have found that the information gleaned from these programs can be very useful to your leadership in your communities. In addition to our traditional regional classroom style and DVD-based training, webinars are now being introduced to make these programs even more convenient and cost-effective. Our first two webinars, "Duties of the Mayor and Council" and "Zoning in Alabama", were held on October 3rd and 24th to capacity audiences. We can currently accommodate 50 participants. As demand increases, we will reassess our capacity limitations. One last webinar is scheduled for 2017, "The Open Meetings Act", on November 14th at Noon.

Each webinar is \$37 and lasts one hour. Participants must complete a T/F test to receive CMO credit and attendees will receive a recorded version of the webinar so they can listen again before completing the test. **Registration opens 14 days prior to each webinar.** Since we can't accept more than 50 participants, please be quick to register once registration is available. Additional information will be posted to the League's website at alalm.org and highlighted in our weekly e-newsletter, *This Week*, as well as distributed via e-blasts. You may contact Cindy Price, CMO/Corporate Relations Manager, at cindyp@alalm.org if you have questions or need information regarding your CMO credit hours.

Lastly, my pearl of wisdom for this issue is to try your utmost to communicate and work with your fellow municipal elected officials. Differences of opinion will always occur. Please remember to listen to the other side of an issue. Be flexible in your willingness to change your opinion if you receive compelling new information. Always vote your conscience, and after a decision is made by the majority, please respect that decision as the decision of the body. ■

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Municipal Overview

By Ken Smith, Executive Director



Remembering a League Stalwart

The League recently lost a close friend and strong advocate when former Oxford Mayor Leon Smith passed away. Leon was one of those folks that you didn't forget once you met him. He was an incredibly loyal individual and was always determined to do what was right. As someone commented to me shortly after his passing, if he supported you, he supported you 100 percent, but if you were doing something he didn't think was right, he'd let you know.

Leon encouraged all city officials from the state to be active and involved in the League. He knew how important it was for cities to work together in efforts to pass legislation that would benefit our cities. He was honored that his fellow officials elected him to serve as President of the League from 1997 until 1998. He was also active with the National League of Cities, where he served on the board. He always enjoyed his trips to Montgomery and Washington, where he could meet with fellow League members and state and federal leaders and talk politics, which was another one of his great loves.

Janet Stephens, Leon's long-time assistant said, "I have had many city officials tell me that Mayor Smith was their mentor, and others that came to him for help or advice, which he was always happy to give. He made a lot of life-long friends through his work with the League."

In addition to serving as League President, Leon served as President of the Municipal Workers Compensation Fund Board for many years and was one of the first graduates of the League's highest training certificate level, Emeritus, from the League's Certified Municipal Official (CMO) Program.

Perry Roquemore, League Executive Director when Leon was President, notes that Leon never wanted to do anything that might embarrass the League and he was determined to make sure no one else embarrassed the League either.

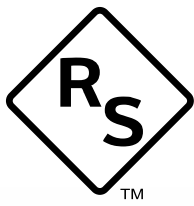
When I was being considered for the position of League Executive Director, I stopped by Leon's office to discuss with him my thoughts and ideas about the League. My visit ended up taking several hours and included lunch and an impromptu discussion about legislative issues confronting

municipalities with a legislator who happened to stop by unexpectedly. Giving you a little insight into Leon, he didn't ask me to leave so he could talk with the legislator, and he didn't make the legislator wait. He met with both of us, discussing legislative issues. Part of me wondered if Leon was using this as a job audition. In fact, it crossed my mind that he might have arranged for our appointments to cross just for that purpose. I really doubt the situation was premeditated, but I don't think Leon minded taking advantage of the opportunity to let me prove myself.

Janet Stephens has fond memories of Leon. She says that Leon's childhood was very hard. His family was very poor, and he worked from a very young age to help with family

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ALABAMA ETHICS COMMISSION: PROTECTING THE INTEGRITY OF LOCAL AND STATE GOVERNMENT

CARRIE BANKS • COMMUNICATIONS DIRECTOR • ALM

Established by the Legislature in 1973 by Act No. 1056, the Alabama Ethics Commission is the state agency responsible for monitoring the ethical behavior of public officials and employees at the municipal, county and state levels. The Commission's mission is to ensure public officials are independent and impartial; that decisions and policies are made in the proper governmental channels; that public office is not used for private gain; and, most importantly, that there is public confidence in the integrity of government.

Unique Background Aids Executive Director

A 1992 graduate of the University of Alabama School of Law, Thomas B. Albritton spent just over two decades with his family's Andalusia law firm, founded in 1887 by his great-great grandfather, before being appointed the fourth permanent Executive Director of the Alabama Ethics Commission on March 5, 2015. He considers himself fortunate to have grown up in Andalusia, where his family played a role in building the community over several generations. "There was an unbroken line between my great-great grandfather, my great grandfather, my grandfather and two of his brothers, my father, my oldest brother and me," he said. "It's a heritage I'm incredibly proud of and am excited to have been a part of. My great-great grandfather, the founder of the firm, was a former mayor for Andalusia and we were city attorneys at some point all the way through that history who also served on innumerable public boards and were members of civic clubs. We had a hand in forming the industrial development board and actively represented that entity."

His 23 years practicing with his family's firm exposed him to many local government challenges and issues where his clients included both municipalities and counties as well as the Alabama Municipal Insurance Corporation (AMIC). "The most rewarding work I had was representing municipalities and counties – trying to enable those decision makers to do their job better," he said. "I loved being a part of it. When you live in a small community and you're involved in an economic development project that ultimately results in some economic interest landing in your town and employing people, it's nice to drive by that on your way to work and say I had something to do with it. Truly, over the course of 23 years, I saw government working from the smallest of communities with the very simplest of issues up to complex federal issues involving municipalities and federal officials. It really was fulfilling work."

In 2015, Albritton made the transition from private practice to overseeing the Alabama Ethics Commission, one of the State's most rigorous agencies. The Fair Campaign Practices Act (FCPA) was brought under the Commission by the Legislature around that same time. "The basic purpose of the Alabama Ethics Commission is the enforcement and interpretation of the Ethics Laws and the Fair Campaign Practices Act," he said. "The FCPA is an interesting act to me and what I like about having that authority is the FCPA is clearer in many areas where the ethics laws are not, so interpretation of the FCPA in many cases is simpler because it's just a tightly drawn body of laws."

Ambiguity and the Ethics Laws

Albritton is "perfectly comfortable" with the ambiguity found in Alabama's ethics laws, although he notes that one of the challenges faced by the Commission is helping others become comfortable. "What everybody wants is a hard and fast list of what you can and can't do," he said. "That would be completely unworkable. The public and public officials are better served by an act that has the ability to take into account the facts as they may be presented in any given situation. If I were a public official, I would want the ability to argue why something was or was not a violation of the law. The facts matter."

Therefore, Albritton emphasized, ambiguity in the law is a good thing. For instance: the friendship exception. The Alabama ethics law provides for a friendship exemption for things of value "given by a friend of the recipient under circumstances which make it clear that it is motivated by a friendship and not given because of the recipient's official position."



According to Albritton, there are some friendships that should be taken into account – that it would be unfair *not* to consider them. “If you had a hard and fast rule that under no circumstances could a friend give a gift to a public official, a friend as that law is intended – one going back years, not a recent friend who is really a friend for ulterior purposes – would leave the act unworkable,” he said. “People have these relationships that should be recognized. It goes back to Section 2 of the Act, which mandates that the Commission recognize and respect and enforce the ability of good people to go into government and to recognize that they have outside interests. It is a balance that the code requires us to respect.”

It’s also a balance that presents a real challenge for a rural state with many small municipalities. In some cases, just a handful of people commit to public service and, because the town is small, they happen to be related. “The Ethics Act clearly prohibits certain transactions and you clearly cannot use your position to benefit a family member,” Albritton said. “If you’re a public official, that’s a very large group of people – so you can’t ignore that. Finding that balance is a real challenge.”

Technology Upgrades and a Lean Staff

With annual operational costs of around \$2 million, the Ethics Commission is a small state agency. Most of the budget, nearly 85 percent, is put towards personnel expenses, which according to Albritton, increase every year. “We’re strapped for cash like everyone else,” he said. It’s also why the Commission has invested in technology – particularly an overhaul of its website and the installation of new case management software. “We are actively looking to technology to keep us lean and be responsible stewards of the State’s dollars,” Albritton said. “Technology will also fully maximize the potential that these individuals have to contribute in greater ways than they already are.”

The Commission has 15 on staff, which is smaller than allowed by statute. “I cannot trumpet my staff enough,” he said. “These people work incredibly hard and I am grateful to them. One thing that I’ve been real proud of is we’ve been able to pare down



our staff and do more with the employees we have. We have invested the last six months in new case management software that is far superior to what we currently had and will enable us to combine all the data we collect to one database where we can see connections between individuals and transactions in a way that we weren’t able to do before. It will also make the enforcement of Statements of Economic Interest much easier when the system itself can generate a list of who hasn’t filed. Right now, individuals in our office have to annually verify all that – and they do a remarkable job – but it’s very tedious and hard work and what we would like to be able to do is free up those individuals to do more complex work for us in terms of enforcement or other needs that we have in the office.”

Another priority for Albritton when he was appointed in 2015 was to improve

the Commission’s web presence, including the online training. In addition, all public records are now accessible directly from ethics.alabama.gov, including lobbyists disclosures, Statements of Economic Interest and any contract a public official has entered into in his or her private life that may be paid in whole or in part with public money.

“It took a lot of work – it was a year-long process,” he said. “The whole point of the website is to be user-friendly and to be full of information, and we wanted people – municipalities, counties, legislators, press, average citizens – to be able to get whatever information was important to them directly off our website. We also updated our online training video; it is substantially different from what we had before. The previous version was a lecture format; the new video is an interactive format that has questions and answers and scenarios that engage the user a little more.”

This is the training municipal officials and public employees are required to have, which takes approximately one hour to complete. “One feature that we did not have before was a way to ensure the viewer was actually watching the video,” Albritton said. “Now you have to actually view a screen and you cannot advance until you manually advance. At the end of the session, the public official or employee has to certify that they have watched the video and that they actually participated in the training.”

Ethics Commission Members

The Ethics Commission consists of five commissioners nominated by the Governor, Lt. Governor and the Speaker of the House. They are confirmed by the Senate and serve staggered five-year terms such that a new commissioner is usually appointed every year. The Commission meets every 60 days in downtown Montgomery, and the meetings, which generally last most of a day, are open to the public as well as live-streamed via the website. As an enforcement agency, the Commission does go into Executive Session to discuss cases covered by Grand Jury secrecy. When this happens, those viewing via live-stream will see a message screen announcing the Commission has gone into Executive Session.

All current Commission members have a legal background. They are: Jerry L. Fielding, Chair, Sylacauga; Frank C. “Butch” Ellis, Jr., Vice Chair, Columbiana; Charles Price, Montgomery; Beverlye Brady, Auburn; and John Plunk, Athens. “We’ve got two retired circuit judges and three practicing attorneys,” Albritton said. “Having a legal background is not required – although the Code does require that at least one Commissioner be a lawyer. It is beneficial to have lawyers because we are interpreting a criminal code and so the legal expertise that they bring is incredibly beneficial. I view the Commissioners as individuals who contribute a unique perspective even though they are all lawyers. They have different backgrounds, different life experiences – they all contribute to their communities.”

Albritton stressed that these five individuals are volunteers who give of their time and expertise for an oftentimes thankless position. “What the public doesn’t understand is that they are serving for free at great personal expense to their private lives,” he said. “The decisions they make are public. The criticism of them is public – for a *volunteer* job where they take off time from their active law practices or their lives to come to Montgomery to contribute. They’re honest, hardworking people who come in every single meeting with their *only* goal being to make the right decision. Their challenge is that they’re the ones who officially make the decisions so, at the end of the day, it’s their job to look at the law, to look at what I’ve given them and to decide if they think I got it right or not. It’s their job to independently evaluate what they’re given. They’re standing out publicly and it’s their decision that’s generally written about – and that can be an incredibly lonely place for people who have volunteered their time. It’s a hard job.”

Hundreds of Complaints Filed Each Year

Several hundred complaints are filed with the Ethics Commission each year, of which about half are dismissed without ever being presented to the Commission. “We have roughly 500 cases filed with us,” Albritton said. “We have a process that is intended to ferret out early those cases that lack merit. It could be that someone filed a complaint that alleges a violation of the Opening Meetings Act. That’s not under our jurisdiction. Or they may allege ethical violations that really don’t arise under our Act – it may be what the filer considers to be a moral violation. With those, we will write the complainant back and remind them of what our jurisdiction is limited to and ask if they have any evidence of where a public official has used his or her position for personal gain. In most cases, they won’t respond or they say no. So approximately 250 cases ultimately get presented annually to our Commission. Out of those, generally about a third are referred for prosecution, about a third are resolved administratively and about a third are dismissed. So even out of the cases that are presented to our Commission, two-thirds of them are either resolved through a fine or dismissed outright.”

Informal Advisory Opinions

“Our primary function is education,” Albritton said. “If you look at our statistics, we have greatly increased the amount of education we are providing to the public sector.” In addition to an expansive website and public speaking engagements, which Albritton said he always agrees to unless he has a calendar conflict, the Commission educates through its informal advisory opinion process. “Our informal opinions do not give legal protection,” he said. “They are the staff’s answer based on previous formal advisory opinions. Some of them are very easy to answer, some are hard to answer. The value of an informal opinion primarily is for those Alabamians who may not have access to legal counsel or legal counsel that does this kind of stuff. If we did not give informal opinions, there would be a lot of folks out there floundering. We give about 700-plus of those a year – that’s a lot of time spent giving informal opinions.”

Informal advisory opinions are not available to the public. By administrative rule, informal opinions are confidential. “A lot of folks want our informal opinions to be public,” Albritton said. “The problem with that is if you had a system where all informal opinions were public, it could create some chaos because people could rely on them for different facts and the informals could be misconstrued.”

Formal Advisory Opinions

Unlike informal opinions, a *formal* Ethics Commission advisory opinion does give legal protection from prosecution – as long as the request does not stray from the advice that was given. Formal opinions are also public documents and are published to the Commission’s website following each meeting.

Albritton said approximately 30 formal advisory opinions are rendered per year and are generally triggered when the Commission has not fully answered the question before. “The requestor is asking us to interpret language in the code when we have not been asked to do that before,” he said. “I think it’s only responsible to do that through a formal advisory opinion because, if we have a certain view of how language should be interpreted and we have not publicly spoken to that before, it should not be something we give to one individual in one isolated place. It’s something that, frankly, we ought to share with everyone affected by the Act. The other aspect I like about a formal advisory opinion is it helps keep us in check. If we have formally stated something, then the public knows we have done that. Another value to a formal advisory opinion is it gives us a document we can relate back to when we’re asked a similar question.”

Commonly Asked Questions

According to Albritton, the Commission receives a number of questions regarding how public officials can live in a small community, have a business in that community and how they can interact with state government, especially if they’re an elected public official serving on a city council. “For instance, the owner of local hardware store wants to know if staff with the city can buy supplies from the hardware store or if the city itself can do business with the hardware store,” he said. “There are allowances for very small communities – Class 7 and 8 municipalities – that allow them under certain very limited circumstances to do that. There is a prohibition outside of our Act that we have to be mindful of that says if you’re an elected public official sitting on a City Council, you’re prohibited in many cases from dealing back with the municipality you represent.”

Additionally, the Commission receives questions about conflicts of interest – whether someone has a conflict of interest in any given situation. “On the state level, we get questions from the state agencies under the revolving door – when people leave public service and want to go into the private sector – so we give advice about how to maneuver through that, which also requires us to work closely with State Personnel because there are restrictions that Personnel has outside of our act.”

Advice for Municipal Officials

Albritton said the Commission receives many questions about conflicts of interest and interaction with city vendors. Occasionally they field voting questions. During election season, the Commission works closely with municipalities on campaign finance issues.

“A large chunk of what’s filed with us are low-level violations,” he said. “A public official used his or her position for personal gain through the use of supplies or personnel that the public gives them in their public role and they’ve converted to private use – it could be a city credit card, it could be an automobile, it could be staff that you have directed to do personal things for you that result in personal gain. Those are the type of cases that are typically resolved through administrative penalty except when they present facts that show there was an intent to violate the Ethics Act and that there was more than \$250 gained for the individual or lost for the public entity.”

He stressed that elected officials must remember and understand that what the public supplies to them has to be used for the public. “It can’t be used for their personal interests,” he said. “What I tell people is if in doubt, always resolve it in favor of not doing it. I’m not a fan of advising the public official to split the hair and argue why something should be allowed. Public officials and employees should not be trying to figure out how something is okay, they should be figuring out whether there’s an issue and then resolving that in favor of complying with the Ethics Act.”

Albritton also recommends that municipal officials seek the guidance of their municipal attorneys. “I tell people if they’ve retained a city attorney, they need to go to that attorney and ask the question because, having done that work myself, I know it can be a bit frustrating if you’ve got a client who goes around you and then presents you with an issue after the fact,” he said. “I’m a big fan of actually involving the legal counsel you’re already paying to help you resolve the question early on. We have a great working relationship with the city attorneys as well as the League of Municipalities. We love to get questions from city attorneys. The other value of filtering your question through your attorney is the attorney will be the first person who will tell you that’s not covered under the Ethics Act or that attorney may say that it’s not allowed under the Act – you can’t do it.”

Albritton said it’s important to realize the public is watching closely and that a number of complaints filed with the Commission are filed on perception – and while perception may not give rise to a violation of the law, it is always best practice to keep the line between professional life and private life as impenetrable as possible. ■

Questions? *For information regarding SEI, FCPA and all things “ethics,” contact Elizabeth Robison at elizabeth.robison@ethics.alabama.gov or visit the Ethics Commission online at ethics.alabama.gov.*

The Legal Viewpoint

By Lori Lein, General Counsel



Expenses of Municipal Officers and Employees

Earlier this year *The Legal Viewpoint* addressed the issue of the payment of legal expenses for municipal officials and employees. Since that time, the legal department has had questions on the broader issue of expenses, including travel and expense allowances.

Generally, in the absence of any legal provision to the contrary, municipalities are not liable for the expenses their officers and employees incur. McQuillen, *Municipal Corporations*, 3rd Edition, Section 12.190. Most states, however, have enacted laws authorizing municipalities to reimburse officers and employees for expenses they incur in the performance of their official duties.

In Alabama, Sections 36-7-1 through 36-7-5, Code of Alabama 1975, provide a method for municipalities to reimburse officials and employees for expenses incurred while traveling beyond the municipal limits on official business. In addition, the Attorney General's office has consistently held that officials may be reimbursed for all expenses incurred in the performance of official duties.

This article discusses expense allowances and some of the issues which have arisen concerning reimbursement of municipal officials and employees for their expenses. This article is written with a general approach applicable to the vast majority of municipalities in Alabama. It is important to keep in mind, however, that there are some local laws and general legislation for certain classes of municipalities that regulate expense allowances. Before implementing an expense policy, or amending an existing one, it is important to research whether any special rules apply to your municipality.

Expense Allowances

While there is no express statutory or judicial requirement that municipalities in Alabama reimburse employees and officials for their expenses, most municipalities do so. By the same token, there is no prohibition on reimbursement, provided that the actions of the municipality do not violate Sections 68 and 281, or Amendment 92, of the Constitution of Alabama 1901, or Sections 11-43-9 and 11-43-80, Code of Alabama 1975. These sections prohibit granting extra

compensation to officers and employees after a service is rendered and also prohibit increasing or decreasing the salaries of municipal officials during the term in which they serve. Additionally, to advance travel expenses, the municipality and the official receiving the advance must comply with Section 36-7-3, Code of Alabama 1975, which sets out mandatory procedures to account for travel advances.

Clearly, the reimbursement of actual expenses does not violate these laws. The municipal official or employee is not receiving any extra compensation when reimbursement is received for expenses. Instead, the official or employee is left in the same position which he or she occupied prior to incurring any expenses.

Similarly, a municipality may establish a flat expense allowance for its employees or officials. In an opinion addressed to Hon. W. W. Malone, Jr., city attorney for Athens, dated October 20, 1965, the Attorney General's office stated "this office has consistently held ... that a flat expense allowance, if based upon a reimbursement to the officer concerned for expenses incurred by him in the performance of his official duties and bearing a reasonable and substantially accurate relationship to the actual expenses incurred, is not considered as an increase in compensation." See, also, AGO 2008-038.

Thus, a municipality may, by ordinance, establish a flat expense allowance to be paid to its officials on a periodic basis provided the allowance bears a reasonable and substantially accurate relationship to the actual expenses incurred. To the extent an expense allowance exceeds actual expenses; however, it is an unauthorized increase in salary and violates the sections of the constitution and code cited above. AGO 1981-187 (to Hon. E. W. Patton, Jr., January 28, 1981). Also, amounts above actual expenses must be treated as income by the official or employee for income tax purposes.

Similarly, the Attorney General has ruled that a park board, formed and operating pursuant to section 11-86-1, et seq., of the Code of Alabama may create an expense account to pay travel and other expenses incurred by the director and staff of the Board while in performance of their official duties if the expense allowance bears a reasonable and substantially

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accurate relationship to the expenses incurred. To the extent an expense allowance exceeds actual expenses, however, it is an unauthorized increase in salary and violates sections 68 and 281 and Amendment 92 of the Constitution of Alabama. AGO 2008-016.

Recognizing the difficulty of determining whether an expense allowance is reasonably related to actual expenses incurred, the Attorney General's office pointed out in its opinion to Mayor Patton that the better practice is for municipalities to adopt a policy of reimbursing their officers for the actual expenses incurred while performing their duties only after receiving an affidavit from the officer listing the expenses. This method helps avoid the potential legal and tax problems encountered when a municipal official is paid a fixed periodic sum for expenses. However, the Attorney General's office pointed out that no law is violated when a municipality authorizes paying its officials a fixed expense allowance.

A \$100 per diem provided to members of a board that is in addition to the reimbursement for travel expenses is considered a salary or compensation. An expense allowance, however, is not compensation. AGO 2008-038.

Items Allowed in Expense Allowances

Regardless of whether a municipality chooses to reimburse its officials only for their actual expenses or to authorize paying them a fixed expense allowance, the general rule appears to be that municipal officers are entitled to reimbursement for all reasonable and necessary expenses legitimately incurred in the performance of their official duties. Regarding the specific items which may be considered as legitimate expenses, the Attorney General's office has stated that this determination must ultimately be made by the municipal governing body.

However, some guidance was provided in the opinion to Mayor Patton cited above. In that opinion, the Attorney General stated that expenses for phone calls, gasoline and automobile repairs may be included in the expense allowance, provided that the expenses were incurred in the performance of official duties. The time spent performing these official duties cannot be included in the expense allowance. Municipal officials are compensated for their time by salary and any extra money received for their time equates to an impermissible salary increase.

In an opinion to Hon. George W. Ivy, Jr. and Hon. John M. Anthony, Jr., dated December 2, 1974, the Attorney General ruled that municipalities have no authority to furnish telephone service at a city commissioners business or residence, even if he or she establishes his or her official office at either location.

The provision of telephone service is particularly appropriate for demonstrating the difficulties of using a flat monthly expense allowance. If the official is allotted a certain

amount of money for telephone expenses yet does not make enough official calls to justify this amount, the official would be required to refund the extra funds to the city. Similarly, if the official spends more money for telephone calls than is allotted, reimbursement would be requested from the city. Reimbursing the official for actual expenses removes these difficulties.

Finally, in the opinion to Ivy and Johnson, the Attorney General ruled that municipalities may not pay the civic club dues of their officers or employees. However, municipalities may furnish city officials with automobiles, provided the automobiles are used solely for official municipal business. AGO to Hon. John M. Franklin, January 28, 1974. A municipality has the power to reimburse volunteers for mileage they incur on municipal business, if the council determines that reimbursing mileage serves a municipal purpose. AGO 1995-134.

Travel Expenses

While flat expense allowances are permissible for municipal officials who incur expenses in the performance of their official duties while in the municipality, in an opinion to Hon. Emory Folmar, mayor of Montgomery, dated May 19, 1980, the Attorney General stated that this allowance cannot "include reimbursement for expenses incurred while traveling or remaining beyond the limits of the municipality." Instead, reimbursement for expenses "beyond the limits of the municipality" is governed by Sections 36-7-1 through 36-7-5, Code of Alabama 1975.

Procedure for Approval

Section 36-7-1 provides that no officer or employee of a municipality or county in Alabama shall be reimbursed from the treasury of the municipality or county unless an itemized statement of expenses is presented and is approved as provided in Section 36-7-2.

Section 36-7-2 requires the officer or employee, immediately upon return, to present the statement to the municipal comptroller in a commission-governed municipality and to the treasurer in a council-manager municipality. This statement must be presented to the council or commission at a regular meeting held within 30 days after it is presented to the comptroller or treasurer. If the governing body disallows the statement, the official or employee cannot be reimbursed. It is the opinion of the League that if the governing body finds only certain items should be disallowed, those items may be deleted from the statement and the statement approved as amended.

In an opinion to Hon. B. R. Winstead, Jr., director of finance for Birmingham, dated October 31, 1973, the Attorney General ruled that, although Section 36-7-2 requires the official who incurred the expenses to present the itemized

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ALM Welcomes Barbara Alexander Operations Manager

Barbara was born and raised in Birmingham where she received her BA in Accounting from Birmingham Southern College (BSC). After getting married in 2007, she relocated to Montgomery, where she worked as an HR Manager for three years before going to work on Maxwell AFB in an OA Manager and EEOC dual role. In 2011, she obtained her SHRM (Society of Human Resource Management) Certification through AUM's Continuing Education program and became a Client Services Supervisor for a staffing agency. She joined the Alabama League of Municipalities in September 2017 as the League's first Operations Manager, a role that reflects her HR and management experience. Barbara is also official royalty – she was named the honorable Lady Barbara Alexander of Great Britain in 2008. Lady Barbara and her husband, Kelvin, have five children and three grandchildren. ■

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statement of expenses immediately upon returning from his or her trip, the official must simply present the statement as soon as is practicable after returning. Then, in order for the official to receive reimbursement for those expenses, the municipal governing body must, at a regular meeting within 30 days after the statement is presented, approve the statement of expenses.

The Attorney General has held that a town council may require its municipally sanctioned volunteer fire department to provide the town with unredacted copies of fire and emergency medical services reports to keep on file for use in determining the reimbursement of expenses of department personnel making fire and medical calls. 2007-111

Advances

Section 36-7-3 states that no sum shall be advanced from the municipal treasury to defray the travel expenses of a municipal official or employee unless the governing body passes a resolution allowing the expense. This resolution must state the purpose and object of the proposed trip.

The Court of Civil Appeals of Alabama has held that a city council may not retroactively approve an advance of travel expenses which were not properly made pursuant to Title 36, Chapter 7, Article 1, Code of Alabama 1975. *Cassady v. Claiborne*, 590 So.2d 339 (Ala. Civ. App. 1991).

When funds are advanced to a municipal official or employee, an itemized statement, as specified in Section 37-6-1, must be presented immediately upon the return of the official or employee. Failure to present this statement and to have it approved renders the officer or employee personally liable to the municipality for the advanced funds. If the officer or employee receives a salary for services, the amount of the advance can be deducted from any future salary received from the city.

The provisions of the code which deal with reimbursement of expenses for traveling beyond the municipal limits – including the provisions relating to advancement of funds – do not apply to the use of a municipal credit card beyond the corporate limits on official municipal business. *See* Section 36-7-1, Code of Alabama 1975. Thus, a municipal council does not have to approve, by resolution in advance, the use of a credit card issued in the name of a municipality for trips outside the municipality by municipal officers and employees.

Reimbursable Travel Expenses

While no Attorney General's opinions or Alabama cases deal with the question of what items may be claimed as travel expenses, it seems clear that items such as gasoline, business-related phone calls, automobile expenses, hotel rooms and meals are permissible. In addition, traveling officials and employees can probably participate in special planned events, assuming that the events are part of a convention or

meeting the official or employee is attending. Again, however, the time the official spends away from the municipality is generally not reimbursable. These are questions that must be answered on a case-by-case basis with the ultimate decision on the items which are allowable resting solely with the municipal governing body.

In addition, no opinions or cases explain what trips are reimbursable. The general rule is that if the trip is related to official municipal business, the officer or employee is entitled to be reimbursed for expenses.

However, it is clear that a municipality may not pay the expenses incurred by the spouse of an official or employee while traveling. AGO to Hon. George W. Ivy, Jr. and Hon. John M. Anthony, Jr., December 2, 1974. Further, a city may adopt a personnel policy that provides for the reimbursement of travel expenses for select candidates for employment with the city and for the reimbursement of moving expenses for select new employees, subject to restrictions to prevent abuse and promote fiscal responsibility. AGO 1999-278.

Some boards or municipalities have legislative acts that specify the items which can be included as reimbursable expenses or which limit the amount of expenses an official can claim. These acts would govern the amount or the type of expenses which can be claimed in these instances. Officials should be aware of the acts and code sections which govern their operation.

Penalties

Any officer or employee drawing or approving any warrant drawn on the municipal treasury in violation of these provisions shall be guilty of a misdemeanor and punished as provided by law. Therefore, proper care should be taken before deciding what items to allow as part of the expense allowance and the municipal governing body must ensure that the expenses which are being claimed by the officer or employee are legitimate.

Additionally, officers and employees who fail to account for travel advances may be convicted for a violation of the Ethics Law. *Langham v. State*, 662 So.2d 1201 (Ala. Crim. App. 1994).

Recommended Accounting Procedures

There appears to be a conflict in the Attorney General's opinions regarding flat expense allowances and actual expense reimbursements. The opinions indicate that officials may receive a flat expense allowance, but this allowance may not exceed actual expenses incurred. The better practice seems clear – municipalities should reimburse officials for the actual expenses incurred. This satisfies all the requirements of the various code sections as well as the accounting requirements of the Internal Revenue Service.

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Regardless of how you choose to preserve this data, your City needs a clear plan for retaining social media content as a public record.

First Amendment Issues

Since the content of municipal social media accounts – posts as well as comments – are likely considered public writings, the First Amendment will apply. Think of social media as a digital equivalent of the old “public square.” Imagine, for example, if the administrator of a municipal social media account removes a negative comment posted on the social media page by a citizen. Has the citizen’s free speech been improperly restrained? Although the Alabama courts have not yet wrestled with this issue, a Virginia court recently has in two scenarios.⁷

First, a citizen posted his concerns about the legality of a County Board of Supervisors meeting on the County’s Facebook page. Since his post was critical of the County, the employee managing its Facebook page (apparently, the County Attorney) quickly removed it, along with three more posts from the same individual. The citizen later sued the County, arguing that his First Amendment rights were improperly restrained. The Court ultimately ruled against the Plaintiff, finding that the Facebook page in question was a limited public forum, and that the comment deleted was “off-topic.”⁸ Part of this decision hinged on the fact that the Facebook page had a policy in place that only invited comments to posted questions.

Next, the same Citizen/Plaintiff sued the Chair of the Loudoun County Supervisors for temporarily blocking him from her Facebook page. Unlike the previous case, the Court here found that the Chair was acting under the color of state law in maintaining her Facebook page and banning the Plaintiff.⁹ The main issue the Court relied on in this case (and what set it apart from the case above) was that the Chair had discriminated based on the Plaintiff’s viewpoint. In the first case above, the policy of the Facebook page allowed for the removal of “off-topic” posts. In this case, the Court found the Chair had banned the Plaintiff because she did not like his viewpoint. The Court found this to be a violation of the Plaintiff’s First Amendment rights and, therefore, ruled in his favor.

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Chuck Stephenson • Director of Information Technology • ALM

*Patches, I'm dependin' on you, son
To pull the family through
My son, it's all left up to you ...*

How many of you remember this incredibly moving song made famous by Alabama's own Clarence Carter? Some of you may even think of this song when you see a reference to patches or patching. Unfortunately, this article isn't dedicated to Mr. Carter.

Digital Security Breaches

By now most of you have probably heard about the security breach that occurred at Equifax this past May through July – the FIRST breach. Just prior to completing this article, on October 12, Equifax announced it may have suffered a second breach. One breach is inexcusable. Two breaches ... well, this story will probably continue to unfold for a while but the first breach was bad enough as I'm sure, like me, many of you discovered your information had been compromised.

Unfortunately, events like this are happening more and more frequently. There are multiple possible entry points for hackers to access systems for malicious purposes. Fortunately, almost all of them are *preventable* to some degree. One of the easiest to control is the installation of software patches and security updates that software companies release regularly.

Patches: The Facts

The facts of the Equifax breach are very concerning. The attackers gained access to the Equifax system in mid-May via a web-application vulnerability that had a software patch available in March, according to an article by *Wired* magazine. That means that the credit-reporting giant had *two months* to apply the fix that would have prevented 143 million people from having their personal data exposed. It would also have prevented a public relations nightmare.

Patches: More Facts

Of the eight most widely reported cybersecurity incidents to date in 2017, four of them are the result of vulnerabilities that had patches available but not installed. Let that sink in for a minute: **HALF!** Included in those four are the two largest ransomware attacks (WannaCry and Petya) on record. Another was the Cloudbleed attack that hit the internet infrastructure company Cloudflare. This exposed data from users of FitBit and OKCupid. Each of these attacks were accomplished by utilizing exploits that had software

Terms of the Trade

- **Breach** - A data breach is an incident in which sensitive, protected or confidential data has potentially been viewed, stolen or used by an individual unauthorized to do so.
- **Patch** – software update comprised code inserted (or patched) into the code of an executable program. Typically, a patch is installed into an existing software program. Patches are often temporary fixes between full releases of a software package.
- **A-Team** – “In 1972, a crack commando unit was sent to prison by a military court for a crime they didn't commit. These men promptly escaped from a maximum security stockade to the Los Angeles underground. Today, still wanted by the government, they survive as soldiers of fortune. If you have a problem, if no one else can help, and if you can find them ... maybe you can hire The A-Team.” (The “A-Team” TV series ran on NBC from 1983 to 1987.)
- **Guinea Pig** – a lovable, furry pet that is neither a pig nor from Guinea.

patches that, had they been installed, would have closed the vulnerabilities allowing the attacks to happen.

Patches: Some History

Security updates, software patches and service packs are nothing new. They have been around for decades. In fact, they go back to the 1940s when they were on paper tape and punch cards. As the use of computers increased, the frequency of updates increased as well. In my early days as an IT professional (see also Computer Nerd), the late 1990s, patches/updates were beginning to become unmanageable for large organizations. There were entire departments that were dedicated to ensuring the timely installation of updates.

A Problem

As client/server technology became more and more the lay of the land, hackers started ramping up their attacks on the vulnerabilities in the software being used by businesses and home users. This caused an increase in the number of updates released to patch those issues. The problem for IT pros was that often the updates seemed to break more than the fixes they made. This brought about a mindset that, unfortunately, many of us still have – the “wait and see” approach. We might wait weeks or months to install necessary security updates. Of course, as the advent of the Internet of Things has grown, vulnerabilities have been exposed and exploited at a *much* faster pace. This means that taking the “wait and see” approach is no longer an option.

“I love it when a plan comes together...”

As a child of the 1970s and 80s, the “A-Team” was one of my favorite TV shows. I loved watching the team, when faced with impossible odds, come through the problem by executing the plan that their leader John “Hannibal” Smith developed. (Of course, it didn’t hurt that they had Mr. T on their side!)

When thinking about a patch management solution, *planning* is a crucial step. Take into account what your most important systems are. How long can they be offline? What times can they be brought down for patching? Do you have backups of servers? How about PCs? Do you have files stored on the PC or are they stored on a server or cloud environment? Do you have rescue disks for PCs?

You can create a recovery drive/disk for every PC in your organization via the Windows Recovery tool located in the Control Panel (Windows 8.1 and above).

There are other questions that will also need to be answered – such as how frequently should you apply updates and patches? The answer is simple if not somewhat irritating: *as often as needed*. For most environments, at least once a month should suffice.

However, there are other factors that may cause a scheduling change. That determination will depend on the severity of the issue that the patch/update resolves. Some updates (patches) are designed to fix vulnerabilities that are currently being exploited. If that is the case, it would not be wise to wait until your normally scheduled patch window.

Testing is a crucial part of the plan. You should have a few computers and servers that are a part of a test group. These devices will literally be your guinea pigs. These will be the first to receive the new updates and patches. Obviously, these should not be critical systems. If your organization has the ability, setting up a full test network that mirrors your production network would be best. However, that is not an option for most municipalities, so having a few guinea pigs is the next best approach. After installing updates to the test machines, and testing for successful functionality, you should be good to move into full deployment of patches to your entire organization.

Final Thoughts

In today’s high-speed world of technology, applying patches in a timely manner is a must. Hackers are operating at a much faster pace than ever, with no signs of slowing down, and the use of technology is growing to new areas of business just as quickly. It is imperative that you channel your inner A-Team “Hannibal” and develop a patch management plan to protect your organization. ■



Chuck Stephenson, Director of Information Technology, Alabama League of Municipalities. To learn more about Chuck, visit www.alalm.org

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Sure, the Law Enforcement and Traffic Safety Division is a long name, but to aptly apply a more descriptive title it would have to be much longer.

That is because one of the largest and most diverse divisions at the Alabama Department of Economic and Community Affairs – a long name in itself – does much more than its name implies. In addition to aiding law enforcement and helping make Alabama’s roads safe, the division, more simply referred to as LETS, also funds multiple agencies and programs that provide help to victims of domestic violence and sexual abuse. LETS also funds programs to help troubled youth correct their behavior before they engage in serious offenses.

“Our duties are really all encompassing and stretched out, but when you get down to it our focus is saving lives and protecting people,” Division Director Bill Babington said.

Two Units Provide Statewide Support

The division, which administers federal funding and coordinates the operation of state and national programs, is set up in two units. The Public Safety Unit works with municipal, county and state law enforcement agencies and offices of related interests across the state to take dangerous drivers off the road, encourage safe driving habits and reduce drug-related and violent crime. The Human Services Unit contracts with advocacy and social service centers, law enforcement and prosecution agencies, and learning and correctional institutions to carry out its mission to make Alabama a safer place to live.

The Public Safety Unit administered about \$11 million in federal funds this year, most of it from the National Highway Traffic Safety Administration, to operate its programs and campaigns. The \$11 million in grant appropriations has created many successes. Teaming up with state troopers, sheriff’s departments and local police, ADECA has used special traffic campaigns like “Click-It or Ticket” and “Drive Sober or Get Pulled Over” to encourage more motorists – drivers and passengers – to comply with mandatory seatbelt laws. The enforcement campaign provided overtime pay for troopers and police to keep watch on Alabama roads.

“The combination of our special traffic campaigns, the seatbelt laws and the fact that people are just more driver-safety aware has helped increase our state seatbelt usage to about 92 percent which is one of the highest usage rates in the country,” Bill Whatley, chief of LETS Public Safety Unit said.

For the second consecutive year, LETS joined forces in October with Ford Motor Co. and the Governor’s Highway Safety Association to offer the Ford Driving Skills for Life, a



The LETS Division is composed of the Public Safety and Human Services units.

hands-on driver safety training for high school students. The program teaches students the perils of distracted and impaired driving and how to safely maneuver a vehicle in hazardous road conditions.

Equipment Grants Benefit Municipalities

LETS equipment grants help local law enforcement agencies acquire materials needed to effectively conduct their operations. Ozark Police Chief Marlos Walker said his department has used equipment grants over the past several years to buy body cameras, crime scene kits and other needed items. “All the grants we have received over the past three years have been essential to helping our officers being better equipped and our department operating more efficiently,” Walker said.



*Bill Babington,
LETS Division Director*

Ozark Mayor Bill Bunting said the combination of equipment grants to the city along with its participation in other ADECA programs, like the traffic safety campaigns and drug enforcement operations, translated into better enforcement and highway safety. “Because of ADECA we keep a large police presence in the Ozark U.S. 231 police jurisdiction,” Bunting said. “Working with ADECA is a total team effort.”

Demopolis Police Chief Tommie Reese estimates that his office has in the last eight years received about \$160,000 in



grants to purchase everything from computers for patrol cars to walk-through metal detectors. Demopolis police also participates in traffic-safety programs like “Click-It or Ticket” and “Drive Sober or Get Pulled Over”.

“The funding that was used to purchase these items has helped our police officers and criminal investigation divisions in apprehending criminals,” Reese said. “Our city, citizens and department have benefitted from the strong partnership with ADECA.”

Demopolis Mayor John Laney agrees. “ADECA programs have certainly improved the quality of safety for the citizens of Demopolis,” Laney said. “Our police department wouldn’t be as near as up to date on technology without the resources we have been able to obtain from ADECA.”

Police and sheriff departments have also benefitted from ADECA’s forensic training program which is provided at no charge to participating departments. Through a partnership with Jacksonville State University, officers receive instruction in the latest forensic and evidence gathering techniques.

“Forensics are often the difference between someone being convicted of a crime or walking free,” Whatley said. “This training teaches officers, who are often the first responders at a crime scene, how to preserve and collect evidence that is crucial to an arrest and conviction.”



LETS equipment grants help supply police, sheriff and state law enforcement with needed equipment to enforce law and protect the public.

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Additional Critical Services

LETS programs through the years have transformed to meet new challenges. In coordination with Gov. Kay Ivey and a council she established, the division is working with other state agencies to combat the growing abuse of opioids and other prescription medicines which Ivey described as “a serious situation that all citizens need to be aware of.” Of the state’s 736 drug overdose deaths in 2015 – the most current confirmed data – 282 could be attributed to opioids, according to the U.S. Center for Disease Control.

“ADECA is proud to join Governor Ivey’s initiative to address the opioid crisis in our state and country,” Babington said. “Our staff is engaged on the issue, and we are honored to be a part of this new project.”

Domestic violence, sexual assault and child abuse are persistent issues that LETS’s Human Services Unit faces each year. Operating this year on a \$37.8 million budget, the Human Services Unit provides grants to 17 domestic violence shelters and 14 sexual assault centers (some dual-service) to provide services to victims of abuse, family violence and violence against women, many of whom are forced to flee potentially deadly and harmful situations. Funding is made available to ADECA through the U.S. Department of Justice and the U.S. Department of Health and Human Services through legislation enacted to address the nationwide problems of abuse.

Services are available at no cost to victims at various locations the state and those services may begin with a call to a center’s hotline from someone seeking needed services ranging from medical care to temporary housing. Specially trained nurses are available to treat victims of sexual assault, particularly those involving rape and child abuse, and to gather forensic evidence needed to convict offenders. In many instances advocacy centers aid victims through police investigations and prosecution and provide counseling to adult and child victims and their families to help them heal emotionally. Aisha Hassan, who leads LETS’s Human Services Unit, said more than 13,000 services were provided to victims of crime during the last reporting quarter.

Jawandalyne Brooks, executive director of the Alabama Coalition Against Domestic Violence (ACADV), said LETS funding is key to keeping shelters operational and providing direct services for victims. “The funding has allowed ACADV to address the need for community coordination and collaboration by providing cross training and policy development that support the



The Hands Across the Border program is an alliance among troopers and other law enforcement in Alabama, Tennessee, Georgia and Florida to reduce speeding and take dangerous drivers off the roads.

needs of survivors at risk of homicide,” Brooks said.

According to Babington, the foundation for all LETS programs begins with accountability. “We have oversight responsibilities for every penny that comes through here and that amounts to millions of dollars that we turn out to a wide variety of sub grantee programs,” he said.

Safety is the focus of LETS staff and the programs they administer. “There are a lot of ways that we touch the public to keep them safe, and that effort makes all us in our division extremely proud,” Babington said. ■

For additional information on ADECA’s LETS Division and its various programs, visit online at www.adeca.alabama.gov/Divisions/lets.



Students learn the dangers of distracted and impaired driving during a driver safety course hosted by ADECA and provided by Ford Motor Co. and the Governor’s Highway Safety Association.

Although the law is still unsettled on the issue, and Alabama courts have yet to weigh in, the bottom line is that a municipality should not attempt to restrain or regulate free speech on social media any more than it is allowed to in other settings. Just because it is on Facebook does not mean you can do whatever you want ...

Data Breach

Public sector organizations are just as likely – or, depending on who you ask, even more likely – as any other entity to be victimized by a cybersecurity attack.¹⁰ Although such attacks usually focus on high-value databases, public works or personally identifying information, it is possible that attackers will target a municipality’s social media outlets as an avenue to gather information for use in an attack on other assets.

“Internet trolls” and hucksters may also try to steal or crack the passwords to a successful social media account to harass or embarrass its owner, distribute spam to the account’s followers or to hold the account hostage for a ransom.

To defend against such intrusions, your municipality should:

1. Limit the number of individuals with access to its social media accounts.
2. Train those individuals to be vigilant with passwords and any portable devices used to access the accounts.
3. Require industry-standard password strength and rotation – including the passwords on mobile devices that are used to access the accounts.

Right of Publicity

Alabama enacted its Right of Publicity Act in 2015.¹¹ Under that law, individuals are granted protection for their name, image and likeness from being exploited for commercial purposes. Although the Act provides robust protections for individuals, it also identifies many “fair use” situations that allow that use without permission. For example, journalists may use an individual’s name and likeness to report on a newsworthy event, or on that individual’s participation in a sporting event.

Importantly, the law does not limit its protections to situations where the likeness or name is used to generate profit – and there is no exception that allows a City or other public entity to freely use any likeness or name that it chooses. To avoid liability under The Alabama Right of Publicity Act, a municipality should train its social media managers to ensure that any images or names featured on its social media outlets either fall within the fair use exceptions to the act, or that the individuals consent to the use of their likeness or name on the municipality’s social media.

Reputation Management

Social media is like a garden that must be tended lest it become overrun with weeds and stop bearing fruit.

You may have already reexamined the way you promote your City and its events after reading cautionary tales of groups that mismanaged or carelessly managed their social media (check out #AskJameis, #McDStories and #ILoveWalgreens on Twitter for a primer on hijacked hashtags). But even if your municipality does not own registered trademarks or explicitly brand itself on social media, you should still monitor your online presence to know how you are perceived on social media.

Be Vigilant

Inattention can breed many things on social media, and few of them are positive:

- Citizens may become confused by the posts of others who impersonate or reference your municipality on social media.
- Your message may become diluted or diverted by others using similar hashtags or account names.
- Trademarks may become generic or diluted from misuse on social media.
- Disgruntled employees or third parties could tarnish the municipality’s reputation.
- Things that happen in the “real world” could be reported and re-posted online in an unflattering way.

Take Down the Imposters

Although some find it funny to impersonate others’ accounts on social media, municipalities shouldn’t be laughing. Imagine the following (fictional) Twitter scenario from the corporate world:

The Albertsons chain of grocery stores actively engages its customers on Twitter (this is true – find them on Twitter at @Albertsons). An imposter and would-be comedian registers the Twitter handle @Albertsons, using the capital letter “I” instead of a lower-case L for the second letter in the name. Because of the font used by Twitter, the two are nearly indistinguishable.¹² The imposter mimics the look and feel of the genuine Albertsons account and begins making innocuous posts on this new account, maybe even suggesting that the Albertsons Twitter account is “back up and running” and invites everyone to follow this new

account. Soon the imposter builds a following that believes it is reading the official Alberstons Twitter feed. Then the imposter gets creative with posts making light of tragedy, glibly interacting with customers, making off-color jokes or worse. Because many of the imposter's followers believe the account is real, Albertsons must act quickly to prevent damage to its reputation.

How should you respond if an imposter targets your municipality in this way?

ALWAYS:

- **Report the activity to Twitter.** In this case, the imposter is using at least one registered trademark and the situation is ripe for redress under Twitter's Trademark Policy. Submit an online report and fax a Cease & Desist letter to Twitter's corporate office. (Twitter does not go out of its way to make the dialogue easy, but they do take these things seriously).
- Accept the fact that (like most social media platforms), **Twitter is not likely to disclose information about the imposter without a subpoena.** The Stored Communications Act (18 U.S.C. § 2701 *et seq.*) provides ample cover for social media providers.
- **Consider whether to file a John Doe lawsuit to pursue defamation or infringement claims against the imposter.** Once you go down this road, you can subpoena account information (likely, an email address – possibly, the IP addresses used to register or access the account) from Twitter and hopefully follow the trail of information all the way to the imposter. However, discretion is often the better part of valor and there may be times where it is better to let the situation lie once the account is disabled.
- **If the damage is done, you may be able to turn it into a positive.** Embarrassing social media moments tend to get noticed and may create an opportunity to seize and redirect that momentum. For example, the American Red Cross recovered beautifully from an employee accidentally posting a mildly inappropriate personal tweet on the official Red Cross Twitter account (*see #gettinslizzed*) and ultimately used the exposure to raise additional funds for its cause. Although its situation did not involve an imposter, the Red Cross is a great example of managing a slip-up on social media.

NEVER

- **Never publicly engage with the imposter.** There is an old saying you shouldn't wrestle with a pig – you get dirty and the pig enjoys it.
- **Never ignore the situation and hope it will go away.**

Remember, however, that true parody accounts are permitted on most social media platforms so long as they are not intended to mislead the public. Also, genuine parody accounts are unlikely to be actionable infringement under Lanham Act or the Copyright Act.

Finding and stopping imposter accounts is just one of many things that you must be on the lookout for, as you tend to your municipality's social media. Some events call for a legal intervention, but others can be solved with just a little common sense and discretion.

Don't let any of this stop you!

Although there are a few pitfalls to watch out for, social media is still a great tool for municipalities. Once you have adequate policies in place, turn your employees loose to engage your citizens on social media. Your City and its citizens will both benefit from the exchange.

continued next page

Endnotes:

¹According to a 2011 study completed by the University Of Pennsylvania Fels Institute Of Government, almost 90% of cities were using social media for an activity other than communications. Patrick Fiorenza, *The Rise of Social Government – Fels Institute Social Media Report Sneak Peak*, May 2012, www.govloop.com/the-rise-of-social-government-fels-institute-social-media-report-sneak-peak/.

²Yes, *that* SnapChat – it is now fully in the mainstream. At the time of writing, SnapChat appears to be the platform of choice for the youngest generation. See www.recode.net/2017/10/14/16471688/us-teens-use-snapchat-snap-social-media-facebook-twitter-instagram.

³Rachel Keyser, *16 Ingenious Ways Local Governments Use Social Media*, Nov. 28, 2016, www.viewpointcloud.com/blog/local-government-resources/local-government-social-media/. While you are at it, check out the Twitter feed of Johannesburg, South Africa <https://twitter.com/CityofJoburgZA>.

⁴Michael Barthel, et al., *The Evolving Role of news on Twitter and Facebook*, July 14 2015, www.journalism.org/2015/07/14/the-evolving-role-of-news-on-twitter-and-facebook/.

⁵Al. Code §36-25A-1 et seq.

⁶See, for example, www.sosonlinebackup.com and www.backupify.com (no endorsement is made for either of these services).

⁷*Davison v. Plowman*, 1:16cv180 (JCC/EDD) (E.D. Va. Mar. 28, 2017); *Davison v. Loudoun County Board of Supervisors*, 2017 WL 3158389 (E.D. Va. July 25, 2017).

⁸See *Davison v. Plowman*, 1:16cv180 (JCC/EDD) (E.D. Va. Mar. 28, 2017).

⁹See *Davison v. Loudoun County Board of Supervisors*, 2017 WL 3158389 (E.D. Va. July 25, 2017).

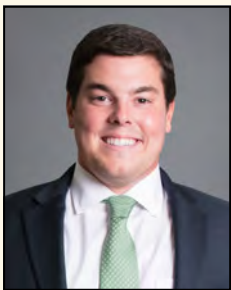
¹⁰Ponemon Institute/IBM, 2014 Cost of Data Breach Study: United States, May 2014.

¹¹Ala. Code § 6-5-770 et seq.

¹²I do not know if this specific scenario has happened to Albertsons Grocery, but the handle @Albertsons (with the letter i) has been suspended by Twitter.



Marcus Chatterton is a partner in Balch & Bingham LLP’s Birmingham office. Marcus is a tech-minded litigator experienced in intellectual property, social media, smart grid, electronic data and general technology issues. He represents and counsels large and small businesses, inventors and creative clients in copyright, patent, trademark and trade secret disputes. He is also an experienced product liability, casualty and real estate litigator. He chairs the Social Media practice group and co-chairs the E-Discovery practice group for Balch & Bingham LLP. Marcus also serves the American Bar Association as co-chair of the Copyright and Social Media Subcommittees in the Intellectual Property Committee of the ABA’s Section of Litigation. He earned his B.S. degree from Auburn University and his J.D. degree, magna cum laude, from The University of Alabama School of Law. Before becoming a lawyer, Marcus was a Marine officer and served in the Middle East during the early days of the Iraq War.



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To contact Marcus or Robby, visit www.balch.com.

Legal Clearinghouse

Rob Johnston, Assistant General Counsel



NOTE: Legal summaries are provided within this column; however, additional background and/or pertinent information will be added to some of the decisions, thus calling your attention to the summaries we think are particularly significant. When trying to determine what Alabama law applies in a particular area or on a particular subject, it is often not enough to look at a single opinion or at a single provision of the Code of Alabama. A review of the Alabama Constitution, statutory law, local acts, administrative law, local ordinances and any relevant case-law may be necessary. We caution you *not* to rely solely on a summary, or any other legal information, found in this column. You should read each case in its entirety for a better understanding.

ALABAMA COURT DECISIONS

Employees: Employee handbooks distributed by city to its police officers did not create a contract under which city was obligated to provide retired police officer with lifetime health benefits. While some versions of the handbook summarized health benefits provided by city, they applied to active uniformed employees of the city, not retirees, and retirement benefits mentioned in the handbooks regarded pension benefits, and not health-care benefits. *Boman v. City of Gadsden*, 220 So.3d 298 (Ala.2016).

Employees: The city and city pension board were separate entities, and thus judgement against the city for pension benefits not paid by the board was improper. *City of Birmingham v. Thomas*, 220 So.3d (Ala.Civ.App.2016).

Zoning: The hardship of which the property owner complained in seeking a zoning variance was self-created and thus could not serve as basis for granting variance. In creating a subdivision, the owner elected to create parcel so that it would be too small to contain a house in hope that she could make money from parcel if adjacent property were developed in the future. *Board of Zoning Adjustment of Huntsville v. Watson*, 220 So.3d 1074 (Ala.Civ.App.2016).

Solid Waste: Operation of landfill by corporation formed by outside county did not violate statute stating that governing bodies may enter into agreements or contracts with each other for disposal of solid waste, even though county did not obtain city's permission before corporation acquired and began operating landfill; use of word "may" indicated a discretionary or permissive act. *City of Brundidge v. Dept. of Env'tl. Mgmt.*, 218 So.3d 798 (Ala.Civ.App.2016).

DECISIONS FROM OTHER JURISDICTIONS

Separation of Powers: City's legislative and executive branches were not distinct jurisdictional entities, and thus city's executive branch lacked standing to bring action in federal court against its own common council. *City of South Bend v. South Bend Common Council*, 865 F.3d 889 (C.A. 7 Ind. 2017).

ATTORNEY GENERAL'S OPINIONS

Competitive Bid Law: The purchase of electronic poll books is exempt from the requirements of the Competitive Bid law pursuant to sections 41-16-51(a)(3) and (a)(13) of the Code of Alabama. AGO 2017-044.

ETHICS OPINIONS

Conflicts of Interest: City may continue to contract with an engineering firm even though the mayor's son-in-law is an employee and could be a partner in the future so long as the mayor has no involvement in the contract negotiations, discussions, drafting, and does not participate in any other way regarding hiring or retaining the engineering firm or the terms of the contract itself. Additionally, because the engineering firm is a "business with which the person is associated," a copy of the contract must be filed with the Ethics Commission within 10 days of entering the contract. AO 2017-09. ■

Legal Viewpoint

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In deciding which expenses to allow, one requirement is common to both the IRS and state laws – the expense must be both reasonable and necessary. Reimbursing officials only after they present a list of actual expenses helps the municipality ensure that this requirement is met.

Regarding travel expenses, in most cases, an official or employee will request an advance from the municipal treasury to help defray expenses. As noted above, the Code of Alabama permits this practice, provided a resolution to this effect

is passed by the governing body of the municipality. This resolution should include detailed instructions concerning the accounting to be made by the official or employee upon his or her return. When the accounting, in written form, is made to the municipality, it relieves the employee from making an accounting to the IRS, provided the procedure is done properly. The League suggests enlisting the aid of the city auditor to ensure that the proper procedure is followed. ■

F.A.Q.

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

City Employees – Bonuses

Can the City give City employees bonuses during the holiday season?

No. Section 68 of the Alabama Constitution, 1901 prohibits municipalities from giving city employees bonuses. However, the Alabama Attorney General's Office has opined that municipalities may provide a lump sum raise or salary supplement to city employees to be paid at a certain time of year as a regular part of their compensation. This payment must be set in advance and considered to be a portion the employees regular compensation. AGO 81-00242. Further, this lump sum raise or salary supplement should be done pursuant to an adopted written personnel policy. AGO 88-00392. ■

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A Call for an Alabama Urban Policy

Wendy L. Hassett, Ph.D. and Douglas J. Watson, Ph.D.



Editor’s Note: An earlier version of this was published: Douglas J. Watson, Robert J. Juster, and Wendy L. Hassett. 2002. “Growth Management,” in James Seroka and Thomas Vocino, *Alabama Issues* Auburn, AL: Center for Governmental Services.

Introduction

Alabama has no stated urban policy despite the fact that a majority of its citizens live in areas classified as urban by the United States Census Bureau. The State’s urban areas impact every Alabama resident – even if they live in rural Alabama. And while Alabama’s active rural outdoor lifestyle is enjoyed by many residents, opportunities for economic prosperity, health care, housing, educational opportunities, shopping and cultural events are concentrated in Alabama’s urban areas.

The most dramatic demographic change in Alabama during the 20th Century was its transition from a primarily agricultural state to a largely urban state. In 1900 only 216,714 Alabamians lived in urban areas; more than seven out of eight residents lived in rural areas (Trent 2001, 8). However, that changed as Alabamians steadily migrated to more urban areas. By 1950, Alabama’s urban population grew to 43.8 percent and by 1990, it exceeded 60 percent. The 2010 Census reports that 59 percent of Alabama’s population still resides in an urban area (U.S. Census 2010). Trent (10) writes: “While much of the state’s land area remains rural, many rural economies have withered as people have left in search of economic opportunity.”

With the exception of a handful of progressive states, population shifts from rural to urban areas occurred with little guidance from state governments in the form of comprehensive urban policy. The result is that all cities in states without comprehensive policies find themselves in constant battles to develop resources or strategies to address serious infrastructure and social needs they face as a result of urban population growth. Oftentimes, because of the inability to directly shape their futures through a lack of legal authority or conflicts with nearby jurisdictions, they turn to their state legislatures for a quick fix solution. Other times,

the problems go unabated. This is the case with Alabama. The first question has to be what would constitute “urban policy” for Alabama. While broad urban policy might seem nebulous and difficult to develop, it is becoming increasingly evident that a need for a comprehensive statewide urban policy exists. The consequence of the absence of such a policy has been to isolate the most serious maladies of high crime, poverty, poor educational systems, deteriorating infrastructure, and other social problems within older cities while the suburbs prosper. For example, the 2015 Report Card on Alabama’s infrastructure conducted by the Alabama Section of the American Society of Civil Engineers (ASCE) scored the state overall as a C-, with 20 percent of Alabama’s 15,986 bridges being identified as “either structurally deficient or functionally obsolete” (2015). State-level attention is needed in infrastructure as well as other areas. Alabama has several urban areas that already show evidence of these problems, and it is likely that more will find themselves in this situation within the next few decades.

Lessons from Urban America

David Rusk, in his influential book *Cities Without Suburbs*, identified 24 lessons he learned in studying urban America over the past four decades (1995, 5-48). Many of the lessons Rusk identified are directly applicable to Alabama’s cities, particularly his concept of “elastic” cities.

For a city’s population to grow, the city must be “elastic.” Rusk (2013, 1995) defines cities as either elastic or inelastic. For a city to be elastic, it must have sufficient vacant land to accommodate future growth and/or have the ability to annex additional land so that growth will be inside city limits. Inelastic cities are generally older ones that have fully developed the land inside their city limits and have either no ability or no desire to expand their territory by growing on the fringes. Rusk (1995, 10) concludes that “this pattern of urban development is sufficiently universal (at least, in America) to embolden me to state the first law of urban dynamics: *only elastic cities grow.*”

The pattern of growth in Alabama’s five largest cities fits Rusk’s description. In all of Alabama’s five largest

cities, most of the population growth has taken place outside the city limits suggesting that cities are not elastic enough to accommodate growth taking place outside their city limits. Figure 1 illustrates how from 1950 to 2010 the populations of most all of Alabama's largest cities have decreased as a percentage of their respective Metropolitan Statistical Areas (MSAs). Table 1 points out that Birmingham's population was at its highest in 1960 (340,887), in 2000, it was only 242,820, and in 2010, it was 212,237. The Birmingham MSA, however, has grown steadily over this time from 634,864 in 1960 to 1,130,047 in 2010. The City of Birmingham comprised 54 percent of the Birmingham MSA in 1960, but today less than 19 percent of the people living in the Birmingham MSA live in the City of Birmingham. These data suggest the growth of suburbs close to but outside the city limits of Birmingham.

The Mobile area developed in a much different way. After a strong decade of growth between 1950 and 1960, Mobile's population has hovered around 200,000 since 1960. Population in the Mobile MSA increased from 314,301 in 1960 to 540,258 in 2000, but decreased to 412,992 in 2010 due to the designation of an additional MSA in Baldwin county. This new MSA recognizes the growth in Mobile's

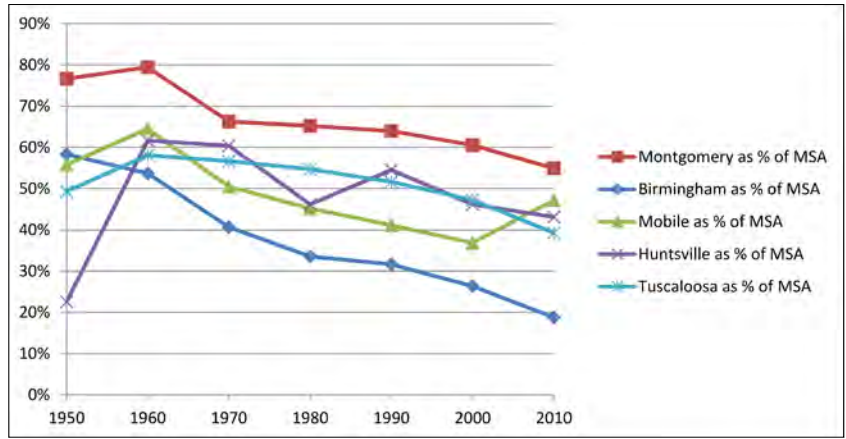


Figure 1: Alabama's Five Largest Cities as Percentage of MSA

nearby cities of Daphne, Fairhope, and Foley which grew at such a rate that a new population center was officially recognized. Today, the City of Mobile comprises less than half of its corresponding MSA compared to nearly 65 percent in 1960.

Birmingham is an excellent example of inelasticity. Birmingham is surrounded on all sides by incorporated municipalities so its ability to grow substantially was long ago eliminated by suburban development. Interestingly, most of the first ring suburbs of Birmingham now have the same inelastic problem due to the development of the second ring cities such as Pelham, Helena and Alabaster. Other smaller

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	1950	1960	1970	1980	1990	2000	2010
Birmingham	326,037	340,887	300,559	284,413	265,968	242,820	212,237
Birmingham MSA	558,928	634,864	739,274	847,487	839,942	921,106	1,130,047
Montgomery	106,525	134,393	133,453	177,857	187,106	201,568	205,764
Montgomery MSA	138,965	169,210	201,325	272,687	292,517	333,055	374,536
Mobile	129,009	202,779	190,122	200,396	196,278	198,915	195,111
Mobile MSA	231,105	314,301	376,690	443,536	476,923	540,258	412,992
Huntsville	16,437	72,365	137,863	142,513	159,789	158,216	180,105
Huntsville MSA	72,903	117,348	228,232	308,593	293,047	342,376	417,593
Tuscaloosa	46,396	63,370	65,773	75,211	77,759	77,906	90,468
Tuscaloosa MSA	94,092	109,047	116,029	137,541	150,500	164,875	230,162

Table 1: Population of Alabama's Five Largest Cities and MSAs

urban areas of Alabama are facing similar problems with new municipalities incorporating within close proximity to them or with the growth of special districts for fire, water and sewer services. Once they become institutionalized, special districts make a comprehensive approach to service delivery and infrastructure development nearly impossible.

A 2017 report published by Public Affairs Research Council of Alabama (PARCA) speaks to the challenges the Greater Birmingham metro area has faced with 35 autonomous municipalities in Jefferson County attempting to address problems independently. Historically, these cities have all, at some level, attempted to address large-scale economic and community issues within their different jurisdictions. The results have been disjointed and fragmented. Pointing to research that suggests that “cooperative governmental arrangements grow faster and generate greater prosperity than metro areas that are governmentally fragmented,” this report calls for all community leaders in the Greater Birmingham area to come together to address regional issues that negatively impact the growth and prosperity all of the cities in the region (PARCA 2017, 8).

The inelasticity of Alabama cities has roots in the annexation laws of the State. Rusk (1995, 16) points out that elastic cities expand their city limits; inelastic cities do not: “Elastic cities did not just fill up vacant areas within existing city limits. They expanded their city limits aggressively.” It is very difficult for any city to have a comprehensive growth plan when it is limited to annexation by petition of the property owners or by state-level legislative action. The result of Alabama’s approach to annexation is evident in the appearance of the city limits of most Alabama cities; most look like jigsaw puzzles with irregular borders. While the state’s annexation laws have been one of the greatest influences on the shape and growth trends of Alabama cities, other contributing policies include the ease of incorporation of new municipalities and the formation of special districts.

Bad state laws can hobble cities. Whether cities are elastic or inelastic depends on state laws. Local governments are the creations of state governments. A widely accepted doctrine of law in the United States governing the relationship between state and local governments is Dillon’s Rule enunciated in 1872 by Iowa Chief

Justice John F. Dillon. It states simply that local governments can do only what they are expressly authorized to do by the state governments (Watson 1995, 15-16).

Some states have recognized that cities are their creations to provide services to urban residents while other states have failed to recognize this and have allowed formerly prosperous municipalities to become liabilities rather than engines for growth and opportunity. For example, many inelastic cities in the Northeast have resulted in severe inner-city problems of failing schools, violent crime and outdated infrastructure.

On the other hand, states like North Carolina have allowed their cities to grow through progressive annexation laws. The PARCA report describes how the North Carolina’s laws set the wheels in motion for Charlotte to pursue a regional consolidation approach that spurred both economic growth and prosperity:

By majority vote of the council, [Charlotte] could take in new territory without needing the consent of those being annexed. Those laws, which operated basically unchanged from 1959 until 2012, allowed Charlotte to expand massively, capturing suburban growth and limiting the emergence of multiple independent suburbs. Besides Charlotte, only six other suburban municipalities exist in Mecklenburg County, compared to Jefferson County, Alabama, where there are at least 35 municipalities. Today, only a small portion of Mecklenburg County is outside the limits of one of the incorporated cities in the county, with 80 percent of the county’s population living in Charlotte. This expansive power of the city encouraged cooperation because the county had a shrinking geographical base in which it was solely responsible for services. The emergence of functional consolidation was somewhat a response to these forces. (PARCA 2017, 88)

Louisville, Kentucky, surrounded by 93 municipalities, is another example of a city that faced crippling fragmentation

caused by state legislation. Kentucky's pro-annexation law included what Rusk describes as a "poison pill" – small subdivisions facing annexation had the authority to self-incorporate to avoid annexation. While this Kentucky law tried to please everyone, it only exacerbated urban problems in that state. Interestingly, Louisville's leadership, headed by long-time mayor Jerry Abramson, was finally able to overcome Kentucky's legislative barrier and forge broad cooperation for the Greater Louisville area. "After 93 suburban micro-municipalities had been organized, Louisville negotiated for a no more annexation/no more incorporation truce in return for a tax-sharing compact with Jefferson County," according to Rusk (1995, 22). The urban solution of consolidation and regional cooperation seen in Charlotte and Louisville reinforce another of Rusk's "lessons from urban America." Rusk argues that the "real" city expands beyond municipal city limits.

The real city is the total metropolitan area – city and suburb. Prior to the 1950s, the inner cities of America were urban America. It was not until the early 1950s that the suburbs around the major cities in the United States started to grow in population as people moved their residences out of central cities to new residential areas within commuting

distance of the downtown. In recognition of the importance of these growing nodes of high urban population density, the Bureau of the Budget (predecessor to the Office of Management and Budget), first issued the designation "standard metropolitan area" (SMA) in 1949. The 1950 U.S. Census reported that more than half of the U.S. population lived in 168 metropolitan areas. This number has grown over the years. Presently, approximately 80 percent of the U.S. population resides in 388 metropolitan statistical areas. The geographic proximity of the independent entities (e.g. cities, townships, counties, special districts) in a metropolitan area have, by their nature, interdependent, yet corresponding, economic, social and environmental concerns. In recognition of this, leadership in a few large cities have had the political will and foresight to set the stage for growth and prosperity and forge successful cooperative regional approaches to eliminate service overlap, enhance efficiencies and streamline efforts.

Prerequisites

Gaining support for statewide policies of any kind is a complex and difficult task. These difficulties are compounded when the basic purpose is to control the use of land. Creating

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a climate in which growth management programs can be discussed and enacted seems to require at least two factors – leadership and consensus.

Leadership. Successful state programs have all been initiated and implemented by either a single person or a small group who share a visionary commitment to changing the status quo. Such leadership could be provided by a governor who thinks and acts like a statesman rather than a politician, or civic or business leaders who place a premium upon economic prosperity and the public interest. Both are examples of the types of people who have been instrumental in most of the successful growth management approaches.

Consensus. One of the fundamental tasks leaders have to perform is to create a broad consensus among a wide range of individuals and organizations, and to use this consensus to build coalitions through which the power necessary to change prevailing practices can be amassed. These prerequisites have been described as follows:

At every stage in the evolution of Florida's growth management system, the governor and the legislature, or both acting jointly, have created committees, commissions, or task forces made up of a broad cross-section of stakeholders in the growth management arena. Typically comprised of elected and appointed officials from every level, developers, homebuilders, agricultural interests, environmentalists, and representatives of professions such as law and engineering, these groups have played a key role in assessing issues and building a consensus for legislative and administrative action. They have been bipartisan, broad based in membership, led by distinguished Floridians who commanded confidence and respect from a wide spectrum of interests, and they have all succeeded in moving the process forward by achieving a consensus on the key issues before them. Almost every state that has adopted a comprehensive growth management system since Florida acted in 1985 has used some version of a consensus-building effort by a broad-based coalition of interests in the growth management area. (DeGrove and Miness 1992, 11)

Recommendations

In light of the growing challenges facing Alabama's 13 metropolitan statistical areas, a number of recommendations emerge.

1. To underscore the importance of Alabama's urban areas, the Legislature should create a Department of Urban Affairs (or similar title.) This Department would

become an advocate for urban Alabama at the State level and would be responsible for conducting studies of service delivery, infrastructure, and social problems. A permanent advisory board of representatives of urban Alabama should be formed and a professional urbanologist should be appointed as the Director. While the Director should have the ear of the Governor and the Legislature, he/she should not be appointed based on political connections. This new Department would not be comparable to any of the current State departments, most of which are program-oriented. The Alabama Department of Economic and Community Affairs, for example, is mainly a vehicle for channeling funds to local governments. While this function is important and could be incorporated into a new policy making entity, the overriding need recommended here is an agency with Statewide policy-making responsibility with the authority to implement such policies at both the State and the local level.

2. The Governor and Legislature should form a Task Force on Urban Alabama to study problems peculiar to Alabama's urban areas. The task force should be made up of leading citizens, elected officials, and academics with special knowledge of urban affairs. Funding should be provided to the task force so that expert consulting help may be provided to direct the work of the task force. At the conclusion of an in-depth study of the problems and challenges of urban Alabama, the task force should issue a report of its findings and recommendations, including a comprehensive urban growth management policy for Alabama. The Legislature should be willing to assign the report to a prominent committee to consider implementation. The Task Force should give consideration to several critical issues:
 - a. **Annexation.** Current annexation laws should be addressed so that cities are allowed to grow in reasonable ways. If a city unilaterally annexes contiguous property, stipulations regarding the responsibilities of a municipality should be detailed in annexation laws. For example, it must commit resources to provide infrastructure and services to the annexed area within a reasonable time. Mississippi's and North Carolina's annexation laws provide worthwhile models to examine and consider.
 - b. **Consolidation.** Consideration should be given to the role of the State Legislature in encouraging the consolidation of adjoining cities or cities and the urban areas that surround them, or cities and counties. Rather than the current situation where incorporation is relatively easy for a growing area to accomplish, the law could discourage the formation of new municipalities and encourage the use of

existing cities and counties to provide services to areas that are urbanizing.

- c. **Special Districts.** Presently, numerous special districts provide water, sewer, and fire services to areas adjoining current city limits. Overlapping provision of services in Alabama's urban area is the rule, not the exception. These districts create serious implications for managed growth, especially when adjacent cities are able to provide these services.
- d. **Land Use Control.** Attention should be given to the possibility of empowering cities with extraterritorial authority for land use control, such as zoning, within a growth boundary area or the planning jurisdiction currently allowed. This authority would allow each city to plan for future growth within at least a two-mile area around the city limits and have the exclusive right to determine land use and to provide water, sewer, fire, law enforcement, and other services.
- e. **Planning Commissions.** In conjunction with consideration of land use control issues, composition of Planning Commissions should be re-evaluated. If cities are given authority to control land-use beyond the city limits, the role and function of Planning Commissions would be altered. Member composition should be considered to allow (or require) a broader membership so the Planning Commission would no longer be an arm of the municipality exclusively unless the area in question is brought under the effective control of the municipality through consolidation, annexation, or other means.
- f. **Impact Fees.** The Florida and Georgia statutes that authorize cities to levy fees to cover the costs of public services upon the developments that generate the demands for such services should be reviewed. The experiences of cities in these two states with the use of this authority should also be evaluated.
- g. **Coordinated Planning.** The creation of a state-regional-local planning and policy making system should be evaluated. While the building blocks for such a system presently exist, there is no overall purpose or guidance for its implementation.

Alabama's annexation and other growth management laws contribute to the difficulties of developing a sensible approach to urban problems and challenges. Until the Legislature gives Alabama cities the authority, responsibility, and support to grow in a planned and orderly manner, urban problems will multiply. The extreme cases of the cities in the Northeast may someday become the situation in Alabama. Several successful state models discussed here and in the 2017 PARCA report are worthy of consideration by Alabama

policymakers to attempt to create strong, prosperous, and equitable growth for Alabamians. Without more progressive annexation and growth-related policies, Alabama's urban areas will continue to fragment with serious ramifications for future generations of Alabamians. ■

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Dr. Douglas J. Watson retired as city manager of Auburn before serving as Professor of Public Affairs at the University of Texas at Dallas from which he retired in 2010. He lives in Auburn where he is active on boards of the City of Auburn and various non-profit organizations.

expenses. After he married, he worked hard to support and feed his family, his wife Delone and their four sons, and he became a very successful businessman.

The story of Oxford's success under his leadership seems to echo his personal life. When he was first elected Mayor in 1984, Oxford had no money in the bank and Leon had to borrow money for the first payroll. Oxford went from a small town of approximately 8,300 people with no money in the bank to a city of approximately 22,000 that is recognized as a major retail center in its part of the state.

Leon lost three sons and his wife, Delone, all while serving as Mayor of Oxford. His faith helped him keep going, but Janet believes that his love for Oxford and his desire to help the citizens of Oxford also helped get him get through those sad times. Leon believed in hard work, loyalty, honesty, and he believed in helping those that are less fortunate.

He had a sign on his desk that read "Effort = Results". The results of Leon's efforts for the city he loved are very evident, and the citizens he loved will enjoy the benefits of his leadership and efforts for many years to come.

One of Leon's favorite phrases was "Always take care of the old folks, always take care of the young folks and the rest can take care of themselves." Personally, I believe he lived that ideal.

Leon's passing coincided with an article written by a friend of mine that was published a few months back in the International Municipal Lawyers Association's magazine, the *Municipal Lawyer*. The article was titled "Don't Forget to Put a Napkin Over the Steering Wheel." The author, Brad Cunningham, City Attorney for Lexington, South Carolina, makes a strong case for something we all already intrinsically know – we spend too much time working and not enough on the important things in life.

Brad opens by letting us know that as he drove home from the funeral of a family member, where he reminisced with relatives he hadn't seen in years, he found himself wondering how had time passed so quickly? He concludes, "Where did all the time go?" I know where it went. It's no real mystery. We are all guilty of it. I spent it at the office! Darn it!"

Brad points out that thanks to technology we are now able to complete work before we finish breakfast in the morning. We can make business calls or answer e-mails. Then we "Get to work, barely say hi to the co-workers and we're on the phone, online and typing away before our seat gets warm."

He says we spend much of our time these days eating in our cars, rushing to get to our jobs, talking on the phone as we travel and working outside regular work hours. He notes, "I once had a colleague in Atlanta who considered a formal dinner as an occasion where he put a napkin over the steering wheel."

Brad says that even after having these melancholy thoughts on the drive home, once the door closed behind him, "True to form, as I hit the door at home in Lexington, I took the opportunity to answer a few work emails and even edit a document ... Even a funeral on a Saturday doesn't get me out of work."

Brad encourages his readers to make time for their hobbies to help reduce stress – a very worthy goal. He concludes, "We are not promised tomorrow, folks. And, it seems such a shame (that we) spend most of our time doing something that causes so many headaches, at the expense of something we enjoy. Sure, of course we must be realistic, but I really don't want to end up like my father. He led a very productive life and had planned a terrific retirement. But, he died suddenly of a heart attack only six weeks before retirement.

"My advice? Keep up that hobby ... Buy the shoes ... Order the good wine ... Wait for the head barber ... Get the leather seats ... Eat steak ... Go ahead and take that trip to Europe. (Hey, is that my phone ringing?)"

Sometimes, it may be in our own best interest to let the phone ring. Depending on who is calling, of course. But don't forget to spend time with family and friends, and take the time just to appreciate life.

Webinars

Turning to League developments, on October 3, 2017, the League launched a new training initiative using webinars to bring Certified Municipal Official training to municipal officials who may not otherwise be able to attend League training. Lori Lein, League General Counsel, discussed the *Duties of the Mayor and Council*. From all accounts, the webinar was a resounding success and we plan to use this on-line tool to provide more training opportunities and to reach our members in various other ways. By the time you read this, we should have completed at least two additional webinars.

We are very excited about exploring the options webinars provide us. Of course, we will continue to provide the high level of in-person training as in the past; after all, nothing can substitute for meeting with other officials and discussing common issues and concerns. But webinars provide us with an additional tool to serve our members. In our opinion at the League, the more training we can provide, the better.

Keep an eye open for more webinars in the future.

Strategic Planning

Last July, the League's Executive Committee voted to conduct a strategic plan for the League. We have engaged Katherine Webb, Vice Chancellor for Business & Community Initiatives for SummaSource, which is part of Auburn University Montgomery, to conduct the strategic plan. She

has conducted numerous strategic plans for other associations.

By the time you receive this issue of the *Journal*, you will have probably received a questionnaire asking for your thoughts about the League. By any measure, the League has been – and continues to be – a successful organization. That said, we are always open to ways that we can better address the desires of our members. Please don't ignore these surveys. Complete them and return them. We want to be sure we are serving your needs.

Legislative Advocacy

The 2018 Regular Legislative Session begins Tuesday, January 9, 2018. We anticipate that this, like other recent legislative sessions, will be very active for League members. A couple of years back, we combined our Legislative and Communications Departments to create an Advocacy/Communications Department that is responsible for our governmental and public affairs, developing legislative messaging, providing legislative updates throughout the year as well as strategic messaging and grassroots campaigns to ensure that we have a continuous dialogue and, more importantly, that we're being *heard* – not only at the Legislature but with relative state agencies as well as associations, nonprofits and other stakeholder organizations. We continue to expand in

these areas by using social media platforms such as Facebook, Twitter, Instagram and YouTube. In addition, we're in the process of developing a "Live Locally Alabama" grassroots campaign to advance a favorable narrative that creates positive synergy while reminding and educating citizens that municipal government is responsible for the quality of life services (police, fire, infrastructure, parks, etc) they not only expect but demand. The League is strategically working towards a Live Locally campaign that allows us to enhance the profile of municipal government and local leadership. To that end, the League has secured the web domain livelocallyalabama.org and will, over the next year, launch a platform that reflects the importance of Alabama's cities and towns.

I encourage you to stay informed about legislative issues by visiting our website, alalm.org, and reading our advocacy publication, *The Statehouse Advocate*. Reach out to your legislators to discuss your local concerns and issues – the contacts you make carry great weight with legislators, perhaps more now than during other sessions since this is an election year.

It will take all of us, working together, to achieve the goals we have of keeping our cities and towns strong and able to serve the needs of Alabama's municipal citizens. ■

Webinar - Open Meetings Act*

November 14, 2017

Register online at www.alalm.org

2017 CMO Graduation

December 4

Ross Bridge Golf Resort and Spa
4000 Grand Ave., Hoover, AL 35226

2017 Municipal Leadership Institute*

December 4-5

Ross Bridge Golf Resort and Spa
Registration Fee: \$225

SAVE THE DATE!

Upcoming League Events

2018 Municipal Legislative Advocacy*

January 23 • Montgomery

Alabama State House Auditorium
(Lunch at the RSA Plaza Terrace)

2018 Annual Convention*

May 19-22

Renaissance Montgomery Hotel
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For additional details and updates for the events, check the "League Calendar" at www.alalm.org.

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