

The Alabama Municipal JOURNAL

November/December 2019

Volume 77, Number 3

2020
LEGISLATIVE
SESSION

LOCAL AUTHORITY
PUBLIC SAFETY
MUNICIPAL SERVICES
ECONOMIC VITALITY

FOCUSING ON
ALABAMA'S
SUCCESS

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Terry Young
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P.O. Box 43769
Birmingham, AL 35243
1-888-736-0210
email: terry@alalm.org

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Editor: CARRIE BANKS

Graphic Design: KARL FRANKLIN

#LiveLocallyAlabama

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On the Cover:

Local authority, public safety, municipal services and economic vitality top the list of legislative issues ALM will be monitoring and advocating for during the 2020 Regular Session.

ALM Staff

Ken Smith, Executive Director

Theresa L. Cook, Executive Liaison

Greg Cochran, Deputy Director

Administrative Services

Barbara Alexander, Operations Manager

Dana Buster, Office Assistant

Alexis Rawls, Receptionist

Advocacy/Communications

Carrie Banks, Communications Director

Karl Franklin, Graphic Designer/Web Master

Kayla Bass, Public Affairs Associate

CMO/Sponsor Services

Cindy Price, CMO/Corporate Relations Manager

Finance

Steve Martin, Finance Director

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Melissa Chapman, Accounting Manager

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Legal

Lori Lein, General Counsel

Teneé Frazier, Assistant General Counsel

Rob Johnston, Assistant General Counsel

Sharon Carr, Legal Services Administrator

Technology

Chuck Stephenson, Director of Information
Technology

Ken Gabehart, Information Systems

Technician/Facilities Manager

Rob Sellers, Information Systems Specialist

For staff bios and
contact information:

www.alalm.org

ALABAMA HOMETOWN HEROES

ALM Deputy Director Greg Cochran and Public Affairs Associate Kayla Bass traveled the state to honor legislators directly involved in advancing municipal quality of life during the 2019 Legislative Session. *Thank You!*

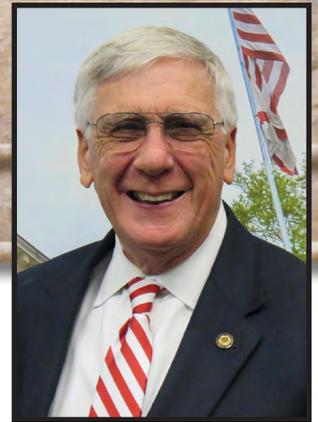


1. Kayla Bass, Senate ProTem Del Marsh, Greg Cochran
2. Kayla Bass, Speaker Mac McCutcheon, Greg Cochran, ALM President Mayor Ronnie Marks, Athens
3. Kayla Bass, Vestavia Hills Mayor Ashley Curry, Sen. Jabo Waggoner, Greg Cochran
4. Kayla Bass, Rep. Bill Poole, Tuscaloosa Mayor Walt Maddox, Greg Cochran
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6. Dodge City Mayor Tawana Canada, Garden City Mayor Tim Eskew, Holly Pond Mayor Bill Oliver, Good Hope Mayor Jerry Bartlett, Kayla Bass, Sen. Garlan Gudger, Greg Cochran, Cullman Mayor Woody Jacobs, Berlin Mayor Patrick Bates
7. Kayla Bass, Rep. Phillip Pettus, Greg Cochran, ALM President Mayor Ronnie Marks, Athens



The President's Report

Mayor Ronnie Marks, Athens



Focusing on Alabama's Success

The League's 2020 advocacy campaign, "Focusing on Alabama's Success", identifies four specific areas critical to municipal government: local authority, public safety, municipal services and economic vitality. This campaign is an expansion of last year's successful legislative session where we realized significant success, including infrastructure funding, RV/campground lodgings taxes and firefighter cancer benefits.

While our ALM team has worked diligently to develop our 2020 strategy, we – the elected leaders of our communities – must work closely with them to ensure our authority remains intact; public safety is not compromised; municipal services are expanded and improved; and an economically viable future awaits our children and grandchildren. Municipal officials play a key role in the League's legislative success and we must remain focused and engaged leading up to and throughout the 2020 Regular Session.

Quality of Life Services Require Legislative Vigilance

Our citizens not only expect but *demand* essential quality of life services. They want safe communities with great schools, efficient utilities, access to healthcare, opportunities to work and inviting spaces to spend time with their families and friends. Vibrant municipalities don't happen in a vacuum. It takes engagement, collaboration, ingenuity and leadership. Municipal officials were elected to lead, not to observe.

We are the elected officials closest to the people. We are responsible for representing our citizenry regardless of political affiliation. Therefore, it is incumbent upon us to continually engage with our legislators to remind them that their actions critically impact cities and towns as well as the people who elected us (and them!) to serve. Engaging with legislators means forming relationships – having crucial conversations, inviting them into our communities to personally witness our challenges, thanking them when they are instrumental in securing funding or resources that

better the lives of our citizens and improve the future of our children. Those relationships are also integral to the success of our League's advocacy and legislative efforts. The staff relies on us to stay informed – to be ready and willing to act immediately when asked.

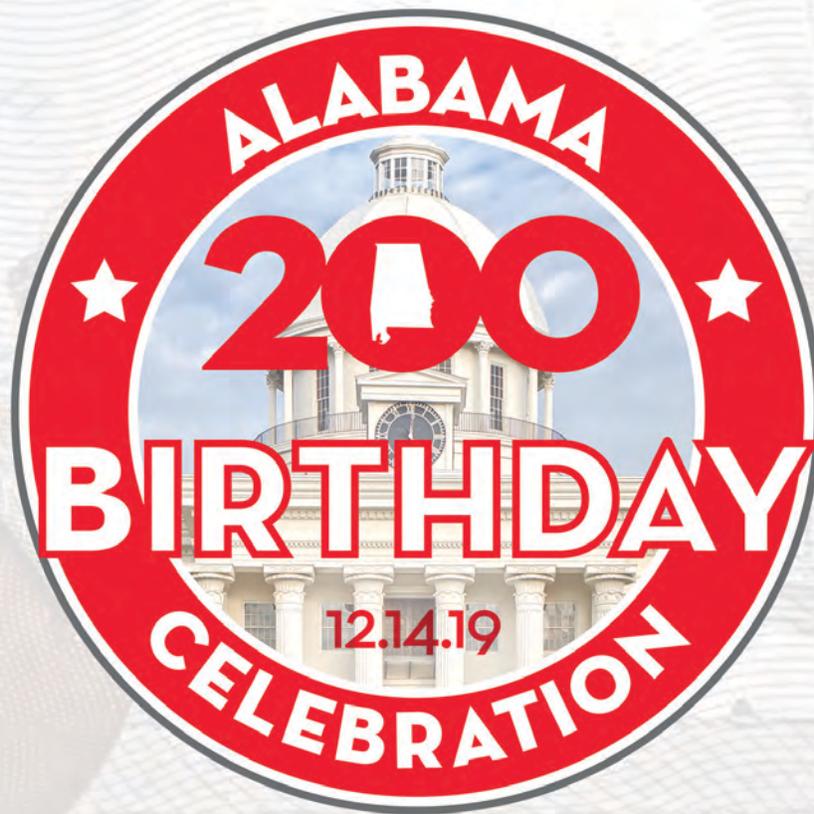
For that to happen – for us to make an impact on the decision-making process – we must understand how the process works and stand ready to explain to our legislative delegations the consequences specific legislation will have – both positive and negative – on the cities and towns where we live. Municipal officials are the driving force behind legislative success. Through a unified effort, we can have a tremendous impact on our organization and our communities by developing and *maintaining* relationships with our legislators.

Focusing on Alabama's Success

Please be vigilant. Pay attention to the *State House Advocate*, the excellent e-newsletter that our team emails weekly throughout the Session. Participate in the Monday morning legislative conference call updates that are held during the session. Don't hesitate to contact the League staff and ask questions if you don't fully understand an issue or if you need additional information. Use the League's website (alalm.org) as your starting point for information. Make sure the League staff has your correct contact information. Also, register immediately for the League's February 11th annual Legislative Advocacy CMO Session in Montgomery and plan to visit with your legislative leaders that afternoon.

This session provides a unique opportunity each year for us to take our messages to the State House – and for the power of our collective voices to be heard. A strong municipal presence at the State House demonstrates the effectiveness of our cities and towns, regardless of size, to *focus on Alabama's success*.

I'll see you in Montgomery on February 11th, if not before, and I look forward to working with you as we strive for a successful 2020 legislative session! ■



YOU'RE INVITED!

10-6:30 PM

SATURDAY

DECEMBER 14, 2019

MONTGOMERY, AL

ALABAMA200.ORG

Municipal Overview

By Ken Smith, Executive Director



Stability and Unity – the Foundation of ALM's Member Engagement

It's hard to believe that 2019 is winding down and that we are speeding into 2020. Your League staff continues to work hard to find new ways to serve our membership and to implement the strategic plan the Executive Committee adopted last year.

The year 2020 will be significant for the League for several reasons. First, it is a municipal election year. Every four years, all but about 10 of our 463 municipalities hold elections for mayors and councilmembers. This is always a time of transition that brings with it new possibilities and challenges. Counting those officials who decide not to run again, and those who run for a new position, we generally see a 30 - 35% turnover rate among municipal officials.

These new officials will need to be trained to assume their new roles. Those who are new will have to learn how to work with their fellow officials and staffs. Those who take on new roles will have to learn that their duties may now be very different from those they held before. And, we will have to help them learn what the League is and how we can help them.

Second, 2020 marks the 85th anniversary of the Alabama League of Municipalities. We were founded in 1935 by a group of mayors who had the wisdom and foresight to recognize the need to have an organization in the state capital advocating the state legislature for their benefit.

The fledgling organization they formed has expanded greatly over the years, working to serve the needs of our members in so many areas that I'm sure were not anticipated in 1935. However, the core functions of the League remain the same – service to our members. Legislative advocacy will always remain one of our core duties. But the services we either provide or established now include legal services, educational training for municipal officials, liability and workers compensation insurance, capital project financing, delinquent insurance license collection, interception of individual income tax refunds for payment of owed municipal debts and so much more.

I think our founding fathers would be proud to see the growth we've experienced, but we never want to forget how

important those early days were to the future of the League. The first Executive Director, Ed Reid, served the League from the day it started until his death in 1965. Those who knew him say that Ed Reid was such a dynamic person he was the identity of the League.

When he died, the League could have struggled, or even fallen apart. But instead, it turned to John Watkins, the League's General Counsel, who served from 1965 until his retirement in 1986. The structure Ed Reid provided during the League's formative years provided a sense of stability that has helped the League grow and remain a strong and relevant organization.

Stability and unity. I think those are key words for an organization that has a diverse membership like ours. Stability and unity help us weather so many challenges.

Think about the world that existed in 1935 and all the events that have occurred since then. The League was founded at the height of the Great Depression. Since then, we've witnessed World War II. The Korean Conflict. The Civil Rights movement. The rise and fall of Communism. Vietnam. 9/11. Wars in the Middle East. The Great Recession. The list goes on and on. Any of these events – and so many others here in Alabama and around the world – could have had a devastating impact on the League.

The world is a very turbulent place.

Yet the League has remained an island of stability for municipal officials and employees.

As is often said, we stand on the broad shoulders of those who served before us. We owe a tremendous debt to those officials who worked so hard to maintain League stability and unity during what must have been difficult times.

Eighty-five years is a long time. We owe a tremendous debt of gratitude to the many, many individuals who went before us and left us a path of success to follow.

But it is vital for us all to remember that future generations will stand on our shoulders. Our actions will influence future generations, and we owe it to those who will follow us to do our best and work together to maintain our stability and unity.

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FOCUSING ON

2020
LEGISLATIVE
SESSION

LOCAL AUTHORITY
PUBLIC SAFETY
MUNICIPAL SERVICES
ECONOMIC VITALITY

FOCUSING ON
ALABAMA'S
SUCCESS

2020: FOCUSING ON ALABAMA'S SUCCESS

GREG COCHRAN • DEPUTY DIRECTOR • ALM

Two years ago, when the League expanded its advocacy department, it allowed us the opportunity to reevaluate how we focus on specific challenges before municipalities. In 2018, we began implementing formal strategic advocacy campaigns with the goal of sharing our narrative with lawmakers, media and the public, while narrowing our focus on legislative issues and taking a proactive approach on behalf of municipalities. What we found while reflecting on the successes of the advocacy campaigns from 2018 and 2019 was increased engagement from our membership and the Legislature, expanded media coverage and a renewed focus on the critical role of municipal government in Alabama.

We know that more than half of Alabama's citizens live, work and play in municipalities. In developing our 2018 and 2019 campaigns, the focus was on the major issues affecting Alabama's citizens while determining how we could be a stakeholder in identifying solutions to address those challenges. We collaborated with several stakeholders to enhance efforts focused on education funding, e-commerce, broadband deployment, transportation infrastructure and childcare safety – all with one goal in mind – to improve the quality of life of our citizens.

The League's 2020 advocacy campaign, "Focusing on Alabama's Success", continues our momentum of working with all levels of public and private stakeholders to create collaborative solutions that address current and future challenges facing our communities and state. Our focus for 2020 is to preserve municipal authority over local issues; engage with state leaders to address the impact of mental and physical healthcare issues in our communities and the corrections system; improve the delivery of municipal services such as clean water and waste water infrastructure; ensure our municipal employees are protected; and enhance the education and job training opportunities for our children in an effort to better prepare them for an economically viable future.

When all is said and done, we must focus on creating and sustaining communities where businesses desire to invest, families desire to live and people desire to spend their time. Municipal government is vital to the wellbeing and success of our state. When municipalities are successful, Alabama is successful.



FOCUSING ON LOCAL AUTHORITY

- Preserve municipal police and planning jurisdiction authorities to maintain the current level of services to Alabama's citizens.
- Support municipal building code enforcement in extraterritorial (police and planning) jurisdictions.
- Protect municipal public rights-of-way authority to the fullest extent of the Alabama Constitution and to prevent further attempts to undermine that authority.
- Guard against unfunded mandates and preemptions that jeopardize quality of life for Alabama citizens.



FOCUSING ON PUBLIC SAFETY

- Partner with stakeholders to provide additional benefits to first responders without jeopardizing municipal budgets.
- Continue to engage with public and private sector stakeholders in developing correctional reforms.
- Engage with local and state leaders to address Alabama's mental health crisis through establishing and funding community treatment and recovery programs.
- Urge State and Federal officials to continue funding the Children's Health Insurance Program (CHIP) for children who are uninsured.



FOCUSING ON MUNICIPAL SERVICES

- Support policies and funding opportunities that will provide municipalities with safer streets and expanded infrastructure, such as sidewalks, bike lanes and walking trails.
- Urge State and Federal officials to fund clean water and waste water infrastructure services in Alabama.
- Partner with stakeholders to discuss opportunities that will allow municipalities to enact and promote healthy communities that further extend quality of life services to citizens.



FOCUSING ON ECONOMIC VITALITY

- Encourage the expansion of high school career technical education to include industrial training as well as coordination of these programs with job placement agencies, state agencies and local industrial development boards.
- Engage with stakeholders to encourage and identify rural economic and community development opportunities that will empower Alabama's traditionally underserved rural areas.
- Partner with public and private stakeholders to identify and expand tourism opportunities as an economic driver for the entire state.
- Continue to develop the best practices to address changing consumer trends and the digital economy.
- Engage with public and private stakeholders to identify and address municipal revitalization opportunities and challenges within our communities.



ALM's Committee on State and Federal Legislation met in Montgomery on November 7, 2019 to determine 2020 legislative priorities.

Focusing on Alabama's Success: Relationships Matter

Kayla Bass • Public Affairs Associate • ALM

The 2020 Regular Session of the Alabama Legislature begins February 4th and *your* relationships with your legislators will be extremely important to the success of your League throughout this next legislative marathon. With so many issues affecting municipal government, it is critical that you make the effort to reach out often to those state legislators who also represent your constituents. As we near the upcoming session, legislators are relying on you to help them understand the important role municipal government plays in our state.

Relationships matter.

Vital relationships between local and state officials start at home – in church and at the grocery store; at sporting events and the post office; and in offices, restaurants and community events throughout the state. After all, you represent the same people, the same region. You share similar goals for your communities – at the grassroots level, where shared values and relationships are critical. Therefore, successfully achieving those goals is often a direct product of teamwork – and a team cannot be effective unless the relationship between all the members is dynamic and resilient. No one can localize and personalize a situation facing your community – or discuss it at the grassroots level with your legislators – better than *you*. *Relationships matter.*

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

Relationships are the bridge to success in grassroots advocacy and legislative achievements. Once your relationships are in place, *use them*. Keep your legislators on task. Make sure they *understand* the effects of legislation on your municipality and your constituents. Remind them that your constituents are also *their* constituents. Hold them *accountable* for what they do and how they vote. *Relationships matter.*



ALM Deputy Director Greg Cochran with Governor Kay Ivey
Photo by Hal Yeager, Governor's Office

League Efforts to Build Relationships

Our members are the most effective advocates on local issues. It is essential that legislators hear from YOU – their constituents – during the policy making process. Legislators are often most responsive when speaking to those from their district. The ALM Advocacy Team has taken several steps to assist you in making sure your voice is heard, whether at the State House or during hometown visits.

Get Involved Through Grassroots Advocacy. Several grassroots resources are available on our website and are designed to help our members effectively engage with their legislators. The resources include the steps to take when scheduling a meeting with your legislator, tips for calling your legislator and tips for writing your legislator. They can be found on our website under the tab Legislative Advocacy.

ALM Action Alerts. Much like last year, members will receive action alerts from the ALM Advocacy Team during the session when we need you to contact a member in the House or Senate. If you would like to be enrolled in text alerts, please contact Kayla Bass at kaylab@alalm.org with your preferred cell phone number. The action alerts will be brief and will only refer to the issue/bill and the action needed.

Monday Morning Huddle. Each Monday morning during the legislative session the League's Advocacy/ Communications Team host a conference call at 10 a.m. to



Building Relationships with Your Legislators Is a Year-Round Effort

Meet with him/her in person. If you don't know your legislator, make an appointment to introduce yourself. This can take place in your hometown or during the legislative session. If you're unsure the steps to take when meeting with your legislator, view our grassroots resources mentioned above at www.alalm.org. Also, you will have a unique opportunity to speak with your legislator(s) in person on the afternoon of February 11th immediately following the League's Legislative Advocacy CMO session in Montgomery. If you have not already done so, please call the State House and make appointments to visit with your legislators between 1:00 and 4:00 p.m. **To visit House Members** call (334) 261-0500. **To visit Senate Members** call (334) 261-0800. Be sure to register for

provide you the most up to date information on the issues being acted on by the legislature, strategies for coordinated advocacy and messaging by your league advocacy staff. Call in information will be sent a week before the 2020 Legislative Session begins.

State House Advocate. The *State House Advocate* is emailed to members on Friday afternoons when the Legislature is in session and highlights upcoming legislative issues, details any actions needed by our members and provides links to ALISON, Senate and House contacts, text of bills and legislative information posted on the League's website. Please carefully read the League's weekly legislative e-newsletter, *State House Advocate*, and be ready to respond to Legislative Alerts from the League when immediate action is needed.

Get Social With Us. The League maintains active social media platforms via Facebook, Twitter and Instagram. To find us on Facebook, simply search for Alabama League of Municipalities and like our page to receive updates. For Twitter, search for the handle @AL_League and click the follow tab. For Instagram, we can be found by searching @alabamacitiesandtowns.

Legislative Dinners

Beginning in January, the League will host eight legislative dinners throughout the state. The goal of each dinner is to update our members and legislators on issues and concerns facing cities and towns. If you are a member of our legislative committee, executive committee or chair a policy committee, we encourage you to take advantage of this opportunity in 2020. This is an excellent way to spend face time with your local legislators and develop lasting relationships. For more information on times and locations, email Kayla Bass at kaylab@alalm.org.

ALM's Annual Legislative Advocacy Session. Registration will open the first week of December. This workshop is extremely important to every municipal official. For additional information, visit www.alalm.org.

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

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

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

Become personally acquainted with the legislative staff. Always be courteous. They are often your gateway into getting an appointment and can help you with your legislative issues.

Brief legislators on what's going on in your community. Add legislators to your city mailing list (both electronic and snail mail) for important issues.

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

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

Relationships matter. ■

Moving Alabama Forward Together!

Gov. Kay Ivey



In January, during my Inaugural Address, I outlined many different issues that I knew could only be tackled through the buy-in and partnership of every Alabamian. We face many critical issues in our state, but I truly believe that we only move forward when we are united.

Infrastructure

I am proud to say that for the first time in nearly three decades, Alabama is investing in our infrastructure. Improving our infrastructure is more than an investment in our roads and bridges; it's an investment in economic development, public safety and local communities. After all, if we want to compete in a 21st century global economy, we must improve our infrastructure by investing in our roads, bridges and our deep-water port. Priming Alabama's infrastructure for future growth helps position the state's global presence and creates jobs here at home. Through a team effort of my administration, a bipartisan legislature, local chambers, mayors and county commissioners, we set aside our differences and united to Rebuild Alabama! Projects have been announced, and I'm confident that every citizen will soon benefit from these needed improvements.

Broadband

Each year, uses for the internet grow more dynamic. Delivering high speed broadband access is crucial to the education we provide our students, our economy, healthcare and the overall quality of life. Through the partnership and the efforts of Sen. Clay Scofield (R-Guntersville) and Rep. Randall Shedd (R-Cullman), I signed two bills that will have large ramifications of updating Alabama's broadband infrastructure. *The Broadband Using Electric Easements Accessibility Act* will allow electricity providers to use or allow the use of existing or future electric easements for broadband purposes. *The Alabama Broadband Accessibility Fund* will amend the amount of grants that can be awarded for broadband projects. We have over 840,000 Alabamians without access to broadband, and these two programs will ensure that more people in our state will have access than ever before.

Census

There is, perhaps, no more urgent issue, that would affect the state than completing our census forms next year. In mid-March 2020, the U.S. Census Bureau will mail *every Alabama household* a notice with instructions on completing the census. Folks can respond online or by calling a toll-free number or requesting a traditional paper form with the completion instructions. While it's not 2020 just yet, it's imperative we're reminding *every* Alabamian across the state just how critical this census is for our future. An accurate and complete count can have a significant impact on important federal discussions such as, healthcare, infrastructure, education and representation in Congress. If we participate today at the same level of 2000, we will lose *two* House seats. If we participate like we did in 2010, we will still lose one seat. We must raise our level of participation to at least 80% to maintain our congressional representation. In August, I established the Alabama Counts 2020 Census Committee to help lead this effort at the state level. The committee's meetings led to the development of the Alabama Counts logo, *I Count*. *I Count* shows that your individual voice matters – *you* can make a positive difference in the future of your family, your community and the entire state. I encourage everyone to have a say in ensuring Alabama has adequate representation for our values in Congress.

Workforce Development & Education

Since my first day in office, my administration has sought the best ways to make our state business-friendly for small businesses and attractive to world-class industry. I am proud to announce that during my tenure, we have created more than 35,000 new and future jobs in Alabama which totals more than \$14 BILLION in investments. Our seasonally-adjusted August unemployment rate is 3.1 percent, which makes us the lowest in the Southeast. We are continuing to show the world that Alabama is not only open for business, but we are competitive, thriving and a state of opportunity.

For Alabama to remain a place where we are announcing new industry projects and breaking ground on expanded and growing facilities, it is essential to have a strong workforce. Through "Strong Start, Strong Finish," we are making important strides to improve Alabama's education system.

This comprehensive approach to improving our education system has three major parts: Pre-Through Three, Computer Science for Alabama And Advanced Training, Better Jobs. A student must have an excellent foundation – I'm pleased to highlight that our #1 ranked high-quality pre-k program received its largest increase ever from the Education Trust Fund budget this year - \$26.8 million. This

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21st Century Workforce Development

Lt. Governor Will Ainsworth

A number of important issues ranging from prison conditions to Medicaid funding to rural development await lawmakers when they return to Montgomery for the 2020 legislative session, but, as lieutenant governor, I will ask them to also focus attention upon an initiative that has become a personal passion – workforce development

Each month, Alabama seems to break long-standing records and set new historic standards for employment and job creation. Gov. Ivey’s schedule is filled with economic development announcements and existing industry expansions, and truckloads of dirt have been turned as ground is broken on countless industrial projects. I have certainly participated in my share of shovel-turnings and investment announcements, as well. But in order to sustain Alabama’s unprecedented wave of prosperity and shield our state from the inevitable downturns that cyclical economics bring, we must prepare Alabamians to fill long-lasting, well-paying and often highly-specialized jobs.

When I talk to business owners and executives in my travels across the state, the recurring theme I hear from them is that a lack of skilled workers hinders their ability to expand, grow, and prosper. A car dealer in Scottsboro told me he was in dire need of trained technicians who could work on today’s highly-advanced automobiles, and officials at Pinnacle Manufacturing in Boaz said welders and painters who could meet their needs were in short supply.

Lieutenant Governor’s Commission on 21st Century Workforce

To address the issue, I created the Lieutenant Governor’s Commission on a 21st Century Workforce shortly after taking office. The panel is comprised of four House members and four Senate members, but we are also working with representatives from the governor’s office, the Alabama Industrial Development Training agency, the K-12 system, postsecondary education, four-year colleges, the business community and other areas. Their task is to devise a blueprint for workforce development in Alabama, and I asked each commission member to approach the issue with one preeminent thought: “Every individual has God-given abilities, talents and skillsets that they can use, so how can we best help them determine what those are?”

Though it has been empaneled for only a few months, the commission is already producing innovative ideas and strong results. A mobile device app is currently being developed, for example, that will provide students across Alabama with a listing of all available jobs within a 60-mile radius at any given time as well as connect companies looking to hire with pre-qualified candidates. The app will help them spot trends in the local job market, inform them about potential salaries in each potential profession, and advise them about the level of education, skills, and training they will need in order to fill available jobs. And while the idea is to target students and encourage them to think ahead, the app will prove just as valuable to adults who are between jobs or those who have been laid off and are seeking new careers.

The commission will also provide the Legislature with specific recommendations about improving Alabama’s delivery systems for industrial training and workforce development. While our training programs – thanks to AIDT Director Ed Castille, Postsecondary Chancellor Jimmy Baker and others – have always received top rankings in national studies and comparisons, we must make sure that they continue to adapt and evolve in a rapidly changing business environment.

We are looking at ways to promote and expand the wildly successful career technical dual enrollment program, which allows Alabama students to simultaneously enroll in their high school classes and in postsecondary classes that will ensure they are job-ready upon graduation. Dual enrollment is giving our future workforce a leg up on those in other states while also proving to be a powerful magnet that attracts new jobs, opportunities and investments.

I believe dual enrollment has played an important role in lowering Alabama’s high school dropout rate, and it has helped develop the hidden, untapped potential that many of our students possess. Apprenticeship is the oldest method of job training, and it is still commonly practiced throughout Europe today, so our commission is seeking to make Alabama a national leader in modern day apprenticeship by allowing trades to be taught with a hands-on approach in a workplace environment.

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Prisons & Education Top 2020 Agenda

Senate Pro Tem Del Marsh

By now the kids are back in school, in some places in Alabama it's starting to cool off and most importantly, football season is in full swing. The 2020 Regular Session of the Legislature will convene in February so with the change in seasons begins the time when we start preparing for what we may see when the Legislature comes back into session.

Prisons

The biggest issue we have coming up in the session is dealing with our prisons. As many of you probably know, the Department of Justice is working with us on improving conditions within our correctional facilities and we can all agree that it is something we need to do.

I am not convinced that only building new prisons and hiring more officers will solve the issue. We must work to ensure that when a prisoner is released, they are rehabilitated and have the capacity to contribute as a productive member of society. Fortunately, we already have a blue print on how to do this in Alabama. We are a unique state in that prisoners can earn a two-year technical degree while incarcerated through a partnership between the Department of Corrections and the Two-Year College System so that when they are released, former inmates are prepared to enter the workforce. Studies show that well over half of our prison population lacks a high school degree but if they earn a degree, job opportunities open up for them and they are far less likely to get arrested again and end up in our prison system. Currently this is a limited program. However, because it has proven to be successful, it is one that I would like to see expanded as we look for ways to fix our broken system.



Amendment 1

With all the anticipation of the Democrat Presidential Primary and the Republican Senate primary elections next year I also want to make you aware of a Constitutional amendment that will be on the ballot. I believe this is a positive change for our state. Education touches almost everything from our prison population (as I stated, many of whom are lacking a high school education) to our economic development. For us to have healthy municipalities, we must be able to offer high quality education options for our students and their parents.

Amendment 1 will completely revolutionize education in Alabama. First, it will abolish Common Core in Alabama. Like many, I wanted to give common core a chance to work but it is obvious to anyone paying attention that it has not been a success. Repeal and replacing this failed system with strong standards put forward by a reasonable school board will only improve the quality of education for our students and put Alabama back on the right track of making our education system competitive on a national level.

Second, it will structure our Department of Education and our State School board more in line with states that rank the highest in education. This will create more accountability in the way we administer education – and the best part is we will not have to raise one dollar in taxes to do it. I believe our students learn best when innovation is allowed to take place in the classroom. That is not happening with our current system. If we have a school board that is made up of qualified individuals, we can increase local control and significantly reduce the amount of time the Legislature spends on education reform and put the power back where it belongs, in the hands of educators.

I don't know about you, but I am tired of seeing Alabama as last in education in almost every survey I read. We have world class universities, a top-ranked Pre-K system and top tier athletic programs; it is time that we bring K-12 education up to that high level. Change can be difficult; however, everyone I talk to on this matter agrees that what we are doing now is not working so why not try a new direction? It is time that we take politics and politicians out of the classroom and empower our teachers, students, parents and local administrators.

To end I would like to thank Greg Cochran and his staff at the League of Municipalities. They do an outstanding job each and every year representing your interests in the Legislature. As we get closer to the session, please do not hesitate to contact my office at (334) 261-0712 with any questions or concerns you may have. ■

Mark Your Calendars!

2020 ADVOCACY DAY/ADVOCACY CMO SESSION

Tuesday, February 11 • Alabama Department of Archives and History

The League's Annual Advocacy Day/Municipal Legislative Advocacy CMO is specifically designed to allow municipal officials to share their ideas and concerns with the state's political leadership. It is important that the vital role our municipalities play in economic development, community enhancement and quality of life is repeatedly articulated to our state representatives. The League's Municipal Legislative Advocacy Session provides a unique opportunity each year for municipal leaders to discuss their messages with their legislative delegations – and for the power of the ALM membership's collective voice to be heard. **A special legislative reception has been scheduled at the Department of Archives and History for this purpose following the annual group photo.**

- | | | |
|--|--|---|
|  | 8:30 - 9:00 a.m. | Registration: Alabama Department of Archives and History (ADAH) |
| | 9:00 - 9:10 a.m. | Welcome
Councilmember Adam Bourne, Chickasaw,
Chair, Committee on State & Federal Legislation;
Ken Smith, Executive Director, ALM |
| | 9:10 - 10:30 a.m. | Senate and House Leadership Panels |
|  | 10:45 a.m. - Noon | Media Training
<i>Transition to RSA Plaza for lunch</i> |
| | Noon - 1:00 p.m. | Lunch: RSA Plaza (a block from ADAH) |
|  | 1:00 - 1:30 p.m. | Keynote: Lt. Governor Will Ainsworth
<i>Transition back to ADAH for afternoon agenda and reception</i> |
| | 1:45 - 3:00 p.m. | Alabama Transportation Institute (ATI) |
| | 3:00 - 3:45 p.m. | Legislative Update: Greg Cochran, Deputy Director, ALM |
| | 4:00 p.m. | Group Photo in front of the State House |
| | 4:30 - 6:00 p.m. | Legislative Reception (ADAH) |
|  | Please plan to stay for the reception to visit with your legislators! | |

Registration opens December 1st • Limited to 140 attendees
www.alalm.org

Reviewing 2019; Preparing for 2020

Speaker Mac McCutcheon

It is often said that before you can truly know where you are going, you must first fully understand where you have been. Following that advice, I think it is important to review the accomplishments of the 2019 legislative session before taking a look ahead to what awaits us in 2020.

2019 – Historical Session

I believe that historians may one day consider the 2019 session to be among the most important and successful in Alabama history. We approved a record-setting \$7.1 billion Education Trust Fund budget for K-12 public schools, community colleges, and public universities, which offers firm evidence that Alabama has fully recovered from the economic downturn that slowed state revenues for much of the last decade. The budget steered an additional \$26.8 million to the state's best-in-the-nation "First Class" prekindergarten program and also added about 250 teachers in grades four through six as part of an effort to reduce classroom sizes.

The \$2.2 billion General Fund budget for Fiscal Year 2020 increased overall spending by about \$137 million more than FY2019 due in large part to earmarked sales tax revenues from Internet purchases. As the result of money we carried forward from the previous year and lower-than-expected costs related to prescription drugs, Medicaid received about \$50 million less than the previous year, but its \$703 million appropriation still represented the largest portion of the General Fund budget.

The Alabama Department of Corrections received an additional \$40 million in order to begin training and hiring 500 additional correctional officers and provide a salary increase for existing officers. ADOC is under federal court order to add about 2,000 additional correctional officers after studies showed the current force is staffed at only one-third of recommended levels. I am happy to report that a class of 90 correctional officers recently graduated from the training academy in Selma.

And, perhaps most importantly for future generations, we approved the Rebuild Alabama Act, which will dramatically improve roads and bridges in every portion of our state while also helping to attract new jobs, opportunities, and industrial investments that benefit all Alabamians. The Rebuild Alabama Act begins to address the fundamental funding issues surrounding our road and bridge construction efforts and ensures that Alabama will no longer be forced to rely upon fewer and fewer dollars to fund infrastructure projects that inflation has made more and more expensive. Passage of this legislation will make our transportation system safer for our children and families to travel, and it will allow the businesses and industries located here to transport their goods more efficiently.

If the Legislature had accomplished all of the items I outlined within a four-year period, it would be considered a historically successful quadrennium, yet we did all of it within one session. That does not mean, however, that the Legislature may now relax and await election year. Many issues, obstacles and challenges still confront our state, and we must continue working to overcome them in the 2020 session and beyond.

2020 Legislative Issues

The crisis within our prison system will demand our most immediate attention in order to prevent a federal takeover by judicial fiat. Old and outdated facilities in need of repair, understaffed corrections officers, inconsistent mental health services, and uncomfortably overcrowded prisons are just a handful of the issues raised by federal judges.

The problems within the correctional system did not occur overnight, and they cannot be resolved overnight, but we are determined to address them. Steps have already been taken to comply with the federal court orders issued in pending cases over mental health services for inmates, and Gov. Ivey is making substantial progress in other areas within the correctional system.



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Senate Majority Leader Greg Reed

Alabama Primed for Great Things in 2020 and Beyond

As we move into a new decade with 2020 right around the corner, Alabama's foundation is strong. In September, the state unemployment rate was 3%, the lowest unemployment rate in history. The number of Alabamians working is 2.2 million, and September was the eighth consecutive month in which our job growth percentage matched or exceeded the national average.

This spring, the State Legislature approved the Rebuild Alabama Plan to shore up our crumbling infrastructure. In 2015, Alabama's roads had received a D+ score from the American Society of Civil Engineers, who found that 19% of major state-funded roads were in poor condition. The Rebuild Alabama program will benefit every single city and county in the state, for years to come. There was obviously a lot of discussion over the infrastructure plan, and I want to thank the League of Municipalities for their constructive involvement and support.

One of the biggest opportunities for progress in Alabama is in education. Many of Alabama's teachers do incredible work, staying after-hours to help struggling students and working weekends to prepare for classes. The Legislature set aside a 4% raise for educators in this year's budget, which follows a 2.5% raise from last year, and I hope that we can do more soon to reward our teachers in the classroom. Unfortunately, test scores in Alabama lag behind the national average – while there are multiple reasons for this, part of the problem is that the current education leadership structure has failed our students and teachers. That's why the March ballot initiative to move Alabama to an appointed school board is so important. More than 40 states have some type of an appointed school board, and by joining them, I think we can bring a higher degree of professionalism to Alabama's education governance.

On all these issues – job growth, infrastructure and education – the League of Municipalities brings a vital perspective to the table. As we go into the 2020 legislative session and a new decade, your voice and leadership are essential. Alabama's municipalities are the lifeblood of our state, and Alabama's success is tied to the flourishing of her towns and cities. ■

What the Legislature does or doesn't do is always of prime importance to our home-towns and home-cities. Since municipalities derive their powers and their authority from the Legislature, it is altogether fitting and proper that officials pay close attention to what goes on in the Legislature. The city or town that keeps its legislator or legislators informed of their respective needs is a wide-awake city. If all of them would do this, we would not have a problem pushing for the passage of needed legislation or opposing unfair bills. So we urge municipal officials to never overlook the opportunity to sit down and talk with their legislators about their legislative needs. An informed Legislature gives a much more sympathetic hearing to our problems.

~ Ed Reid, ALM Executive Director (1935-1965), July 1965, from his final column in the *Alabama Municipal Journal* the month before he died.



House Majority Leader Nathaniel Ledbetter

The 2020 Regular Session

Whenever I am asked as Majority Leader to predict the bills and measures that will take center stage in the 2020 Regular Session, I note that there are currently 75 members of the House Republican Caucus, which means there are 75 different priorities, agendas, and pet initiatives that each hopes to highlight and pass. So aside from the obvious issues, such as prison reform, healthcare funding, education improvements, and others, one or two unexpected bills usually result.

Like other members, I, too, have particular areas of interests that I hope to promote. During my time in the Legislature, I have been particularly proud of the work we have accomplished in rural improvements and development. Significant advancements in rural technology and infrastructure have been passed under our watch, and I hope to see the Legislature continue that commitment.

Likewise, we have enacted a number of measures targeted toward economic development, job creation, and industrial recruitment, and the results have been obvious. Alabama's economy is skyrocketing, and it shows no signs of slowing, so we must pass additional incentives and workforce development programs in order to add even more fuel to our economic engine.

Improving Alabama's mental health programs is another area that I believe deserves our attention. Focusing on this area will have important, long-lasting social impacts like reducing crime, improving school safety, easing prison overcrowding, and providing needed help to those who are unable to help themselves.

As a former mayor and city councilmember in Rainsville, Alabama, allow me to close by offering my appreciation to the Alabama League of Municipalities for providing our state's cities and towns a strong voice in the chambers and committee rooms of the State House. Your work and influence are appreciated by all of us who serve in the Alabama Legislature. ■



House Minority Leader Anthony Daniels

Looking to 2020 and Beyond

As we prepare for the 2020 session, the Legislature has a fresh opportunity to take on some of the most pressing and impactful issues facing our cities, municipalities and citizens. Those include building a 21st-century workforce, bridging the digital divide, ensuring access to quality healthcare and rebuilding our infrastructure. Alabama has taken steps toward progress on these issues; however, they still demand our immediate attention and action in the form of innovative, lasting, and sustainable solutions.

Despite significant development and investment in our urban centers and technology hubs, too many Alabamians are missing out on job and career opportunities that accompany growth. Access to affordable higher education, hands-on workforce development programs and an increased emphasis on STEM education, can better prepare Alabama workers for careers in the innovation economy and the global marketplace.

How can we prepare for the future when so many of our communities remain cut off from the digital world? An estimated 800,000 Alabamians lack access to high-speed broadband and more than 200,000 have no wired Internet availability at all. Through public-private and municipal partnerships, we can build the tech infrastructure necessary to bring fast broadband access to all our towns and cities.

Alabama has one of the highest infant mortality rates in the nation. Though we're making progress, we have a duty to better prepare mothers and protect their infants by improving access to maternal healthcare, nutrition and necessary screenings, as well as enhancing public awareness on dangers related to sleep safety, substance abuse, postpartum depression, and domestic violence.

We must work to ensure that every cent of the new infrastructure revenue is expended fairly and effectively on vital repairs and upgrades. This calls for a close working relationship with county and municipal leaders to efficiently utilize resources and prioritize transportation projects in terms of safety, need, and economic impact.

The coming session is a chance for legislators to refocus, reenergize and recommit ourselves to improving Alabama's cities, towns and communities. I call on my colleagues to look ahead, join together and work together to make an impact on the issues that matter most to Alabamians and their families. ■

Understanding ALISON: Alabama Legislative Information System Online

By Kayla Bass • Public Affairs Associate • ALM

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

ALISON – A Valuable Advocacy Resource

Please familiarize yourself with ALISON, the Alabama Legislature's website and legislative tracking system: www.legislature.state.al.us. Built in-house by the Legislature's tech staff, not only is ALISON the resource we will direct you to most often for information the League is tracking, you may also find that you want to independently research a legislative action, read a bill or know how your local representatives voted on certain legislative actions. ALISON provides a wealth of information, including an overview of the legislative process, House and Senate Rules, contact information for the House and Senate, session information (House and Senate Special Order Calendars, prefiled bills, bills, resolutions, confirmation, committees, etc.), meetings and announcements as well as links to other resources.



Figure 1

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

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

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

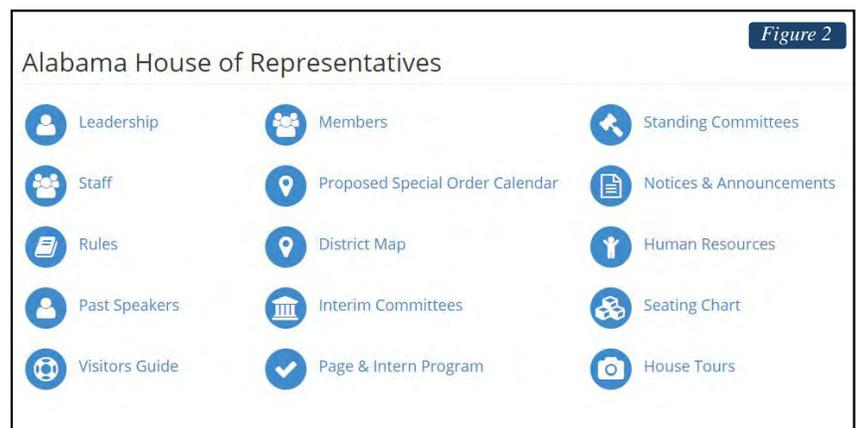


Figure 2

Session Info

Another important resource via ALISON, is the “Session Info” tab on the homepage, which will link you to a variety of options regarding the legislative session. Click on “Regular Session 2020” located in the black box along the top left side of the page (see Figure 3).

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

Finding the Status of a Bill (Instrument)

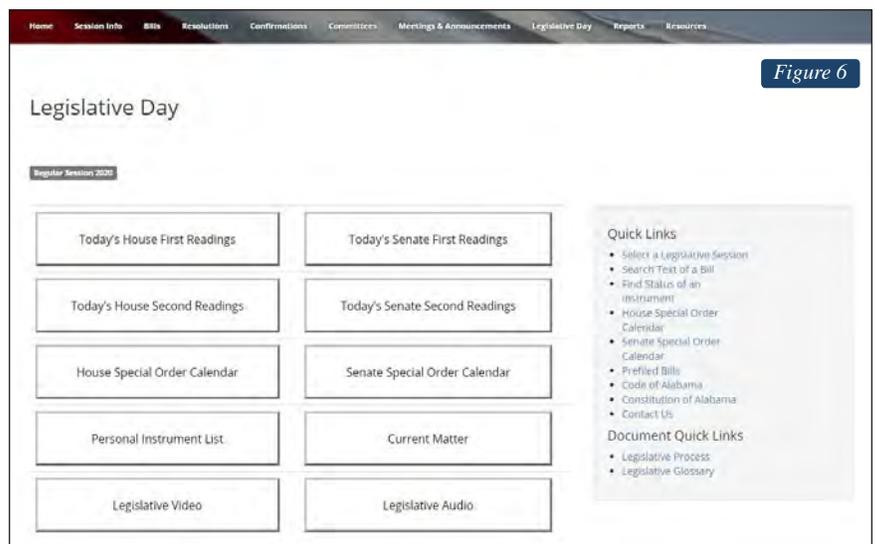
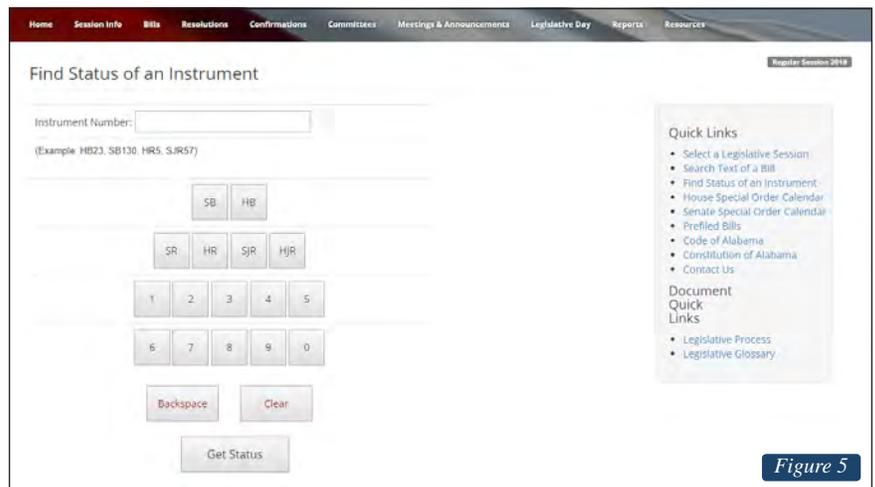
Under the Quick Links from the page described above, select “Find Status of an Instrument” (“instrument” is the same as “bill”) and then click on the SB (Senate Bill) or HB (House Bill) button and enter the bill number you’re seeking in the “Instrument Number” box near the top. This will link you to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

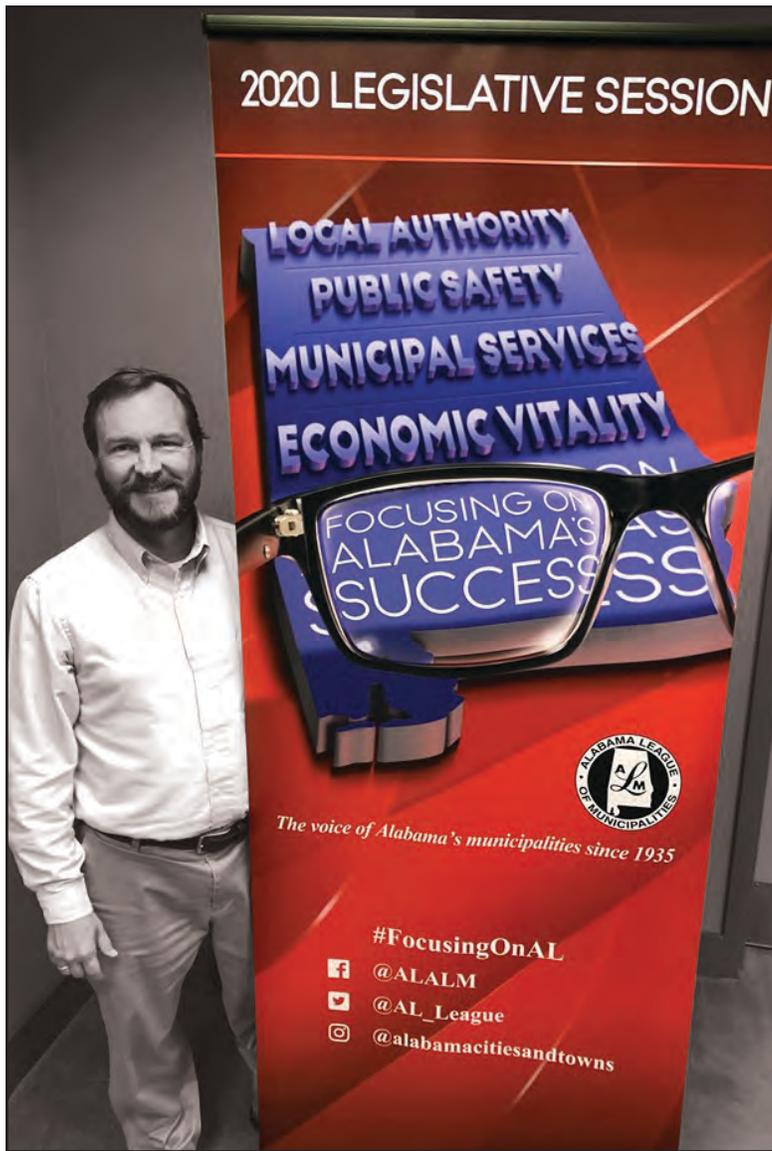
Legislative Day

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

Conclusion

While ALISON can be somewhat counter intuitive, it is the best resource for staying current during the legislative session. The League will absolutely need your participation throughout the 2020 Regular Session to promote our legislative priorities and to stop any bills that threaten local government. As mentioned above, your weekly State House Advocate and Monday Morning Huddle conference calls will review the session week by week and will ask for specific engagement. A link to ALISON is always prominently displayed along the right-hand side of the e-newsletter – and you will most likely find yourself visiting ALISON often during the legislative session so please take some time to become comfortable navigating the site. As always, we appreciate your engagement and thank you for your support! ■





A message from the editor:

ALM's focus is always on success. Thanks to Karl Franklin, we always make an exceptional visual statement in the process.

While brainstorming for our annual advocacy campaign is a team effort, it is in no way an organized process. We discuss, disagree, agree, change our minds, discuss some more and then repeat. The end product may not at all resemble our original ideas; however, the end goal is always the same – to ensure that Alabama's municipalities control their own narratives and that local government authority remains intact.

ALM's advocacy team puts in many hours on your behalf – patrolling the State House during the session; meeting with stakeholders throughout the year; making sure our membership is informed; traveling around the state as necessary. There's also a great deal of activity behind the scenes that is important to our success. You may not be familiar with Karl Franklin's face, but you see his outstanding work in everything we do. Karl is an exceptionally talented graphic designer who is also a fundamental member of your advocacy team. His contributions are priceless and the Alabama League of Municipalities is fortunate to have him on staff!

Thank you, Karl!

Carrie

Lt. Governor Ainsworth continued from page 14

Working with our Military

Because I chair Alabama's Military Stabilization Commission, we are working to ensure that the families and dependents of our men and women in uniform can access employment opportunities while stationed in the state. We will soon launch our "Heroes Welcome" campaign, which will provide relocating military and veteran families a central resource to find information about employment opportunities, education and other important community information.

Our state was among the first to pass legislation ensuring occupational licensing reciprocity for military dependents, which is a complicated way of saying a military spouse, for example, who is licensed to practice accounting in another state is also allowed to practice locally while stationed in Alabama.

We are currently working with state boards and agencies overseeing dozens of professions to ensure that they are complying with the law. The unemployment rate for military spouses stands at an unacceptable 16 percent, and studies indicate that 55 percent of military spouses are underemployed, so we hope our efforts improve those statistics.

Improving, modernizing, and updating our workforce development programs will certainly improve Alabama's economy, but it will also brighten the economic outlook and job creation efforts in cities and towns across the state. I know that goal is central to the League of Municipalities' mission.

By working together, coordinating our efforts, and keeping our eyes focused firmly on the future, we can ensure a bright, new day for Alabama and for generations of workers yet to come. ■

The Legal Viewpoint

By Lori Lein, General Counsel



Public Records in Alabama Who, What, Where, When and How

One of the most challenging public policy issues of our time is the juggling act between access to public records, personal privacy and limited personnel and resources in local government administration. While everyone agrees with the fundamental proposition of transparency in government, many records created, kept and maintained by public entities contain or touch on very private matters, the release of which could cause great harm to persons and businesses. From the protection of juveniles, domestic violence victims, proprietary business information, sensitive personal information, security concerns, trade-secrets and tax information, it's not as simple as "it's a public record" and therefore any member of the public can have free and unfettered access any time they want.

In addition, there is not a one size fits all approach to how Alabama citizens access public records. While a large state agency or municipality may have the resources to employ someone wholly dedicated to retrieving, reviewing and providing public records, for many of Alabama's municipalities, the city clerk is the only administrative employee at city hall and he or she has a wide variety of job duties that must be performed such that they cannot simply stop other city business at any given moment to handle a voluminous public records request.

Another major issue impacting access to public records is the fact that many of the records are not stored in an electronic format and because there are so many records that a municipality must maintain, they are often stored off-site from city hall. Retrieving those records can be incredibly time consuming for a one employee run town hall.

In 2006, after several years of negotiations and study commissions comprised of various stakeholders including local government, primary, secondary and higher education, state agencies, the press association and other public interest groups, the Alabama Legislature passed the Open Meetings Act (OMA) which was a complete and comprehensive overhaul to Alabama's old "Sunshine Law". The OMA provided all parties a working framework for conducting open public meetings while outlining and protecting the need to shield certain private interests.

There is little doubt that Alabama's public records law could use an update much like the Open Meetings Act; especially one that makes clear what is and what is not a public record. The League will continue to engage on this issue with the goal of finding the right balance for all concerned. Until that time, however, this article can serve as guide for public officials on the current status of the law for public records access in Alabama.

Who?

Before discussing which records are public records and which records are protected from public disclosure, it's important to give some thought to who is responsible for maintaining records and who is entitled to obtain those records in Alabama.

The Records Custodian

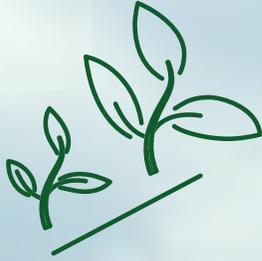
With few exceptions, the city clerk of a municipality is considered the legal records custodian for a municipality. In addition to maintaining official records, the records custodian acts as a trustee, representing the interests of those with the right of access to the records. In *Brewer v. Watson*, 71 Ala. 299 (Ala. 1882), the court pointed out that it is the custodian's duty to preserve records against all impertinent intrusion and allow access to those who can claim that access will promote or protect a legitimate interest. Public records must be kept in the office where the records were created or in a depository approved by the Local Government Records Commission. AGO 1991-249. If an off-site depository has been approved, the transferring official who follows the guidelines set by the commission will not be liable for any loss or damage to records stored in the off-site facility. AGO 1998-062.

In addition to providing access to public records, the records custodian is also charged with maintaining and, in some cases, disposing of public records. Public records which are not considered permanent public records, and which are obsolete and no longer needed for public purposes must be disposed of pursuant to the record disposition schedules created by the Records Disposition Authorities administered through the Alabama Department

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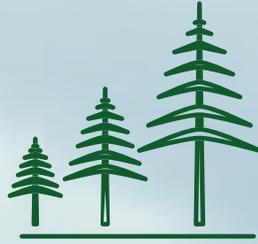
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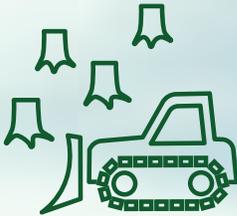
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alabamapower.com/vegetation

Why do municipalities keep getting hacked?

Kevin Beaver • CISSP

This article first appeared in the August 2019 issue of City & Town, the official magazine of the Arkansas Municipal League, and is reprinted with permission.

It seems that every few weeks, there's a new municipality somewhere in the U.S. making the headlines because of a security incident, a ransomware infection, or a data breach. From the highly-publicized ransomware infection impacting the city of Atlanta to lesser-known security breaches involving the Los Angeles, CA retirement system and the Houston, TX medical plan, it's clear that municipal government agencies are as susceptible to nefarious behavior as any other organization. But why is this? Is it hacking to exact revenge on specific government agencies? Is it insider abuse or employees making poor decisions? Perhaps it's a lack of management buy-in and budget that's limiting IT's ability to keep things under control? The answer can certainly be related to all the above. However, based what I see in my work as an information security consultant, it tends to be a bit simpler than that.

One thing that I've discovered over the years is that it's not the complicated "hacking" that's often overhyped and glorified by the media and in the movies. Instead, what takes most organizations down are simple security flaws exposing network systems and users. Numerous studies come out each year underscoring this reality. It's Pareto principle stuff: 20% of the security vulnerabilities are creating 80% of the risks. Simply put, it's all about the *basics*. Not unlike any other type of business, municipalities are experiencing incidents and breaches because of low-hanging fruit that's often overlooked yet super simple to exploit such as:

- weak passwords
- missing software updates
- inadequate malware protection
- limited visibility into the network and computer systems
- sensitive information being stored in ways that's accessible to anyone on the network
- untested systems and software
- gullible, expedient, and click-happy users that are taking the security decision-making process into their own hands

Many people responsible for IT and security assume that all is well on the network because they have basic security controls in place, and they don't "see" anything happening.



Given all the moving parts and complexities associated with the typical municipal network, there's no reasonable way to know for sure that all is well – unless it's validated on an ongoing basis. Unless and until these types of basic security vulnerabilities are discovered and cleaned up, your city runs the risk of experiencing an incident or breach, including those that you may not even know about until someone else discovers it and tells you.

Arguably, all security incidents and breaches impacting municipalities are preventable, yet it's a growing concern. In many cases, it's IT and security staff failing to acknowledge and fix their system vulnerabilities before the bad guys discover and exploit them. Just as common, though, is the situation whereby management doesn't provide the financial and political backing necessary for the organization to obtain and maintain a reasonable level of security. It's the universal law of *cause and effect*: if you fail to acknowledge threats, vulnerabilities, and their associated risks, it's only a matter of time before someone comes along and makes you look bad. As Ayn Rand, author of "Atlas Shrugged", said, "We can evade reality, but we cannot evade the consequences of evading reality."

The real question is: why aren't more organizations seeking out their IT blind spots and weaknesses and doing something about it? It's not terribly difficult, nor is it all that expensive, especially given the alternative. If you can justify bringing in an outside resource to perform an in-depth security assessment, that's the ideal scenario. However, with the right tools and expertise, you can do it in-house to uncover and address many of your security risks.

The most important thing is to acknowledge that information security is not just an IT problem but, rather, an actual *business* concern. Like legal, finance, and operations, information security is a critical function that your municipality can't be without. Don't want to make the headlines? You must vow to do something about it. With networks growing more complex, especially with critical utility control systems, smart cities, and the Internet of Things upon us, the time to do something about security is now. The

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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

Recreational Immunity: Recreational-use statutes precluded town from being liable for park user's injuries suffered while using a swing connected to a tree branch that fell. *Ex parte Town of Dauphin Island*, 274 So.3d 237 (Ala. 2018).

Boards: Proper venue for declaratory judgment action against city water and sewer board was the county in which the board's principal place of business was located. *Ex parte Bd. of Water and Sewer Com'rs of City of Mobile*, 272 So.3d 635 (Ala. 2018).

Tort Liability: Police officer was entitled to state-agent immunity from claims of negligence and wantonness made by motorist involved in a collision with a patrol car. *Ex parte City of Montgomery*, 272 So.3d 155 (Ala. 2018).

DECISIONS FROM OTHER JURISDICTIONS

Search and Seizure: Pedestrian was not "seized" by a police officer's directive to move from the street to the sidewalk, within the meaning of the Fourth Amendment. *Johnson v. City of Ferguson, Missouri*, 2019 WL 2494519 (8th Cir., Mo.).

First Amendment: City's ban on advertising in for-hire vehicles and taxicabs was a permissible restriction on commercial speech. The ban furthered a substantial interest in protecting passengers from the annoying sight and sound for in-ride advertisements. *Vugo, Inc. v. City of New York*, 2019 WL 3121891 (2nd Cir. N.Y.).

Tort Liability: Municipal officials are not excused from liability under 1983 for a predeprivation federal procedural due process violation, even if they also state laws and the state provides some postdeprivation recourse. *Bradley v. Village of University, Illinois*, 2019 3121844 (7th Cir. Ill.).

ATTORNEY GENERAL'S OPINIONS

Competitive Bid Law: The Department of Examiners of Public Accounts ("Examiners") may approve any competitive bid process, related to goods and services, that is utilized by a cooperative of the National Association of Counties, its successor organization, or any other national or regional governmental cooperative, as long as the process complies with the bid law requirements applicable to the governmental entity conducting the process. Examiners may only approve a cooperative's bid process, related to heating and air conditioning units or systems, if the process complies with the provisions of Alabama's bid law. AGO 2019-038.

Appropriations: The city may expend public funds and allow its employees, agents, or contractors to enter private property with the owner's consent to remove any unsightly and damaged trees if the city council determines that the work promotes economic and industrial development for the city and the council complies with the conditions of section 94.01(c) of the Recompiled Constitution of Alabama. AGO 2019-040.

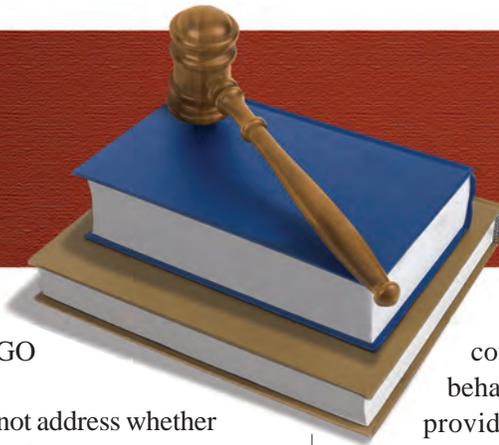
Judicial Administrative Fund: Funds designated for the operation of the municipal court in the Municipal Judicial Administrative Fund pursuant to section 12-19-310 of the Code of Alabama may be used to pay for the renovation of the court's administrative offices. The renovation is subject to the Public Works Law and must be competitively bid if the project cost exceeds \$50,000. AGO 2019-042.

Boards: The county E-911 Board is not authorized to provide administrative office space for use by a commercial ambulance company that is providing services in the county or make modifications to its office building on behalf of the company. AGO 2019-043.

Nuisances: The cost of weed abatement incurred by a Class 8 municipality under Section 11-67-27 of the Code of Alabama includes expenses for advertising, postage, material, equipment, and employee wages. AGO 2019-046.

Public Works Bid Law: The purchase, installation, or upgrading of school security systems by the City Board of Education is subject to the Public Works Law. If the Alabama State Law Enforcement Agency makes a finding that the project would impact the security or safety of persons or facilities and requires confidentiality, a contract may be let without public advertising. AGO 2019-048.

Streets and Roads: The town should assume responsibility for the public streets in the areas annexed during the 24 months following incorporation at the same time it begins to assume



responsibility for the streets in the newly incorporated town. AGO 2019-049.

Passports: Alabama law does not address whether a municipal office may be designated a Passport Acceptance Facility. A municipality must apply to the U.S. Department of State for such a designation. AGO 2019-050.

ETHICS OPINIONS

Conflicts of Interest: A city council member may enter into a business relationship with a company that has entered into a long-term license, lease and management agreement with the city provided that he did not use his public position to create the opportunity for himself and his company in violation of Section 36-25-5(a), Code of Alabama 1975 and provided that he avoid conflicts of interest should they arise. AO 2019-04.

Fundraisers: A public employee or public official and their family members may fundraise for the costs of medical treatment for their son provided there is no mention of their public position in the solicitation and they include a disclaimer that they are not soliciting any donations from (1) anyone seeking official action by the agency for which the public official or public employee serves or works, (2) anyone or any business with the agency that the employee or official works for or serves, (3) any principals, lobbyists, or subordinates of lobbyists, and (4) any person or business the public official or public employee directly inspects, regulates, or supervises in their official capacity. AO 2019-05.

Fundraisers: Public officials, public employees, or family members of either who serve on the board of a 501(c)(3) organization but receive no compensation or personal gain from the nonprofit, and neither does a business with which they are associated, can fundraise for the nonprofit, including from business or individuals who may be considered principals. No public official or public employee can use official resources or personnel to aid in fundraising. No contribution can be converted to the personal use of the official or employee or their family member. The contribution cannot benefit the public official, the public employee, their family or a business with which they are associated. No public official, public employee or group of public officials or public employees can solicit contributions from lobbyists. Nothing can be solicited or accepted for the purpose of corruptly influencing any public officials or employee's official actions. AO 2019-06

Conflicts of Interest: A member of city council can contact governmental entities on behalf of his private sector employer and clients provided he not use the fact that he is a public official in order to obtain the business, that he not use or disclose confidential information gained in the course of his official position that could provide financial gain to his employer or client or anyone else, that he not solicit or accept anything for the purpose of corruptly influencing his official actions, that he not solicit business from those entities with pending matters before the city council, or those whose actions could be substantially affected by his official actions. Any contract his employer enters into to be paid in whole or in part out of state, county or municipal funds must be filed with the Ethics Commission within 10 days of its being entered. AO 2019-08. ■

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Thank You for Your Service!

One of AL's Longest Serving Clerks Retires



After serving more than 39 years under six different mayors, Carolyn May is retiring as Town Clerk of Grant on December 18. She is one of the longest tenured clerks in Alabama. Thank you for your service, Carolyn! Well done. Godspeed.

Hacked

continued from page 25

steps necessary are quite simple: 1) take the time to know what's on your network, 2) understand how it's all at risk, and 3) do what's reasonable and necessary to minimize those risks. Take action now and on a periodic and consistent basis moving forward. That's the formula for success. Combined with the discipline to see it through, you can rest assured that you've taken a reasonable and defensible approach to prevent the worst from happening and minimizing the impact when security events do occur. ■

Kevin Beaver is an independent information security consultant, writer, and professional speaker with Atlanta-based Principle Logic, LLC. With over 30 years of experience in the industry, Kevin specializes in performing independent security assessments and consulting to help his clients uncheck the boxes that keep creating a false sense of security. He has written over 1,000 articles and 12 books on information security including the best-selling Hacking For Dummies and The Practical Guide to HIPAA Privacy and Security Compliance. Kevin can be reached at through his website at www.principlelogic.com.

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Former ALM Executive Director Perry Roquemore Receives Honorary Certified Municipal Official Emeritus



Live Locally Alabama is an ALM grassroots campaign designed to encourage civic engagement, instill community pride and highlight the crucial role municipal government plays in the daily lives of Alabama's citizens. As part of this campaign, a Live Locally Alabama feature is included in each issue of the Journal highlighting important community topics and quality of life issues that will help municipal officials and employees improve their cities and towns for the people they serve.

On October 3rd, during ALM's 2019 CMO Graduation Ceremony, it was the League's privilege to award the highest CMO designation to former executive director (1986-2011), Perry C. Roquemore, Jr., an innovator who not only demonstrated outstanding leadership throughout his 37-year career with the Alabama League of Municipalities but had the foresight to create and develop an exceptional educational program that has now benefited thousands of elected men and women throughout Alabama.

What began as Perry's vision in the early 1990s to develop a professional educational program for Alabama's elected municipal officials became the Certified Municipal Official Program in 1994 and is now celebrating its 25th anniversary as an outstanding platform instrumental in educating nearly 5,000 municipal officials representing more than 460 incorporated cities and towns throughout Alabama. A total of 896 municipal officials earned the Certified Municipal Official designation during Perry's tenure as ALM Executive Director.

The vision to shape a professional certification program specifically designed to equip elected officials with municipal training and resources has now seen more than 1,200 officials achieve the Certified Municipal Official designation since its inception. CMO graduates have used the knowledge gained through this program well beyond the local level. Graduates have gone on to broaden their leadership influence through statewide elected office, serve on national and international committees as well as lead ALM's national organization, the National League of Cities.

Perry's dedication to municipal leadership began when he joined the League in 1974 as staff attorney and morphed as he served as Executive Director from 1986 until his retirement in 2011. During his tenure, Perry wrote countless legal articles and publications; was a resource and speaker for many affiliate groups, including Alabama's municipal clerks and revenue officers; and served on the board of the National League of Cities as well as other national and statewide organizations. He attended leadership conferences around the nation and appeared before the Alabama Legislature on behalf of

municipal government. He mentored, counseled and advised municipal leaders, personnel, colleagues and staff, and his dedication to expanding municipal education opportunities and leadership development was evident every step of the way.

Before municipal leaders and guests attending the 2019 CMO graduation ceremony, it was with heartfelt gratitude that – for the first time in the history of ALM's CMO Program – the distinguished title of Honorary Certified Municipal Official Emeritus was conferred upon Perry C. Roquemore, Jr., a trailblazer and dedicated leader in municipal education. His guidance, leadership and unwavering dedication to the cities and towns of Alabama is a commendable legacy. ■



Perry Roquemore with his son, Chris, his wife, Suzanne and ALM Executive Director Ken Smith

Congratulations, 2019 CMO graduates!

2019 CMO Emeriti

Councilmember Wayne E. Biggs, Saraland
Mayor Bob Bunting, Ozark
Mayor Michael S. Jessup, Riverside

Councilmember Ron A. Mason, Butler
Mayor Ray Nelson, Fayette
Councilmember Dawn M. Tanner, Pinson

Mayor Loxcil B. Tuck, Tarrant
Councilmember Darrell Wilson, Tallassee

2019 Advanced CMOs

Councilmember Roosevelt Adams, Jr., McIntosh
Councilmember Virginia Glaze Alexander,
Hartselle
Councilmember Feast D. Broughton, Brewton
Councilmember Carrie R. Brown, Brewton
Councilmember Joe Nathan Brown, York
Councilmember Kim Newman Brown, Hanceville
Councilmember LaJeffery A. Carpenter, Eutaw
Mayor Timothy B. Coe, Wedowee
Councilmember Audrey Colvin, Alexander City
Mayor Vivian Holt Covington, Hurtsboro
Mayor Harold L. Crouch, Chatom
Councilmember Cynthia S. Donald, Bessemer
Councilmember Danny L. Garnett, Southside
Mayor Randy A. Garrison, Hartselle
Councilmember Janice M. Glaze, Jackson's Gap
Councilmember Leslie LeeAnne Greene, Creola

Councilmember Bobby R. Hardrick, Daleville
Councilmember Deborah Ann Hicks-Milan,
Union Springs
Councilmember Rick Hill, Rainbow City
Councilmember John L. Hines, Opp
Councilmember Desiev Ned Howard, Shorter
Councilmember Charlotte J. Hunt, Opp
Councilmember Frankie L. Kelly, Centre
Councilmember Levon Charles Manzie,
Mobile
Mayor Ray Marler, Headland
Councilmember Lorenzo A. Martin, Sr.,
Prichard
Councilmember Seketha A. Mitchell,
Lisman
Mayor Barry D. Moody, LaFayette
Mayor Mickey Lane Murdock, Elba

Mayor Tony H. Picklesimer, Chelsea
Councilmember Michael L. Rea, Somerville
Councilmember Gayle C. Robbins, Florala
Councilmember Tracy A. Sanders, Brent
Councilmember Bobby L. Scott, Jr.,
Center Point
Councilmember Kendrick L. Spurling,
Headland
Councilmember Gary Strickland, Opp
Councilmember Cynthia W. Toles, Gadsden
Councilmember Angesa Twymon, Childersburg
Councilmember Lawrence T. Weaver, Brewton
Councilmember Robert Wilder, Aliceville
Councilmember Deverick B. Williams,
Gadsden
Councilmember George Williams,
Midland City
Councilmember Thomas Worthy, Gadsden

2019 Certified Municipal Officials

Councilmember Virginia Glaze Alexander,
Hartselle
Councilmember Nancy Alston, McIntosh
Councilmember Alan Anderson, Ashford
Councilmember Dollie M. Blue, Midway
Mayor Becky Bracke, Opp
Councilmember Annie Lucas Brown,
Tuskegee
Councilmember Gordon W. Burden, Trinity
Mayor Sandra Killen Burroughs, Lexington
Councilmember Joey B. Callahan, Lincoln
Councilmember Joseph A. Cannon, Athens
Councilmember Cassie Carlisle, Valley
Councilmember LaJeffery A. Carpenter,
Eutaw
Mayor Ashley C. Curry, Vestavia Hills
Councilmember Shirley W. Curry, Tuskegee
Councilmember Elizabeth Davis, Evergreen
Councilmember Cynthia S. Donald, Bessemer
Councilmember Michelle Rupe Eubanks,
Florence
Councilmember William G. Foster,
Tuscumbia

Councilmember Janice M. Glaze,
Jackson's Gap
Councilmember Douglas G. Goodlin,
Daphne
Mayor JoAnn Minniefield Bennett Grimsley,
Midland City
Mayor John R. Hammock, Tallassee
Councilmember Rick A. Hayes, Pelham
Councilmember Kristi Hill, Decatur
Councilmember Rick Hill, Rainbow City
Councilmember Danny Hollis, Sulligent
Mayor Zachary Allen Holmes, Loachapoka
Councilmember James Howell, Center Point
Councilmember Michael L. Hudson, Elberta
Councilmember Marcus Jackson, Prattville
Councilmember Ellis Johnson, Lisman
Councilmember Michael McLain,
Childersburg
Councilmember Seketha A. Mitchell, Lisman
Councilmember Bill Moody, Childersburg
Mayor Barry D. Moody, LaFayette
Councilmember Victoria A. Norris, Elberta

Councilmember Jason W. Peterson,
Montevallo
Councilmember Sherry Reaves, Springville
Councilmember Allison M. Reese, Satsuma
Councilmember Brandon Robinson,
Childersburg
Councilmember Larry Sandlin, Hokes Bluff
Councilmember Bobby L. Scott, Jr.,
Center Point
Mayor Annie M. Shelton, Beatrice
Councilmember James E. Smith, Ashford
Councilmember Lynda M. Spann, Beatrice
Councilmember Skipper Spurlin, Opp
Councilmember Jerry Starnes, Prattville
Councilmember Miah Tolbert-Jackson, Selma
Councilmember Linda Turner-Gaines,
Lisman
Councilmember Sylvia Wallace-Patton,
Florala
Mayor Roger Weatherwax, Moulton
Mayor Ken R. Wesson, Childersburg
Councilmember George Williams, Midland City
Councilmember Thomas Worthy, Gadsden

RELIGIOUS DISPLAYS AT CITY HALL

TEXAS MUNICIPAL LEAGUE STAFF

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City officials should use caution when placing or allowing religious displays of any type on public property. Although this topic can be troublesome all year long, the issue always seems to come to the forefront during the holiday season. Even well-intentioned religious displays may run afoul of the Establishment Clause of the United States Constitution, which reads in relevant part: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” This prohibition against governmental advancement or inhibition of religion is more commonly known as the “separation of church and state,” and it applies to all governmental entities: federal, state, and local.

The “separation of church and state” does not mean that government agencies are entirely barred from recognizing or celebrating holidays or events that have religious connections. City holiday displays that are limited to more secular images, like Santa Claus and Christmas trees, will generally survive a constitutional challenge. According to the Supreme Court in *Allegheny County v. Greater Pittsburgh ACLU*, the government may acknowledge Christmas as a cultural phenomenon, but it may not observe it as a Christian holy day by suggesting that people praise God for the birth of Jesus. Thus, a snowman and an angel displayed at a city are more justifiable as signals that Christmas is a time for peace on earth and good will toward men.

It is unclear whether a religious symbol, like a Nativity scene, can lawfully be displayed by a city or on city property. There is no federal or state statute covering this topic. Moreover, the case law provides very few hard and fast rules for such displays. As United States Supreme Court Justice Clarence Thomas observed, the Supreme Court’s Establishment Clause “jurisprudence has confounded the lower courts and rendered the constitutionality of displays of religious imagery on government property anyone’s guess. . . .” *Utah Highway Patrol Ass’n v. Am. Atheists, Inc.*, 132 S. Ct. 12, 13 (2011) (Thomas, J., dissenting from the denial of cert.) Therefore, it is difficult to formulate a specific set of rules to ensure that a given display is constitutionally permissible if it has religious symbols in it.

The Supreme Court has held that a Hanukkah menorah has both religious and secular connotations and may properly be displayed if the context presented is an overall holiday setting rather than the endorsement of religion. In *Allegheny County*, the Supreme Court found constitutionally permissible a holiday display that consisted of a menorah next to a larger Christmas tree, which was the “predominant element” of the display, and less significantly, a sign saluting liberty.

Part of the difficulty in determining whether a given holiday display will survive an Establishment Clause challenge is that the United States Supreme Court has adopted a very fact-specific approach to dealing with this issue. The best way to summarize the Court’s approach is that, if the dominant theme of a holiday display seems to be an endorsement of a particular religion, or if someone could believe that the dominant theme of the display is religious, then the display might not survive a challenge. For instance, a manger scene mixed in with a Santa figure, a snowman, a menorah, and a Christmas tree will be more likely to survive an Establishment Clause challenge than will a manger scene alone. However, if the manger scene is the centerpiece of the larger display, and the other figures are much smaller than the manger or placed in such a way that the manger scene is the dominant theme of the display, then the display will probably not survive a challenge.

In what has been described as the leading case on the topic of city Christmas displays, the United States Supreme Court upheld the authority of a Rhode Island city to erect a Christmas display in a park owned by a nonprofit organization. The scene included such objects as a Santa Claus house, a Christmas tree, a banner that reads “Seasons Greetings,” and a Nativity scene. *Lynch v. Donnelly*, 465 U.S. 668 (1984). Focusing on the context of the Christmas season, the Court found that the city had a secular purpose for including the Nativity scene as one component of its holiday display, which did not impermissibly advance religion or create an excessive entanglement between religion and government. According to the Court, any benefit to one faith or religion or to all religions by the inclusion of the Nativity scene in the display is *indirect, remote, and incidental*, and is no more an advancement or endorsement of religion than the exhibition of religious

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What Every Potential Candidate Should Know About Municipal Government

On August 25, 2020, most Alabama municipalities will hold elections for the mayor and council. While candidates cannot officially qualify to be on the ballot until July 7, 2020, many candidates have already announced their intention to run for municipal office and have started their campaigns. The Alabama League of Municipalities prepares a manual titled *Procedures for Holding Elections in Mayor-Council Municipalities* which covers issues related to campaigning and holding a municipal election. Included in the manual is an elections calendar out-lining all of the important dates relating to the election process. This manual will be available for download on the League's website: www.alalm.org after November 15, 2019. Over the next several issues of the Municipal Journal, the League Legal Department will explore various issues relating to municipal elections and the election process.

The goal of this article is to inform potential candidates as to the structure of municipal governments in Alabama as well as to the limitations and restrictions on municipal power. It is not intended as a guide for qualifying and running for municipal office. Candidates must understand the extent of the authority a municipality may exercise before making the decision to run for office. Also, an understanding of these laws and functions can help candidates avoid future embarrassment upon discovering that a campaign promise can't legally be fulfilled.

The provisions discussed in this article apply generally to any municipality with a mayor/council form of government. Many state laws, however, apply to only certain municipalities. It is up to the candidate to be sure

Lori Lein • General Counsel • ALM

that the rules and regulations set out in this article govern their municipality.

What is a Municipality?

In Alabama, a municipality is a form of local government created by the citizens within a defined area. First, the local government must meet the requirements of state law to incorporate. The laws governing incorporation are found in Article 1 of Chapter 41 of Title 11, Code of Alabama 1975. Following these procedures and an affirmative vote of the majority of citizens in the area proposed for incorporation, a municipality is created.

Historians disagree regarding the reasons municipalities first came into existence. Some reasons include the promotion of commerce, protection from invading armies, convenience, or even just the desire of humans to share time with each other. Regardless of the historical reasons, municipalities today provide many services to their citizens, such as fire and police, utility services, parks and recreation, and historical preservation among others. They also help protect their citizens through these services. Municipalities provide an element of convenience by performing many services which individuals themselves may not be willing to perform, such as construction and maintenance of roads, disposal of garbage and promotion of the arts.

Municipal government provides a means for citizens to have a direct say in which services are needed and how those services should be provided through the process

of electing representatives. Representatives, who are chosen from the pool of willing citizens, meet and discuss how the municipality can best meet the needs and desires of their citizens.

When these elected officials meet, however, it is important for all parties to understand that in Alabama, all municipal powers flow directly from the state legislature. That is to say, Alabama's municipalities do not have "Home Rule" and therefore do not have inherent power to operate as a government independent of the Alabama Legislature. Alabama operates under what is known as the "Dillon rule". This rule provides that municipalities have no powers beyond those that are given to them by the state legislature. The authorization must be either explicit or clearly implied from the language of a state statute or constitutional provision. See generally *Mobile v. Moog*, 53 Ala. 561 (Ala. 1875); *Best v. Birmingham*, 79 So. 113 (Ala. 1918).

Briefly, Alabama is governed by Alabama Constitution of 1901, and any amendments thereto. Laws in the Constitution are passed by the legislature, but only become effective following a vote of the public. The Constitution provides a framework for the adoption of laws by the legislature. Legislative acts cannot conflict with constitutional provisions. If there is a conflict, a new constitutional amendment must be adopted and approved by a vote of the people.

In addition to the Constitution, the legislature meets at least annually--more often if special sessions are needed--to pass general and local laws. Many of these laws apply directly to the operation of municipal governments. Actions taken by a municipal government cannot conflict with state legislation. Beyond that rule, however, is a further limitation on municipal powers. Not only do municipal actions have to comply with these statutes and the Alabama Constitution; under the Dillon rule, there must be legislative authority for the municipality to take the specific action in question.

When potential candidates decide that when they get elected some action needs to be taken, they examine the laws to ensure that the municipality has the power to act in the way desired. If not, authority must be obtained through the Alabama Legislature. Depending on what the official wants to do, this may require either a local act, a general act or possibly even the adoption of a constitutional amendment.

The Extent of Municipal Power

Municipalities are established by incorporation through the procedures set out in the Code. Art.1 of Chap. 41 of Title 11, Code of Ala. 1975. Municipalities grow through annexations. The methods of annexing property are also provided for in the Code. See Chapter 42 of Title 11, Code of Ala. 1975.

Municipalities are divided into cities and towns on the basis of population. Section 11-40-6, Code of Ala. 1975. If

the municipality has less than 2,000 citizens, it is a town. Once the population reaches 2,000, however, the municipality is defined as a city.

Municipalities may exercise two types of power: legislative and corporate. Legislative powers affect the public generally. In exercising these powers, the municipality acts very much as an arm of the state. Corporate powers are more comparable to those of a private corporation and are exercised to benefit the municipality in its proprietary capacity.

Municipalities also have authority to exercise certain powers within their police jurisdictions. The police jurisdiction is a legislatively created area outside the corporate limits of a municipality. Section 11-40-10, Code of Ala. 1975. The size of the police jurisdiction is either a mile-and-a-half, or three miles, depending on the population of the municipality. It ensures orderly development beyond the municipal limits and allows the municipality to protect persons who live within these areas.

Municipalities can levy certain types of taxes in the police jurisdiction in order to pay for services which are provided in the area. See Section 11-51-91, Code of Ala. 1975. Additionally, municipalities can enforce criminal ordinances in the police jurisdiction. Construction and development can be regulated through the application of municipal building codes and subdivision regulations. Municipalities can also provide a wide range of services to citizens within the police jurisdiction, and if the municipality licenses businesses within the police jurisdiction, it must spend those funds to provide services within the police jurisdiction.

Appropriations

Frequently, potential candidates for municipal office make promises to voters that will require some type of appropriation from the municipal treasury. The use of public funds is, of course, of central concern to the voters. Many taxpayers, understandably, want to have a direct say in how their tax money is spent. However, citizens must understand that municipal expenditures are limited by state law.

Perhaps the most common barrier to municipal spending is Section 94 of the Alabama Constitution of 1901. This Section is commonly referred to simply as Section 94. It prohibits municipalities from giving anything of value to any private individual or group of individuals. The prohibition also bars donations to private, nonprofit corporations, even if these organizations benefit the public. Section 94 is the reason municipalities cannot pave driveways or parking lots on private property. The rule is also why government property cannot be given away, unless the use of those funds serves a recognized public purpose.

Section 94 is a frequent source of friction for elected officials, especially for those who are new to the operations

of public entities. This is because often the groups requesting financial help from the municipality do provide a valid community service, and there is an inherent desire to assist them. Many are charitable organizations. For the purposes of Section 94, though, it is crucial to distinguish between the public and private nature of the group, and many traditional entities are considered private, not public. Under Section 94, it doesn't matter that the group is non-profit. If it is private (which generally means that it was not directly created by a public organization), the municipality may not donate funds to it without finding a public purpose behind the donation.

In *Slawson v. Alabama Forestry Commission*, 631 So. 2d 953 (Ala. 1994), the Alabama Supreme Court stated that, "[t]he paramount test should be whether the expenditure confers a direct public benefit of a reasonably general character, that is to say, to a significant part of the public, as distinguished from a remote and theoretical benefit ..."

Section 94, though, does not prohibit municipalities from contracting with private companies and individuals for services. For example, although a municipality cannot give money to the Girl Scouts of America, the municipality may compensate the Girl Scouts for legitimate services they can perform for the municipality. Bear in mind that the service being performed generally must be a service that the municipality could perform itself.

Similarly, Section 94 does not ban appropriations to public organizations which serve the municipality. For instance, municipalities may contribute funds to public schools their citizens attend. Municipalities may not, however, make donations to band booster clubs or other private clubs organized by students or parents because these are private groups.

Section 94.01 of the Alabama Constitution of 1901, creates a limited exception to Section 94 for economic development projects. The procedures in Section 94.01 must be followed exactly in order to spend public funds under to this provision.

Municipalities must also comply with State bid laws. Generally speaking, the bid law prohibits expenditures (with certain exceptions which are listed in the Code) of more than \$15,000.00 (\$50,000 for public works contracts) without first soliciting competitive bids. See Article 3 of Chapter 16 of Title 50, Code of Ala. 1975 (Competitive Bid Law) and Chapter 2 of Title 39, Code of Ala. 1975 (Public Works Bid Law). Municipalities may, however, contract with other public agencies or purchase items through a state contract without first obtaining bids. AGO 2008-093. In addition, they may make purchases through a purchasing cooperative under certain conditions or off an existing Government Services Administration (GSA) contract. Section 41-16-51(a)(17).

There are other provisions governing municipal expenditures that are too numerous to discuss here. What

is important is for potential candidates to understand that they must examine expenditures carefully to ensure that the expenditures are legal.

Citizen Petitions

Citizens often draft and circulate petitions to be presented to the municipal governing body. What is the legal effect of these petitions?

In some limited cases the Code requires the council to act on petitions which contain a certain percentage of citizen signatures. Some examples include petitioning for certain methods of annexation and petitioning for a wet/dry alcohol referendum. In these cases, the council must follow through on all statutory requirements. These situations, though, are rare. Usually, the council is not required to act on, or even debate, requests submitted by petition. At best, a petition serves as a means of bringing the issue before the council.

Citizens have the right to make requests of the governing body. And, just as clearly, the number of signatures on a petition has a practical political effect. In most cases, however, a council may deny a petitioner's request, or refuse to even consider it.

Even where a municipal council will consider a citizen petition, it is important that candidates realize that duly elected municipal officials cannot delegate the authority to make legislative decisions to the citizens themselves. Frequently, elected officials want to allow citizens to vote on issues. While it may be admirable to seek approval of those who will become subject to a municipal action, the legislative power of a municipality, exercised by the municipal governing body, cannot be delegated to the citizens. For instance, in Opinion No. 91-00262, the Attorney General held that a city council may not make zoning in a particular district subject to a referendum of the residents.

The prohibition on delegation of municipal powers is particularly applicable to taxation. A municipality cannot hold a referendum for the voters to approve most tax increases. Ad valorem taxes are the notable exception. Most other taxes must be approved by the council by passage of a general and permanent ordinance. The city may hold a public hearing to obtain input, but it cannot delegate approval of the tax or tax increase to the citizens.

In fact, a city may not sponsor and hold a non-binding referendum using city employees and officials to work on the election, even if the cost of the referendum is paid for with private funds. AGO 94-00001. But, a private group may conduct a non-binding referendum for a municipality, although the municipality may not participate other than as private citizens and the council cannot agree to be bound by the referendum. AGO 97-00257. Keep in mind that under state law a municipality must submit some questions, as provided for by law, to the voters to make the final decision.

When making campaign promises, a candidate for municipal office must be sure whether a referendum is required, or even allowed, prior to agreeing to allow the public to vote on specific issues should he or she get elected.

The Division of Duties Between Elected Officials

One of the most misunderstood aspects of municipal government is the separation of powers between the mayor and the council. Like government on the state and federal levels, municipal government is divided into three separate but equal branches: executive, legislative and judicial. Each of these branches has distinct duties, powers and restrictions on how far it can intrude into the affairs of the other branches.

At the municipal level, the mayor serves as the head of the executive branch. Section 11-43-81, Code of Alabama 1975. As such, the mayor is responsible for overseeing the day-to-day operations of the municipality. He or she oversees municipal employees, makes sure that bills are paid on time, executes municipal contracts and, in general, performs many of the same functions as a C.E.O. of a private corporation.

In municipalities of less than 12,000 inhabitants, the mayor also presides over council meetings and serves as a member of the council. Section 11-43-40, Code of Alabama 1975. In these cities and towns, the mayor may vote on any issue before the council, introduce measures and participate in debates to the same extent as members of the council.

In cities with populations of more than 12,000, the mayor is not a member of the council. However, he or she has a veto over any permanent action taken by the council. The council can override the veto by a two-thirds votes. Section 11-43-40, Code of Alabama 1975.

The council is the legislative branch. Candidates must understand that individual councilmembers, acting alone, have no greater power or authority than any other citizen of the municipality. The council can only act as a body at a legally convened meeting.

The council has authority over the finances and property of the municipality. The council establishes policies, passes ordinances, sets tax levels, determines what sorts of services the municipality will offer and has authority over all other legislative aspects of municipal government.

Council Meetings & Public Participation

Problems frequently arise over public participation in council meetings. This is probably due to the misconception of a council meeting as a public hearing. It is not. A council meeting is intended as a gathering of elected officials brought together to conduct the affairs of the municipality. It is a business meeting. The meeting is open to the public not so much to obtain citizen input, but to allow the public to observe the affairs of government to ensure appropriate and legal representation by their elected officials. Although most

councils do set aside a time for public comment, Alabama law does not guarantee citizens the right to speak at a council meeting. The Open Meetings Act, found in Chapter 25A of Title 36, Code of Alabama 1975, grants citizens the right to be present at public meetings, but does not grant them an absolute right to express their views at the meeting. And, the municipality may establish reasonable guidelines governing public participation in the meeting. AGO 98-00134.

Public Records

Potential candidates must also be aware that problems often arise over public records. Controversies over what is public and what is not public are common. It is probably best to assume as a starting point that all records a municipality keeps are public. Section 36-12-40 and 36-12-41, Code of Alabama 1975, guarantee every citizen the right to inspect and make copies of all public writings, unless otherwise expressly provided by statute. While most records maintained by a municipality are public, some are not available for public inspection even by elected officials. For example, sensitive tax information is protected by state law and employee withholding information cannot be released. Municipalities are encouraged to establish reasonable procedures governing access to public records. Citizens who wish to view public records must follow these procedures. The custodian of records may ask for a reason for viewing the records, and must be convinced that the reason is legitimate. Also, the municipality may charge for making copies. AGO 2008-073. Additionally, not all records are public. Some records, such as on-going police investigation files, some material in personnel records, confidential tax information and similar records containing information not for public consumption, are not open to the public. For potential candidates, it is important to note that individual councilmembers and the mayor generally have no greater right to inspect municipal records than do any other members of the public. See AGO 2000-053.

Relationships with Boards

Not all municipal services are provided by the municipality itself. Many are provided by municipal boards. Some of these boards are separately incorporated, while others are not. Municipalities have the authority to create a broad range of boards to control particular functions. Perhaps the most common example is a utility board.

Boards are usually created when the governing body takes on the duty of performing so many functions that it needs to give the responsibility to another entity so that it can adequately provide for the other needs of the citizens. Once a board is created, its powers are specified by the statute under which it was organized. The council may not change the duties of the board from those set out in

continued on page 44

paintings in governmentally supported museums. *See also Town of Greece v. Galloway*, 134 S.Ct. 1811, 1821 (2014) (explaining why legislative prayer does not have to be generic or nonsectarian).

In 2005, the United States Supreme Court decided two cases that provide further guidance for city officials. Both cases concerned the display of the Ten Commandments on public property. The cases applied the same law but yielded contrary results. In *Van Orden v. Perry*, the Texas Capitol was allowed to keep a large stone monument bearing the Commandments.

On the other hand, in *McCreary County v. ACLU of Kentucky*, two Kentucky county courthouses lost their framed copies of the mandates entrusted to Moses. In both cases, the Supreme Court was asked to decide the legality of nearly identical texts erected on government property. Both cases forced the Court to review previous cases in an effort to balance the *religious* and *historical* significance of the Commandments. So, why different outcomes?

The sole point upon which all nine justices agreed was that the Ten Commandments communicate both a secular *moral* message and a Judeo/Christian *religious* message. The Court reminded us that the purposes of the Constitution's "Religion Clauses" are to ensure religious liberty and tolerance for all, to avoid religious divisiveness, and to maintain the separation of church and state. The Court wrestled with two competing principles for applying the Establishment Clause:

- (a) the strong role religion and religious traditions have played throughout our nation's history; and
- (b) that government intervention in religious matters can itself endanger religious freedom.

In *McCreary County*, the Court continued to rely on the three-part test of *Lemon v. Kurtzman*, a 1971 decision that questioned whether:

- (1) the government activity in question has a secular purpose;
- (2) the activity's primary effect advances or inhibits religion; and
- (3) the government activity fosters excessive entanglement with religion.

While the Court did not employ the *Lemon* test in the Texas case, in both the Texas and Kentucky cases, the Court focused on the "secular purpose" of the monuments by looking at the *context* of the displays. (The *Lemon* test has increasingly been criticized by the Court and replaced by a historical approach.) Were the Commandments there to communicate a religious message? Or did they merely show a moral and historical basis for our governments?

Although the Court did not specifically organize its analysis in the following manner, these were the factors

carefully considered by the justices in both the Texas and Kentucky cases:

Initiative: Erection of the monument in Texas was initiated by the Fraternal Order of Eagles, a national civic, social, and patriotic organization that strives to reduce juvenile delinquency. County officials initiated the courthouse displays in Kentucky.

Funding: The Fraternal Order of Eagles donated the Texas monument. The Eagles also paid the cost of erecting the monument. The displays in Kentucky were paid for by the counties.

Approvals: Evidence from the legislative journal entries in Texas indicated an acceptance of the donation by the state legislature. The Historic Preservation Commission recommended the actual site for the monument. The displays in the Kentucky courthouses were ordered to be installed by each county's judge and later ratified by the legislative body of each county. The Court has also looked for evidence of governmental contact with church authorities concerning the content or design of the exhibit prior installation.

Ceremonies: The dedication of the monument in Texas was presided over by two state legislators. The ceremony opening the display in one Kentucky county was presided over by the county judge and included a clergyman who "testified to the certainty of the existence of God."

Location: The Texas monument is located outside on 22 acres. According to the state's brief, its "location and orientation make it one of the least conspicuous monuments on the grounds." The displays in Kentucky were located inside on the walls of high-traffic hallways frequently used by the public on a daily basis.

Surroundings: The monument in Texas is one of 22 monuments and 17 historical markers, including tributes to soldiers and peace officers. Initially, the Commandments in Kentucky were alone. The county expanded the display twice, after the initial suit was filed- first to include similarly framed county resolutions stating that the Commandments were "the precedent legal code" and referring to Jesus Christ as the "Prince of Ethics," and second (after the counties changed lawyers) to include framed copies of the Magna Carta, Mayflower Compact, Bill of Rights, Declaration of Independence, and the lyrics of the Star Spangled Banner.

Intensity: The placement of the monument on the Texas State Capitol grounds was found to be "far more passive" than other examples previously considered by the Court. The displays in Kentucky were posted in the courthouses in a "high traffic area," those being hallways "readily visible to... county citizens who use the courthouse to conduct their civic business, to obtain or renew driver's licenses and permits, and to register cars, to pay local taxes, and to register to vote."

Duration: The Texas monument had existed at that location for over 40 years before being challenged by the plaintiff, who had first encountered the monument six years prior to filing suit. Kentucky erected the courthouse displays in the summer of 1999 and suit was brought that fall.

The differing results handed down by the Court demonstrate that context is crucial when determining a secular purpose. In Kentucky, even though other historic documents hung on the two county courthouse hallways separate from and in addition to the display at issue, the majority of the Supreme Court characterized the display (as a whole) as a “solo exhibit,” stating that when “the government initiates an effort to place this [religious] statement *alone* in public view, a religious object is unmistakable.”

The “fact-based” nature of any religious display case means that a set of standard guidelines is difficult to cultivate. For example, two lower courts held that if the County had erected the third expanded display in *McCreary* (which included the Magna Carta and other documents) first, it most likely would have withstood scrutiny. A case in the 10th Circuit, *Green v. Haskell County Board of Commissioners*, also dealt with a Ten Commandments display. In that case, unlike in *Van Orden*, the court concluded that the display had a primarily religious effect because two of the three County Commissioners made statements, attended events, and generally supported the monument in their capacity as commissioners. Further, the monument was challenged in the same year it went on display, like the display in *McCreary County*. Thus, the court found that the display was unconstitutional.

What if a private entity, with the city’s consent, places a religious holiday display on public property? City attorneys advise that a city may diminish the likelihood that such a display is unconstitutional by placing a sign disclaiming any city endorsement or participation in the display, or views depicted by the display. But that’s not always the case. For instance, in *Felix v. City of Bloomfield*, the court found certain restrictions on religious displays bind even private entities. 841 F.3d 848 (10th Cir. 2017), *cert. denied*. In *Felix*, the 10th Circuit found a Ten Commandments display unconstitutional even though it was created and donated by a private party, was accompanied by several secular monuments, was erected pursuant to a public-forum policy, and included a sign disclaiming any government endorsement of religion. While 10th Circuit opinions, including the aforementioned opinion in *Green*, are not binding on Texas cities, they demonstrate that, while cities can look to precedent for guiding principles, ultimately the outcome in any given case may not be predictable.

Because the law in this area is not black-and-white, the only way to ensure safety from litigation would be for cities to make sure their holiday displays are strictly secular in nature. Of course, many cities will decide to include certain religious imagery as a part of their holiday or other displays. In these cases, remember that religious symbols should not generally form the main theme of the display and be sure to contact your city attorney to determine if the display will run afoul of the Establishment Clause. ■

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Every organization, no matter how stable, is on a continual journey. While keeping one foot planted firmly on the solid ground that led to the creation of the organization, few entities can afford to simply stay where they are, continuing to do the same things the same way. To survive, an organization has to constantly monitor the needs of its members and adjust to meet those needs.

Municipalities are especially vulnerable to the shifting nature of life. Municipalities face constant change and immense challenges. They cope with it through the superb cooperation and quick responses of their officials and employees. The continual efforts of elected officials, city managers, clerks, planners, public safety and public works personnel and others does not go unnoticed by those of us who serve you. It is amazing to think of the courageous work performed everyday by the municipal officials and employees of Alabama.

How do we achieve stability and unity? We get there only through your involvement and participation, and the League strives to find ways to encourage member engagement. Here are a few ways you can get better involved with the League.

The Policy Committee Process

As representatives of municipal interests, we must seek to find those issues that unite us and put aside those that divide us. We must acknowledge our different opinions but work together in the best interests of municipal government, working to create a balanced environment that allows businesses to grow and thrive and that improves the quality of life for municipal citizens.

Finding the way forward requires the involvement of our members. Your participation and engagement in League functions helps us work through our differences to identify that common ground.

The League's policy committee process is the starting point to identify our common goals and interests. If you are interested in learning more about how to be an effective municipal leader, influence state and federal policy and the direction your League of Municipalities takes, I strongly encourage you to become part of our policy committee process.

The League's five standing policy committees are charged with the important duty of meeting each year with officials from the state and federal government and receive updates about developments that impact municipal operations. Committee members review the information they receive from these officials, determine what is important for all our members to know, then develop policy statements and legislative recommendations for adoption by the full membership.

These recommendations are compiled into the League's Policies and Goals. The Policies and Goals serves as our guidepost, mapping the direction and position our members want us to take on numerous issues. The engagement of our members in the policy committee process is, thus, vital for us to know what issues are important to our members.

Several years ago, we took a fresh look at the policy committee process and moved the policy meetings from the summer/fall to the winter/spring so that the committee could meet while the legislature is in session. Part of the committee process is set aside so that members can visit your legislators to advocate on municipal issues that are important to you and the League.

Municipal Advocacy Day

One of the best ways to become active in the League is to participate in our Certified Municipal Officials (CMO) Program. This program is designed to educate municipal officials about the laws, regulations and best practices affecting the operation of municipal government. Officials earn credit hours toward achieving one of three certification levels – Certified Municipal Official, Advanced Certified Municipal Official, ultimately, recognition as Emeritus-Level Certified Municipal Official. The CMO program makes you a better informed municipal official.

But some of the League's CMO training events also provide additional opportunities to serve the League and your citizens. Chief among these is Municipal Advocacy Day, which takes place each year during the Legislative Session.

While training is a key component of Municipal Advocacy Day, perhaps even more important is the opportunity it provides you to meet with and share information with your legislators. On Advocacy Day, you will hear from League staff and state legislative leaders about important municipal issues that will be addressed during the legislative session. Part of the credit you earn on Advocacy Day comes from the time you spend with your Senators and Representatives. And we hope you take that time to share with them information you learned during the event and advocate on behalf of your municipality.

Municipal Leadership Institute

The League's Municipal Leadership Institute is another CMO event that provides you with an opportunity to develop better leadership skills. The Municipal Leadership Institute (MLI) provides an in-depth exploration of issues important to municipal officials. The MLI is a one-day deep dive into topics designed to help make you a better leader. This event takes place in October each year.

Our CMO graduation generally takes place the same day as the MLI. At this ceremony, we recognize those officials who have earned a CMO designation during the previous year.

Publications

A great starting point for League engagement is by reviewing our publications and web site. We provide volumes of information local officials need to know to better serve their communities. The more you know, the better prepared you will be when problems arise. Even better, the information you find in our publications can help you avoid trouble in the first place.

Our publications include the bi-monthly *Alabama Municipal Journal* and a weekly e-newsletter, *This Week from the League*. We maintain an extensive web site loaded with information designed to keep you informed.

During each legislative session we also publish the *State House Advocate*, an electronic newsletter covering developments at the legislature during the week. I urge you to study this document each week to stay informed. Even more importantly, I implore you to you *use this information*. Contact your legislators about bills that concern you and let our Advocacy Team know who you contacted and what their response was. Never forget that you are our best advocates, and we succeed legislatively only to the extent you engage with your legislative representatives.

League Convention

Another good way to learn about your options is to attend the annual League Convention. In my opinion, all municipal officials should attend the annual League Convention, whether you want to be active in the League or not. The League Convention provides hours of instructional opportunities for municipal officials. This multi-day event allows municipal officials from across Alabama to gather at a single location to share ideas, get to know each other better and learn from experts and from each other. You'll find many, many opportunities to become more active if you attend the Convention. You'll also grow as a municipal official.

Conclusion

Our staff strives to provide better, more up-to-date and relevant information and services to our members. This has been one of our primary goals since the League was formed and we feel that we have been extremely successful achieving this objective over the years. We are a service organization and our guiding light will always be to search out new ways to enhance the assistance we provide.

When you decided to run for municipal office, I'm sure you had your own set of reasons. Whatever your reason, once

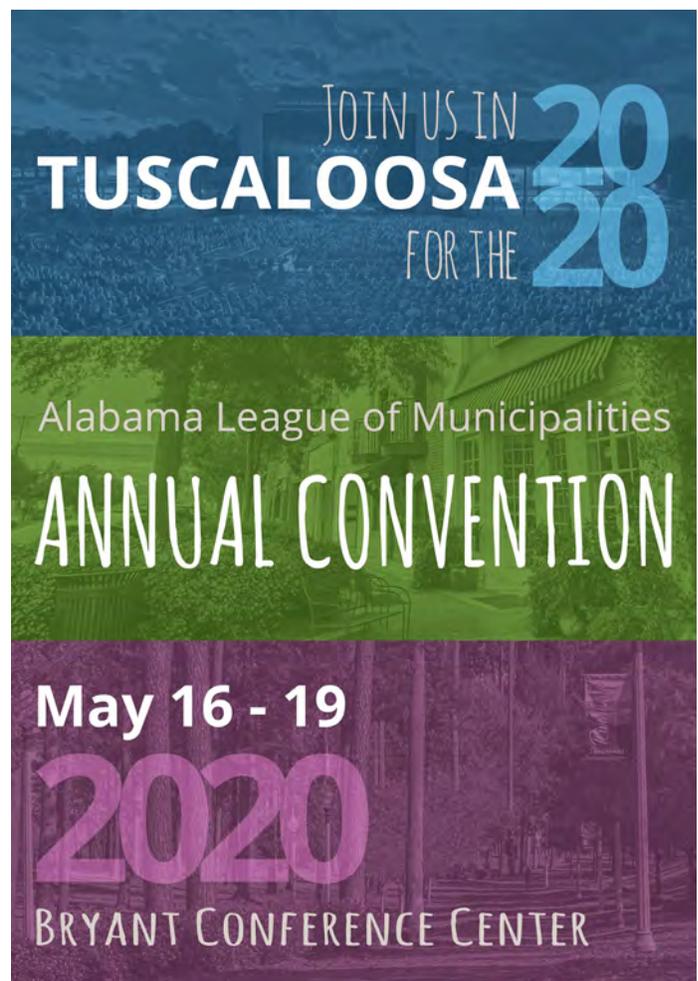
elected, your goals should become more focused. Primary among those goals should be the desire to find ways to improve your city or town.

City officials quickly realize that they don't operate in a vacuum. So much of what happens within the city limits is impacted by county governments, other cities and most significantly, the state and federal government. Part of your job as an elected official is to learn as much as you can about these other levels of government, getting to know those in power and working to influence actions by these other levels of government that affect your city or town's interests.

The League works hard to provide opportunities for municipal officials to connect with those whose decisions impact local governments. Your participation in League programs not only helps the League, it provides tangible benefits to your municipality by enabling you to make those connections and build relationships for the future.

I hope to see you at future League events and look forward to working alongside you to improve Alabama by making our cities and towns better!

Thank you for everything you do. ■



of Archives and History. For assistance or to obtain a copy of the records disposition requirements established by the Records Disposition Authority and approved by the Local Government Records Commission, please check the League's website. Additionally, the Alabama Department of Archives and History Government Records Division website has extensive information available at www.archives.alabama.gov or by phone at (334) 242-4435.

Who Can Access Records in Alabama?

The Alabama Supreme Court has limited Section 36-12-40, Code of Alabama 1975, to Alabama citizens. See *State ex rel Kernells v. Ezell*, 291 Ala. 440 (Ala. 1973). In *Ezell*, the court determined that a person over the age of 21 years, who was a bona fide resident citizen and duly qualified elector and voter of Alabama and his county, may inspect a petition for local option election under Section 36-12-40. Further support for the argument that Section 36-12-40 is limited to Alabama citizens is the United States Supreme Court decision *McBurney v. Young*, 133 S.Ct. 1709 (U.S.2013). While *McBurney* was a case involving Virginia's public records law, the Court referenced Alabama's Section 36-12-40 and observed that Alabama's statute was an example of a state statutory provision limiting access to public records to only the citizens of that state. *Id.* at 1714. As a result of the *McBurney* case, the Alabama Attorney General has also issued opinions supporting the argument that only Alabama citizens can access most public records. AGO 2018-030.

One issue that frequently arises is whether elected officials have greater access to public records than citizens. Generally, municipal officials and employees have no greater rights to inspect records than do members of the public. Only those officials and employees who must view a record that is not otherwise public should be allowed access. While the council acting as a legislative body has the right to request to see certain documents, individual councilmembers must demonstrate their interest in order to review records, just like private citizens.

The most common judicially created limitation on who may access records is that the records custodian may require the person seeking access to show that he or she has a direct, legitimate interest in the document sought. See, *Brewer v. Watson*, 71 Ala. 299 (Ala. 1882). There is no right of inspection when it is sought to satisfy a whim or to create scandal or for any other improper or useless purpose. No one has the right to demand to see every record maintained by the municipality without showing why he or she is interested.

When a person appears before the records custodian at the proper time and place and gives a legitimate reason, the custodian cannot assume that the person is seeking

the record for some other illegitimate purpose and deny access. See, Section 36-12-41, Code of Alabama 1975 and *Excise Commission of Citronelle v. State*, 60 So.812, 814 (Ala. 1912). Of course, the custodian may still deny access to records if disclosure would be detrimental to the public interest.

Access to public records cannot be restricted on the grounds that the individual plans to use the records for personal gain. AGO 1998-157. Additionally, access cannot be denied because the person requesting access has been guilty of some past impropriety or that the information will be used in litigation against the municipality or a municipal official. *Brewer v. Watson*, 71 Ala. 299, 306 (Ala. 1882).

What?

There is no question that Alabama's statutory law on public records is sparse. Section 36-12-40, Code of Alabama 1975, guarantees every citizen the right to inspect "all public writings", unless otherwise expressly provided by statute. And Section 36-12-41, Code of Alabama 1975, provides that every custodian of "public writings" must, upon request, provide a certified copy of the public writing upon the payment of fees.

What these sections do not do is provide guidance on which records are considered public writings. Generally, the term "record" is given an expansive meaning, such as the definition found in Section 41-13-1, Code of Alabama 1975. There, public records are defined to include all "written, typed or printed books, papers, letters, documents and maps made or received in pursuance of law by the public officers of the state, counties, municipalities and other subdivisions of government in the transactions of public business." The Alabama Supreme Court has held that the terms "public record" and "public writing" are synonymous. These sections are broad and provide little guidance for city clerks who must determine whether to release a particular record. In addition, this list is not all-inclusive and each record must be examined individually to determine whether the public is entitled to access, looking to case law and Attorney General's opinions for help.

In *Stone v. Consolidated Publishing Co.*, 404 So.2d 678 (Ala. 1981), the Alabama Supreme Court held that public writings as defined by Section 36-12-40 are those records which are reasonably necessary to record the business and activities of public officers "so that the status and condition of such business and activities can be known by our citizens." The key element in this statement is that the record be "reasonably necessary." It is clear that the right of access goes far beyond those records that the law requires a public official to keep. The fact that a record is not required does

not mean that if a record is kept it is not a public record.

In the case of *Randolph v. State ex rel. Collier, Pinckard and Gruber*, 2 So. 714 (Ala. 1887), the Alabama Supreme Court stated, “The right of free examination is the rule, and the inhibition of such privilege, when the purpose is speculative, or from idle curiosity, is the exception.” With this case in mind, it is always best to assume as a starting point that all records the city keeps are public records.

Of course, the right to inspect and copy records is not absolute. There are sound policy reasons for restricting access to certain records. There are liability issues to contend with if private information becomes public. Businesses are entitled to confidentiality concerning information that might give an unfair business advantage. Further, confidentiality encourages honest reporting for sales tax and licensing purposes. Statutory provisions, such as Section 40-2A-10, Code of Alabama 1975, dealing with sales and use tax return information and Section 11-51-196, Code of Alabama 1975, dealing with business license information, limit access to certain records and as well as provide for criminal penalties for anyone releasing such information without the consent of the taxpayer.

Personnel records often contain information that reflects negatively upon an employee’s character and, if released, may subject the city to liability for defamation. Licensing information can be used by competitors to gain an unfair business advantage. If confidential police records become public, ongoing investigations may be ruined and lives endangered. For example, the uniform incident/offense report is a public record, although portions of it may be withheld from public disclosure to protect police investigations, witnesses, innocent persons and the right of the accused to a fair trial.

Because Alabama’s statutory law doesn’t provide guidance regarding any limitations on the release of public records, most of the limitations come from caselaw or opinions of the Attorney General. The Alabama Supreme Court applied a test in *Stone v. Consolidated Publishing Co.*, 404 So.2d 678, 681 (Ala. 1981), to aid in determining whether a record should be released to the public. There, the court stated that “Courts must balance the interest of the citizens in knowing what their public officers are doing in the discharge of public duties against the interest of the general public in having the business of government carried on efficiently and without undue interference.” This is the same test that all custodians of records must use to determine whether to release a record. If the right to access unduly interferes with government business, then the custodian is justified in restricting access. If not, then the record is public, unless some other restriction on access applies.

In the *Stone* case, the Alabama Supreme Court discussed the types of records where the harm done by disclosure outweighs the right to access: “Recorded information received by a public officer in confidence, sensitive personnel records, pending criminal investigations and records the disclosure of which would be detrimental to the best interests of the public.” *Id.* at 681.

With regard to personnel records, the AG has opined that while time sheets of employees are public records, certain sensitive information that may be contained in those records is not a public record. The custodian of records should redact sensitive personnel information. AGO 2008-073. Examples of sensitive personnel information may include social security numbers and other personal identifying information, information regarding garnishment of wages for child support or other judgments against the employee, investigations against the employee that do not result in discipline and income tax withholding information.

When it comes to security information regarding municipal operations, it is important to remember that under the Homeland Security Act of 2002, all state Sunshine Laws are preempted; therefore, Alabama’s state disclosure, open records or freedom of information laws are preempted to the extent they require access to a record that the Department of Homeland Security considers to be “critical infrastructure information.” *See*, 6 USCA, Section 131(3). Additionally, state courts do not have the power to require the release of that data. *See*, 6 USCA, Section 133. Similarly, Alabama law prevents access to records, information or discussions relating to security plans, procedures or other security related information from public access. Section 36-12-40, Code of Alabama 1975.

What about information regarding criminal matters? According to the Attorney General, a municipality should allow members of the general public to inspect and obtain copies of completed Alabama Uniform Traffic Accident Reports. But in doing so, they should redact a person’s home address and telephone number from an accident report. A person’s date of birth is public and may not be redacted from any Uniform Traffic Accident Report that the municipality produces. AGO 2012-045. Timing may be key to the determination of whether a criminal record is open and available for inspection. The criminal complaint supporting an unexecuted arrest warrant is not subject to disclosure under Section 36-12-40, Code of Alabama 1975. AGO 2008-030 and AGO 2013-040.

Clearly, it would be impossible to lay down a hard and fast rule that applies in all situations. The custodian must review each request individually and determine whether

access should be permitted. Where a record contains both confidential and public material, the custodian, if possible, should delete the private information and release only the information that is public.

Where, When & How

A municipality may set reasonable restrictions on the time and place of inspection of public records, generally at city hall and during regular business hours. However, the limitation must be reasonable. According to the Attorney General, the custodian of records must make the records available for copy and inspection during the normal business hours, within a reasonable period of time that the request was made and may do so in such a manner as to “prohibit work disruption.” AGO 2008-073.

Also, a municipality has the right to charge a reasonable fee for making copies of the record. While the records custodian may allow a person to make a copy, the better practice is for the custodian to make the copy. The Attorney General’s office held that a public entity may recoup reasonable costs incurred in providing public documents, including staff research, preparation and time, but not costs for an attorney’s time in reviewing potentially confidential documents. What constitutes “reasonable costs” is a factual determination that must be made by the governing body. AGO 2008-073.

Section 36-12-40, Code of Alabama 1975 does not authorize a citizen to shift to the custodian the tasks of inspecting records and identifying the ones to be copied or the expense of copying those and does not require the custodian to undertake the burden and expense of mailing or otherwise delivering the copies. *See Ex parte Gill*, 841 So.2d 1231 (Ala. 2002). Under no circumstances, however, should the individual be allowed to remove the original document from city hall. This is a good rule to follow regardless of who is inspecting the record.

The where, when and how of public records were key issues in the case of *Blankenship v. Hoover*, 590 So.2d 245 (Ala. 1991). In *Blankenship*, the City of Hoover adopted a policy requiring anyone requesting access to public records to make this request in writing. The city provided forms for this purpose. The form required the person making the request to give his or her name, to include the date the request was filed, to list the records sought, and to give a reason for asking to view the records. The bottom of the form – set aside for official use – provided space for the records custodian to check whether the request was granted or denied. In the event of a denial, the custodian had to list reasons for denying the request.

The City of Hoover developed its policy after an experience in late July 1990. At that time, plaintiffs came to the financial department and requested numerous records. The requested records were provided, and plaintiffs were given space to review them. Plaintiffs made approximately 180 copies on Hoover’s copy machine. Hoover did not charge for making these copies. Hoover’s finance director testified that while the records were being copied, plaintiffs tore pages from the books and left the books in a damaged condition. One of the plaintiffs, while denying doing any damage, admitted that several pages came loose while they were making copies and that the plaintiffs folded and replaced them.

Later, the plaintiffs made an additional request for records from the city and refused to give any reason for their request. Among the records requested were all W-2 and 1099 forms showing the salaries and reportable payments by the city of Hoover since January 1, 1988. The city stated that it would provide the records, with the possible exception of the W-2 and 1099 forms, if the plaintiffs would fill out the city’s form. The plaintiffs refused and sued, seeking the requested records and an injunction that would permit them access to the records without stating a reason.

The trial court ruled in favor of Hoover, finding the city’s public records policy reasonable. The court stated: “Hoover may [require persons requesting public records to fill out a form in the nature of the one offered in evidence in this case] asking why a person is seeking public records so long as the question is not intended to dissuade people from seeking the records and is not used in the ordinary course as a means to prevent people from having access to such records ...” “Hoover may establish a reasonable policy which limits the number of persons reviewing records at any one time as such limits may be required by its physical facilities and may limit the records reviewed at one time so as not to unduly interfere with the normal operation of city government.”

The trial court also found that Hoover did not have to produce its W-2 forms because the forms disclosed “whether or not an individual employee has elected to participate in income-deferral plans, insurance plans, or similar benefits which are more personal than public in nature.” Regarding the 1099 forms, however, the court found that they did not contain any personal information and should be provided. The court stated that, the rate of pay, even the gross pay of individual employees, must be made available upon request.

The Alabama Supreme Court affirmed the trial court. In its opinion, the court was impressed with the fact that Hoover did not apply its policy to prevent access to records, nor

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Potential Candidate

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the statute. Nor can a council create boards that are not authorized by the legislature. Although a council may create an advisory board, it cannot delegate power over any municipal function in its control unless the legislature has given them that authority. McQuillan, *Municipal Corporations*, 3rd ed., Section 12.38. An advisory board can only make recommendations to the council. The council must determine whether or not to act on those recommendations.

Frequently, municipal officials are asked to remove board members or to order the board to take certain actions. Candidates must understand that once a board is created, it has the sole power to act and the council has no power to make demands on the members of the board. Members of these boards are appointed for terms and generally they cannot be removed until their terms expire. This is especially true for separately incorporated boards. It is particularly important to understand the difference between an incorporated and an unincorporated board. Incorporated boards usually cannot be dissolved until some event defined in the Code occurs. Frequently this is the payment of the debts of the board. Therefore, members of incorporated boards are totally independent from council members. Unincorporated boards are different. They generally can be dissolved by a governing body. The council will then either establish a new board or assume control over the functions themselves. However, the council may not leave the board in existence and change the duties of the board from those set out in the Code.

Conclusion

This article does not answer every conceivable question regarding municipal government, nor could it. Municipal government is multifaceted. It is difficult to even list all the functions performed by municipalities, and even harder to explain the laws which govern their operation. Multi-volume sets of books have been written which provide only a brief overview.

What is often overlooked, however, is the community nature of a municipality. Although municipal governments are legally recognized entities with a certain amount of control over the affairs of their citizens, municipalities are still communities. They are organized by citizens who feel a need for the services and protection the government provides. In order to make the government effective, elected officials, and the citizens they represent, must work together in a spirit of cooperation, cooperation based on an understanding of what the municipality is permitted to do under state law. The League hopes this article will help foster this spirit of cooperation. ■

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large allocation will add 200 additional classrooms and raise the total number of four-year-olds enrolled in the program from 32 percent to nearly 40 percent! Research shows that a child who enters kindergarten prepared they are more likely to read proficiently in third grade, graduate from high school, attend college and become successful in the workplace.

As we anticipate the rising demand of the computer science field, we are continuing our efforts to enhance computer science education in Alabama. Through our partnership with and the efforts by Rep. David Faulkner (R-Mountain Brook), all K-12 Alabama schools must offer computer science by the 2022-2023 school year. The Department of Education will create certification pathways for computer science teachers and require hiring a state computer science specialist.

Part of my mission for the state is to carve a path for our students to enter the workforce, highly-skilled and well-equipped. An effort to streamline obtaining an apprenticeship and allow students to obtain certification in a skill or a trade was steered through the Legislature by Rep. Terri Collins (R-Decatur) and Senator Clay Scofield, which I signed into law. This is a win-win for our students and our workforce. This critical bill helps qualified students to receive their credentialing and be one-step closer to employment while eliminating the bureaucratic red-tape.

This year, we have partnered together and have made great progress for our state. Whether it's been advancing our infrastructure, offering more rural access to broadband, ensuring a complete and accurate count of Alabama, success in growing our economy, expanding business and industry, or positively reforming education, we have many reasons to celebrate! We have shown the state and the nation what it means to place partisan differences aside to work for our common good. I ask that we continue to partner together for the good of our state. Let's move forward, together! ■

Speaker Mac McCutcheon

As prisons will demand even more budget dollars, Alabama is looking to control the costs of the Medicaid program, which have skyrocketed over the last several years. To that end, we have implemented the Alabama Coordinated Health Network, which is a series of seven regional networks that coordinate preventative care and healthcare services for Medicaid recipients. The network will steer those covered by Medicaid away from emergency room visits, which prove costly to the system, and toward less expensive yet equally or more effective service providers.

Issues endemic to the rural portions of our state – such as the recent closings of several hospitals, economic development, school safety, and others – will continue to command our attention during the 2020 session. The Legislature has already worked to bring reliable, high-speed, broadband Internet services to rural Alabama, which will open the door for new investments, new jobs, and new opportunities.

I am also certain that the Legislature will once again consider allowing Alabamians to vote on the creation of a state lottery. The votes necessary to send a traditional, paper ticket lottery to a referendum ballot already exist in the Legislature, but lawmakers aligned with gaming entities insist upon including “lottery terminals” that operate, in essence, like slot machines.

Alabama is in dire need of additional revenue and keeping the proceeds from a lottery within the state rather than exporting them to our sister southeastern states seems a commonsense source for it, so I hope the impasse that has blocked the public from voting thus far will be overcome.

The items I have mentioned do not offer a complete laundry list of issues that will come before the Legislature next year, but it covers the highlights. Each session, though, offers a number of surprises – both good and bad – and some unanticipated bills, measures and issues seem to gain momentum on their own and rise in prominence.

But the fact that this Legislature and our governor stand ready to face and resolve challenges like prison conditions, Medicaid spending, infrastructure, school safety and revenue needs should offer you assurance that Alabama's state government is in good hands.

And I know that I speak for each Alabama lawmaker – whether Democrat or Republican – when I tell you with every confidence that Alabama's very best days are still ahead of us. ■

FOCUSING ON ALABAMA'S SUCCESS

did the policy discourage requests. The court held that the policy merely permitted Hoover to ensure that inspections were performed by those with a legitimate interest in the requested records and that the integrity of the records was maintained without undue interference.

Conclusion

Since the passage of the Alabama Open Meetings Act, there have been similar Legislative attempts to overhaul Alabama’s public records law but, to date, there has not been any legislation introduced striking the same balance achieved in the OMA when it comes to public records. The most recent attempt was in the 2019 Legislative

Session during which the proposed bill failed to make it out of committee because it failed to take into account the needs and interests of public entities and employee resources. As a result, on-going discussions continue on this issue and the League continues to represent the voice of Alabama’s municipalities.

Until such time as more guidance is provided, the League encourages municipalities to adopt reasonable public records policies, such as the one upheld by the Alabama Supreme Court in the *Blankenship* case. For more information on public records policies, please contact the League Legal Department. ■

New ADEM Regulation Change Affects Alabama Cities and Towns

Wesley Helton, Director of New Market Development, Specification Rubber

The Alabama Department of Environmental Management (ADEM) had a regulation change on June 21st this year that effects the quality of rubber gaskets used in potable water lines. **Alabama Regulation 335-7-7-.03** was changed to require “gaskets, o-rings, and other products used for joining pipe, setting meters or valves, or other appurtenances shall not be made nor coated with materials which will support microbiological growth and shall be certified as meeting the specifications of the National Sanitation Foundation (NSF)/American National Standard Institute (ANSI) Standard 61.”

The National Sanitation Foundation (NSF) is a third-party certifying body that helps to ensure products used by humans are safe. They hold many standards throughout various industries, for example, when you shop at your local store for a toaster chances are you would see an “NSF” logo on the box and on the toaster itself. NSF Standard 61 happens to be the particular standard that regulates drinking water applications. Everything from pipes, meters, valves – and now gaskets – must be certified to this standard to help protect Alabama’s citizens from harmful chemicals.

It makes sense to include gaskets with the other products because the gasket is only one of two items that actually touch potable water while traveling through a water main. Obviously, the pipe itself touches water, but the typical length of pipe is only 20 feet; therefore, the importance of gaskets come in to play when two pipes are connected. The gaskets prevent water from leaking out or something unsanitary leaching into the pipes. When the pipes are certified to NSF-61 standards, but the gaskets are not, then every 20 feet, the potable water that we all consider safe has the chance to come in contact with chemicals that are not.

ADEM’s NSF 61 standard rule change is a positive development for consumers and city leaders alike, as it further ensures the safety of drinking water across Alabama. ■

Wesley Helton is Director of New Market Development for Specification Rubber, a leading manufacturer of rubber gaskets for ductile iron pipe, valve and water hydrant producers. The company celebrated its 50th Anniversary in 2018 and has just under 100 employees. Their headquarters and manufacturing facility are located in Alabaster, Alabama. For more information visit www.specrubber.com or call 888.633.3415.

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