

THE ALABAMA MUNICIPAL **JOURNAL**

October 2002

Volume 60, Number 4

Annual Committee Day Held September 5, 2002



Cameron Whitman, Center Director for Policy and Federal Relations for the National League of Cities, was the featured speaker during the Opening Session of Committee Day.



Dr. Jim Seroka, Director of the Center for Governmental Services and Professor of Political Science and Public Administration, addressed committee members during the Committee Day luncheon.

Alabama League of Municipalities
PO Box 1270
Montgomery, AL 36102

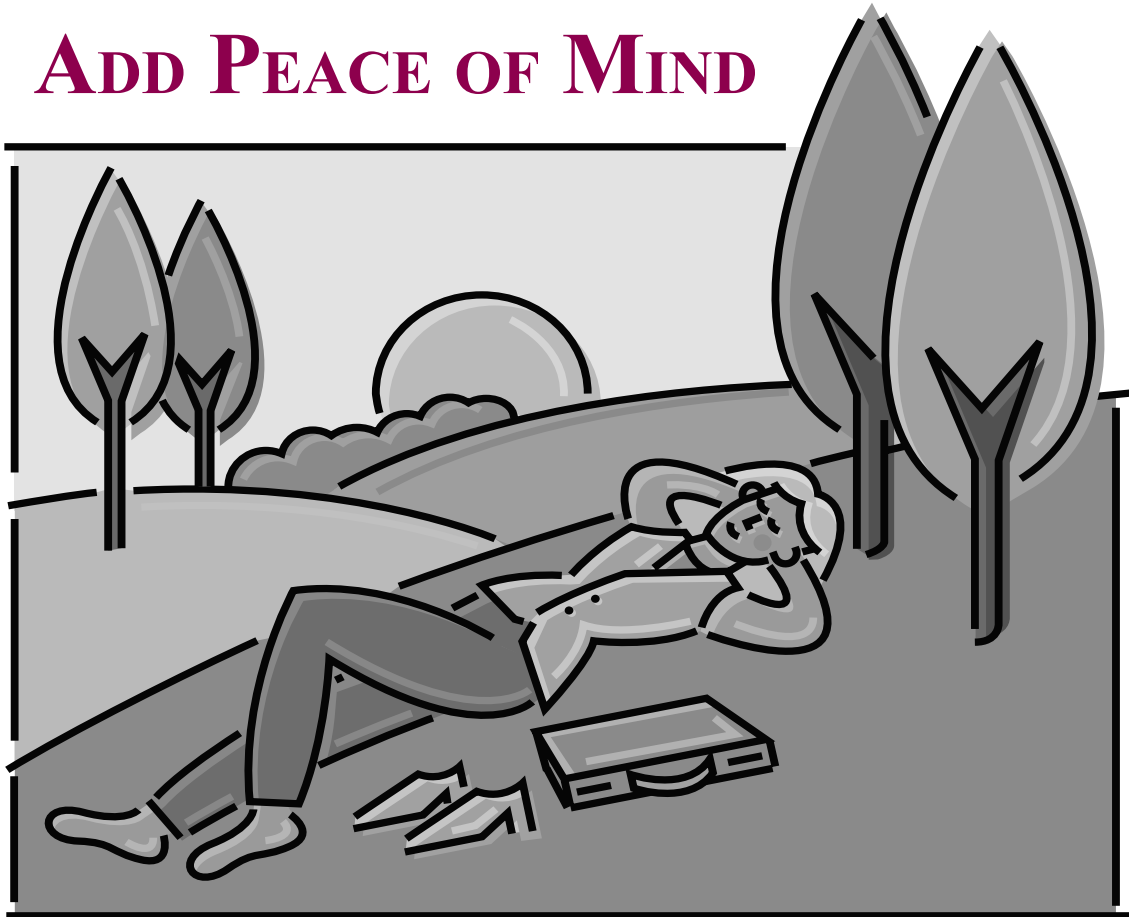
CHANGE SERVICE REQUESTED

Presorted Std.
U.S. POSTAGE
PAID
Montgomery, AL
PERMIT NO. 340

Inside:

- **Minutes of the League's Five Standing Committees**
- **Congress Renews National Dam Safety Program**
- **Municipalities and The First Amendment**

ADD PEACE OF MIND



By joining our Municipal Workers Compensation Fund!

- Discounts Available
- Accident Analysis
- Personalized Service
- Monthly Status Reports
- Directed by Veteran Municipal Officials from Alabama
- Over 550 Municipal Entities Participating

Write or Call TODAY:

Steve Martin
Municipal Workers
Compensation Fund, Inc.
P.O. Box 1270
Montgomery, AL 36102
334-262-2566



Millennium Risk Managers
P.O. Box 26159
Birmingham, AL 35260
1-888-736-0210

THE ALABAMA MUNICIPAL JOURNAL

Official Publication, Alabama League of Municipalities

October 2002 • Volume 60, Number 4

• OFFICERS

GEORGE ROY, Mayor, Calera, President
 DAN WILLIAMS, Mayor, Athens, Vice President
 PERRY C. ROQUEMÔRE, JR., Montgomery, Executive Director

• CHAIRS OF THE LEAGUE'S STANDING COMMITTEES

Committee on State and Federal Legislation
 MICHAEL C. DOW, Mayor, Mobile, Chair
 CARROLL L. WATSON, Lincoln, Vice Chair

Committee on Finance, Administration and Intergovernmental Relations
 BARBARA PATTON, Mayor, Opelika, Chair
 CHARLES MURPHY, Mayor, Robertsedale, Vice Chair

Committee on Energy, Environment and Natural Resources
 DEBBIE QUINN, Councilmember, Fairhope, Chair
 ARTHUR DAVIS, Councilmember, Calera, Vice Chair

Committee on Community and Economic Development
 BOB BUNTING, Mayor, Ozark, Chair
 LEE GARRISON, Councilmember, Tuscaloosa, Vice Chair

Committee on Transportation, Public Safety and Communication
 DON MOORE, Councilmember, Uniontown, Chair
 LEWIS E. WASHINGTON, SR., Councilmember, Wetumpka, Vice Chair

Committee on Human Development
 NANCY SEWELL, Councilmember, Selma, Chair
 TOM OWINGS, Councilmember, Brent, Vice Chair

• THE STAFF

PERRY C. ROQUEMÔRE, JR., Executive Director, perryr@alalm.org
 KEN SMITH, Deputy Director/Chief Counsel, kens@alalm.org
 STEPHEN S. MARTIN, Finance Director, stevem@alalm.org
 ROBERT C. BLACK, General Counsel
 CARRIE A. BANKS, Communications Director, carrieb@alalm.org
 GREGORY D. COCHRAN, Director, State and Federal Relations, gregc@alalm.org
 EDYE GOERTZ, Member Services Director, edyeg@alalm.org
 LORI LEIN, League Counsel, loril@alalm.org
 MARY ELLEN HARRISON, Staff Attorney, marye@alalm.org
 TWANNA MILLER KING, Legal Research, twannak@alalm.org
 SHARON CARR, Receptionist, sharonc@alalm.org
 FAITH ANN GUNN, Accounting Manager, faitha@alalm.org
 THERESA ROGERS, CMO Program Administrator, theresar@alalm.org
 RACHEL WAGNER, Librarian, rachelw@alalm.org
 LAURA ANNE WHATLEY, Legal/Communications Assistant, lauraw@alalm.org
 STEVE WELLS, President, AMIC, stevew@AMICentral.org

• ACTIVE MEMBERS (433)

Abbeville, Adamsville, Addison, Akron, Alabaster, Albertville, Alexander City, Aliceville, Allgood, Altoona, Andalusia, Anderson, Anniston, Arab, Ardmore, Argo, Ariton, Arley, Ashford, Ashland, Ashville, Athens, Atmore, Attalla, Auburn, Autaugaville, Avon, Babbie, Baileyton, Baker Hill, Banks, Bay Minette, Bayou La Batre, Bear Creek, Beatrice, Beaverton, Belk, Benton, Berry, Bessemer, Billingsley, Birmingham, Blountsville, Blue Springs, Boaz, Boligee, Branchville, Brantley, Brent, Brewton, Bridgeport, Brighton, Brilliant, Brookside, Brookwood, Brundidge, Butler, Calera, Camden, Camp Hill, Carbon Hill, Cardiff, Carrollton, Castleberry, Cedar Bluff, Centre, Centreville, Chatom, Chelsea, Cherokee, Chickasaw, Childersburg, Citronelle, Clanton, Clayhatchee, Clayton, Cleveland, Clio, Coaling, Coffee Springs, Coffeeville, Coker, Collinsville, Colony, Columbia, Columbiana, Coosada, Cordova, Cottonwood, County Line, Courtland, Cowarts, Creola, Crossville, Cuba, Cullman, Dadeville, Daleville, Daphne, Dauphin Island, Daviston, Dayton, Deatsville, Decatur, Demopolis, Detroit, Dodge City, Dora, Dothan, Double Springs, Douglas, Dozier, Dutton, East Brewton, Eclectic, Edwardsville, Elba, Elberta, Eldridge, Elkmont, Elmore, Emelle, Enterprise, Epes, Ethelsville, Eufaula, Eutaw, Eva, Evergreen, Excel, Fairfield, Fairhope, Fairview, Falkville, Faunsdale, Fayette, Five Points, Flomaton, Florida, Florence, Foley, Forkland, Fort Deposit, Fort Payne, Franklin, Frisco City, Fulton, Fultondale, Fyffe, Gadsden, Gainesville, Gantt, Garden City, Gardendale, Gaylesville, Geiger, Geneva, Georgiana, Geraldine, Gilbertown, Glen Allen, Glencoe, Glenwood, Goldville, Good Hope, Goodwater, Gordo, Gordon, Gordonville, Goshen, Grant, Graysville, Greensboro, Greenville, Grove Hill, Guin, Gulf Shores, Guntersville, Gurley, Haleburg, Hackleburg, Haleyville, Hamilton, Hammondville, Hanceville, Harpersville, Hartford, Hartselle, Hayden, Hayneville, Headland, Heflin, Helena, Henagar, Highland Lake, Hillsboro, Hobson City, Hodges, Hokes Bluff, Holly Pond, Hollywood, Homewood, Hoover, Hueytown, Huntsville, Hurtsboro, HyTop, Ider, Indian Springs, Irondale, Jackson, Jackson's Gap, Jacksonville, Jasper, Jemison, Kansas, Kellyton, Kennedy, Killen, Kimberly, Kinsey, Kinston, Lafayette, Lake-view, Lanett, Langston, Leeds, Leesburg, Level Plains, Lexington, Lincoln, Linden, Lineville, Lipscomb, Lisman, Littleville, Livingston, Loachapoka, Lockhart, Locust Fork, Louisville, Lowndesboro, Loxley, Luverne, Lynn, McIntosh, McKenzie, Madison, Madrid, Malvern, Maplesville, Margaret, Marion, Maytown, Mentone, Midfield, Midland City, Midway, Millbrook, Millport, Millry, Mobile, Monroeville, Montevallo, Montgomery, Moody, Mooresville, Morris, Mosses, Moulton, Moundville, Mount Vernon, Mountain Brook, Mountainboro, Mulga, Muscle Shoals, Myrtlewood, Napier Field, Natural Bridge, Nauvoo, Nectar, Needham, Newbern, New Brockton, New Hope, New Site, Newton, Newville, North Courtland, North Johns, Northport, Notasulga, Oak Grove, Oak Hill, Oakman, Odenville, Ohatsee, Oneonta, Onycha, Opelika, Opp, Orange Beach, Orrville, Owens Cross Roads, Oxford, Ozark, Paint Rock, Parrish, Pelham, Pell City, Pennington, Petrey, Phenix City, Phil Campbell, Pickensville, Piedmont, Pike Road, Pinckard, Pine Apple, Pine Hill, Pine Ridge, Pisgah, Pleasant Grove, Pleasant Groves, Pollard, Powell, Prattville, Priceville, Prichard, Providence, Ragland, Rainbow City, Rainsville, Ranburne, Red Bay, Red Level, Reece City, Reform, Rehobeth, Repton, Riverside, Riverview, Roanoke, Robertsedale, Rockford, Rogersville, Rosa, Russellville, Rutledge, Saint Florian, Samson, Sand Rock, Saraland, Sardis City, Satsuma, Scottsboro, Section, Selma, Sheffield, Shorter, Silas, Silverhill, Sipsy, Skyline, Slocomb, Smiths Station, Snead, Somerville, South Vinemont, Southside, Spanish Fort, Springville, Steele, Stevenson, Sulligent, Sumiton, Summerdale, Susan Moore, Sweet Water, Sylacauga, Sylvan Springs, Sylvania, Talladega, Tallassee, Tarrant, Taylor, Thomaston, Thomasville, Thorsby, Town Creek, Toxey, Trafford, Triana, Trinity, Troy, Trussville, Tuscaloosa, Tuscumbia, Tuskegee, Union, Union Grove, Union Springs, Uniontown, Valley, Valley Head, Vance, Vernon, Vestavia Hills, Vina, Vincent, Vredenburgh, Wadley, Waldo, Walnut Grove, Warrior, Waterloo, Waverly, Weaver, Webb, Wedowee, West Blocton, West Jefferson, West Point, Westover, Wetumpka, Wilsonville, Wilton, Winfield, Woodland, Woodstock, Woodville, Yellow Bluff, York.

Published monthly by The Alabama League of Municipalities, 535 Adams Avenue, Montgomery, Alabama 36104, telephone (334) 262-2566. Web address: www.alalm.org. Single copies, \$2.00. By subscription, \$24.00 per year. Advertising rates and circulation statement available at www.alalm.org or by calling the above number. Statements or expressions of opinions appearing within this publication are those of the authors and not necessarily those of the Alabama League of Municipalities. Publication of any advertisement should not be considered an endorsement of the product or service involved. Material from this publication may not be reprinted without permission.

Contents

<i>President's Report</i>	5
NLC Survey: One Year After 9-11 Cities See Biological, Cyber-Terrorism as Top Threats	
<i>Municipal Overview</i>	7
Seminars Offered During Congress of Cities Promise to be Interesting and Informative	
<i>Environmental Outlook</i>	9
Congress Renews National Dam Safety Program	
<i>The Legal Viewpoint</i>	11
Municipalities and the First Amendment	
<i>Legal Notes</i>	15
<i>Minutes of the FAIR Committee</i>	17
<i>Minutes of the EENR Committee</i>	19
<i>Minutes of the TPSC Committee</i>	21
<i>Minutes of the CED Committee</i>	23
<i>Minutes of the HD Committee</i>	25
<i>Perspectives</i>	34



Floyd E. "Tut" Fann State Veterans Home



Wellness Center
Auburn Medical Park
East Alabama Medical Center



DCH Regional Medical Center



McCauley Associates, Inc.

Architecture - Planning
Interior Design - Engineering

Birmingham Office (205) 969-0303
Auburn Office (334) 887-2401

McCauley Associates, Inc.,

an architectural firm whose designs and standards
have withstood the test of time.

McCauley Associates is a multi-disciplined architectural firm headquartered in Birmingham, Alabama which was founded by Charles H. McCauley in 1926. Today's management team has over 40 years of combined experience with the firm.

Known for their vision in planning for the future, the 75 year old firm specializes in healthcare, educational, religious and sports facilities. With over 1,000 completed projects McCauley's management philosophy continues to stress design quality and cost control. The firm brings to any project the full scope of its capabilities including master planning, architectural design, interior/space design and engineering.

Healthcare design incorporating the needs and desires of the client have created facilities that have endured the test of time. Some of the facilities include East Alabama Medical Center, DCH Regional Medical Center, Decatur General Hospital and Bryan W. Whitfield Memorial Hospital.

As evidenced by the opening of a new location in Auburn, Alabama in May 2001, McCauley has continually worked to grow and meet the needs of an ever changing arena.

Principals

R. Mack Freeman, Jr., AIA, President
John T. Ray, AIA, Vice President, Administration
Davis O. Burton, AIA, Vice President, Design
Harold H. (Hal) Bishop, AIA, Vice President, Production
Howard W. Tutwiler, Jr., ASID, Vice President, Interior Design
Norma N. Rogers, Ph. D., Vice President, Marketing



The President's Report

George W. Roy
Mayor of Calera

NLC Survey: One Year After 9-11 Cities See Biological, Cyber-Terrorism as Top Threats

Nearly a year after September 11, cities put biological, chemical, and cyber-terrorism at the top of their list of concerns about terrorist threats, says a recent survey of 725 cities by the National League of Cities (NLC). But some top concerns, like cyber-terrorism, are addressed by only a small number of cities in their anti-terrorism planning.

The fiscal and economic aftermath of September 11 left about half of U.S. cities less able to meet their financial needs (42 percent of all cities and 52 percent of large cities) – 100,000-plus in population. About two-thirds mentioned a need for funding to pay for equipment (70 percent of respondents) and training (62 percent) to support local homeland security efforts in the future. On the positive side, cities reported greater cooperation with other levels of government, the private sector, and nonprofits since September 11.

“Cities are the natural targets of this evolving terrorist threat, and we have risen to the challenge of protecting citizens over the past year,” said National League of Cities President Karen Anderson, mayor of Minnetonka, Minn. “But even though cities are at the very center of homeland security, they seem to be an afterthought when it comes to federal and state priorities for providing funding and communicating key information.”

“We have immediate needs such as fixing radio interoperability problems, repayment of local police for guarding airports, firefighter grants, and other homeland security needs that the Congress and President need to act on,” Anderson said. “Funds for these urgent priorities were cut in the 2002 supplemental spending bill.”

Biological, Chemical, and Cyber-Terrorism Are Top Concerns

The survey of cities found that biological terrorism topped the list of current concerns (mentioned by 82 percent of all

cities and 95 percent of large cities), followed by chemical threats (81 and 92 percent), and cyber-terrorism (80 and 91 percent). Other top concerns were car bombs (70 percent of all cities and 91 percent of large cities), “dirty” bombs that release nuclear material (67 and 85 percent), radiological attacks (62 and 78 percent), suicide bombs (62 and 82 percent), and airplanes used as weapons (60 and 76 percent). City leaders in larger cities were more likely to express concern about all types of terrorism.

For some threats, there are large gaps between concern and planning. Cyber-terrorism is a concern of 80 percent of all cities but only 26 percent said their plans address cyber-terrorism. Among large cities, 91 percent are concerned about cyber-terrorism but only 43 percent have developed strategies that address that threat in their anti-terrorism plans. Sixty-seven percent of all cities are concerned about dirty bombs but only 29 percent address that threat in their plans. Among large cities, 86 percent are concerned about dirty bombs and 54 percent have addressed the threat in their plans.

The survey also found that only one in five cities (20 percent) had integrated the color-coded Homeland Security Advisory System into local planning efforts. Thirty-six percent said they had not integrated the federal alert system with their plans and 32 percent said they were working on it. Slightly more of large cities said they had integrated the alert system into their plans (27 percent) and 44 percent said they were working on it.

Placing the threat of terrorism in perspective, cities cited traditional, ongoing issues more often than terrorism as one of their top concerns. Ranking first was the need for traditional public safety and crime prevention (cited by 62 percent of all cities and 69 percent of large cities), followed by the economic conditions (55 percent of all cities and 53 percent of large cities), and infrastructure investment (44 percent of all cities). Among all cities, terrorism readiness ranked fourth with 34 percent mentioning it among top priorities. However, among large cities, terrorism tied with economic conditions as the second most often cited concern (53 percent).

The survey was conducted by the National League of Cities in July and August of 2002. Out of the 725 respondents, 142 were cities with populations of 100,000 or more.

The National League of Cities is the oldest and largest national organization representing municipal governments throughout the United States. With a membership of 1,800 cities and towns, as well as 49 state associations, NLC serves as a resource and advocate for 18,000 U.S. cities that serve 225 million people. For details about the survey, visit NLC’s website at www.nlc.org. ■

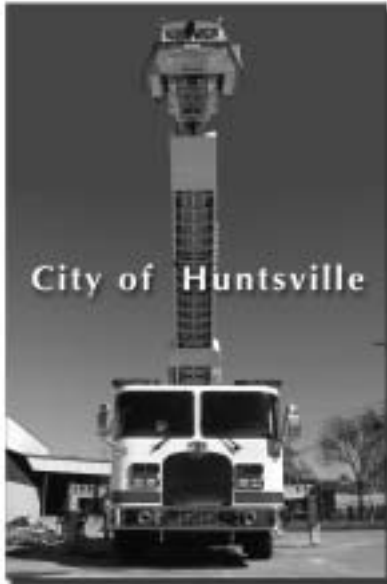


NAFECO™

North American Fire Equipment Company

FIRE • POLICE • EMS

Visit Our Updated Website! www.nafeco.com



City of **Huntsville**



City of **Decatur**

We Also Have a Full Line of:
Turnout Gear
Uniforms and Supplies
Breathing Apparatus
Thermal Imaging Cameras



Trained CVT on Staff
24-Hour Road Service
SCBA Repair
Service Department
Pump Repair



City of **Fort Payne**



Town of **Eva**

1-800-628-6233

1515 W. Moulton Street Decatur, AL 35601

Phone: (256) 353-7100 Fax: (256) 355-0852



Municipal Overview

By
PERRY C. ROQUEMORE, JR.
Executive Director

Seminars Offered During Congress of Cities Promise to be Interesting and Informative

The NLC Congress of Cities will be held in Salt Lake City, Utah, on December 3-7, 2002. On December 3rd and 4th, several excellent seminars will be offered by the Leadership Training Institute. On Tuesday, December 3, Larry S. Julian will present a half-day Leadership Training Institute seminar titled, "Four Traits of a Successful Leader." Larry Julian is a successful consultant and trainer who specializes in leadership development. President of the Julian Group, Julian combines his experience consulting with government and community sectors into successful speaking engagements. Julian has been a presenter for the Leadership Training Institute for a number of years.

On Wednesday, December 4, Carl Neu, a former member of the Lakewood, Colorado, City Council, and executive vice president of Neu and Company and the Center for the Future of Local Governance, will present a half-day Leadership Training Institute seminar titled, "10 Habits of Highly Effective Governing Bodies." Since the establishment of Neu and Company in 1971, Neu has served numerous organizations in local government, health care, financial services and telecommunications. His is a frequent speaker at leadership conferences and has authored more than 100 articles, publications and audio-visual training programs. This month I am providing condensed overviews of these excellent presentations.

Four Traits of A Successful Leader by Larry S. Julian

During a recent campaign, I saw a series of TV ads where the candidate claimed he was a "leader with integrity" and "a leader who can be trusted." Why would I trust this man as a leader? Because he said he could be trusted?

We live in a world that is not trusting of political leaders. As leaders, then, we need to define who we are on the inside before we communicate to the public what we claim to be on

the outside.

Ralph Waldo Emerson said, "Who you are speaks so loudly I can hardly hear what you are saying." While having leadership skills is important, leadership is more about who you are than how you appear.

In every successful leader, you'll find the same four traits: clarity, credibility, creativity and courage. These traits aren't handy tips to becoming successful; they're the traits that define our character and who we are. Understanding these traits and living them are the keys to effective leadership. Living them will earn the trust of your constituency and pave the way for your success. Here are the most basic definitions of these traits:

Clarity: The ability to see the underlying truth of a matter in order to make the best decision. Decisions are often complex and difficult. While we want things to be black and white, we're confronted with gray. To further complicate our decision-making ability, we're hindered by hidden agendas and political pressure. This is the called the "awareness stage." In this stage, we learn how to develop skills to better understand our constituency, the political climate, and ourselves.

Credibility: The levels of trust people have in a leader. Lack of trust is one of the greatest challenges facing local elected officials. Once trust is broken, it's very difficult to reestablish credibility. Establishing trust is a key to success, but is easier said than done. It takes steadfast consistency to make decisions that align with our principles. This is the "alignment stage," where we learn how to align our beliefs, values and principles with our actions and decisions.

Creativity: The ability to adapt to change by transforming today's problems into tomorrow's solutions. Most people are resistant to change and will do whatever it takes to keep the status quo intact. Why? They perceive change as a threat; that it involves more "cost" than "benefit." The irony is that change is inevitable and has to be addressed, whether we embrace it or not. Change offers three paths: fight, flight or adapt. Today's municipal leader must learn how to adapt to change by transforming present problems into tomorrow's solutions. This is the "adapting stage," where we learn the concept of "yes, and..." Instead of fostering a "yeah, but..." environment where all ideas are shot down, we create a "yes, and..." environment where we build on ideas to find a new and better solution.

Courage: The ability to do the right thing regardless of the consequences. Fear plays a significant role in today's political environment. We often make the easier wrong decision instead of the tougher right decision because we fear the

continued next page

consequences that may come from doing the right thing. Fear's close cousin is discouragement. Where fear raises the adrenaline, discouragement dulls the senses. It robs us of the conviction to move forward in doing what's right. Together, fear and discouragement can halt progress entirely.

Today's leader needs the moral courage to do what's right in the face of these two foes. This is the "action stage" because courage is the action of moving forward regardless of the obstacles. Here, we must learn to be at our best in times of trial and difficulty. We also must learn how to spot the "BID," or blessing in disguise, and utilize it to our advantage.

The hundreds of leaders I've coached over the years have one thing in common. Across industry, age, and position, they've all admitted they were a "work in progress." We're not born with clarity, credibility, creativity, or courage. They need to be worked at every day.

10 Habits of Highly Effective Councils, Plus Some by Carl Neu

The caliber of leadership we, as local officials, provide is a preeminent factor in the success of our communities, the quality of their future, and the "American Experiment" of democracy at the hometown-grass roots level. Those who serve as mayors, council members and administrators are the very essence of what the founders of our nation envisioned: ordinary, every day people who can become capable through dedication and competence of providing extraordinary leadership. Leadership has the power to bind the people of our communities together and to achieve a sense of unity, hope and excitement through vision, goals and common purpose.

Thomas Cronin, a nationally recognized authority on public policy, defines leadership as "making things happen that might not otherwise happen, and preventing things from happening that ordinarily might happen. It is a process of getting people to work together to achieve common goals and aspirations (visions). Leadership is a process that helps people transform intentions into positive action, visions into reality."

The quality of leadership effectiveness demonstrated by a governing body is not bestowed by an election victory, good intentions, or a swearing-in ceremony. It comes from the disciplined understanding of, and adherence to, a set of fundamental principles and skills that characterize highly effective governing bodies and council-staff partnerships.

These principles and skills are required to translate leadership intent and visions into stellar accomplishments through extraordinary performance, the wise and really productive use of resources, and igniting the imagination and

commitment of people, citizens and employees, to new horizons of potential.

Research and observations involving hundreds of municipal, county, corporate and non-profit governing bodies indicate that the truly highly effective ones demonstrate consistently 10 habits fundamental to their success. Our nation's founders when confronted with intense challenge, anxiety, danger and dissent soon recognized the "plus some" factor.

Plus Some is unbridled curiosity, intellectual energy, and self confidence combined with a commitment to continued learning, courage, resolve and integrity; i.e. character. Plus Some is the bedrock upon which all effective councils, and their members, create and manage change successfully toward productive outcomes. Leadership provided by highly effective councils achieves the fulfillment of visions through, first, awakening the best in people, and, secondly, following the 10 habits for effectiveness

The Plus Some elements and 10 habits of highly effective councils and the council-staff-community partnerships through which they work are: 1. The ability to awaken the best in people and in themselves. 2. Transforming oneself from candidate for council to being a truly effective council member.

The 10 habits of highly effective councils:

Think and act strategically; Understand and demonstrate the elements of teams and teamwork; Master small-group decision making; Have clearly defined roles and relationships; Develop and honor the council-staff-community partnerships; Conduct systematic and objective evaluation of policy implementation; Allocate council time and energy wisely and appropriately; Establish, and abide by, clear rules and procedures for council meetings; Get a valid assessment of the public's concerns and evaluation of council's performance; Practice continuous learning and development as leaders.

Leadership we provide at the local and municipal level is the very type of leadership that made America burst upon the stage of human imagination more than two centuries ago. Our call as mayors, council members and administrators is to preserve and perfect that caliber of leadership with a sense of purpose, honor and skill; to be leaders in the truest sense of the word. We all are capable of answering this call through developing good governance models and a disciplined adherence to fundamental habits of effectiveness.

For information on registering for these seminars, visit the NLC conference website at www.nlc.org and click on the Leadership Training Institute Seminars button or call the Leadership Training Hotline at **202-626-3170**. ■



ENVIRONMENTAL OUTLOOK



By Gregory D. Cochran
Director, State and Federal Relations

Congress Renews National Dam Safety Program

The U.S. House of Representatives voted in August to renew a national dam safety program. The reauthorization of the National Dam Safety and Security Act passed the U.S. House last month by a 401-2 vote with Alabama's congressional delegation support. But Alabama is one of two states that will not qualify for the federal funds it provides to inspect and secure dams until legislation proposed by ADECA's Office of Water Resources is passed. The lack of a dam safety law on Alabama's books means federal dollars to identify and shore up weakening dams never reaches our state.

The Alabama Office of Water Resources estimates some 2,100 dams in the state go uninspected, and about 200 of them are designated as high hazard and would probably kill someone if they failed. The figure does not include the state's 70 major dams that are regulated and inspected by the Tennessee Valley Authority, the Federal Energy Regulatory Commission or the Army Corps of Engineers.

Neighboring states, such as Mississippi, have received nearly \$600,000 in federal grants during the past four years for work on its 3,328 dams; Louisiana got \$145,000 for its 381 dams; and Georgia's nearly 5,000 dams qualified for more than \$630,000. Other states have used the money to hire inspectors, create an inventory of dams and the hazards they present, and buy inspection equipment.

Four times since 1985, attempts to pass a dam safety law have failed in the Alabama Legislature, according to the water resources office in the Alabama Department of Economic and Community Affairs. Opponents have included farmers, who feared it would disrupt the earthen impoundments they build to irrigate crops and livestock or fill for catfish ponds. This year, representatives of the Alabama Farmers Federation says it's close to negotiating a deal with state officials that private landowners can live with.

The proposal creates standards for construction, operation and removal of dams. In addition, it allows funding for dam restoration while limiting liability on the property owners. Proposed state legislation would define a dam as 25 feet in

height and 50 acre-foot in volume.

Historically, dams that failed had some deficiency which caused the failure. Failures are most likely to occur from one of the following reasons; (1) Overtopping, caused by water spilling over the top of the dam; (2) Structural failure of materials used in dam construction; (3) Stability failure of the foundation or other features that hold the dam in place; (4) Cracking caused by movements like natural settling of a dam; (5) Inadequate maintenance and upkeep; (6) Piping, when seepage through the dam is not properly filtered and soil and other particles continue to progress and form sink holes in the dam. Many dams have been designed for an effective life of 50 years. With proper design, maintenance and care they can last longer. The majority of dams in the country are quickly approaching this age. By the year 2000, 30 percent of the dams in the U.S. were 50 years old; by the year 2020, 80 percent will be this age. Rehabilitation of these aging dams needs to be top priority, before its too late.

During the 1990s, floods damaged over 400,000 acres of land at an estimated cost of \$100 million with seven deaths. As a result of the 1998 flood, five people died, 800 families were affected and 11 counties reported damage. In the 1994 flood there were two people killed as a result of the storms, 400,000 acres of farmland were flooded and 10 counties were declared disaster areas. In the 1990 flood, more than six thousand people had either lost their homes or had extensive property damage.

State Parks To Spend \$182 Million On Repairs

In the 1960s and '70s, the Alabama State Park System was considered a national model. Unfortunately, mother nature and age have taken their toll on Alabama's state parks. In 1998, Alabama voters recognized the need to improve and update their parks when they overwhelmingly passed a \$109 million state park improvement bond issue. In August, the Alabama

continued next page

Department of Conservation and Natural Resources proposed \$182 million in renovations for Alabama's 24 crumbling state parks. It is the biggest state park investment in Alabama history and the first since George Wallace was governor.

The Department of Conservation has been seeking input on the latest State Park Renovation Program master plan. For more information about the renovations contact Department of Conservation at **334-242-3486**.

Community Foundation of Greater Birmingham and the Environment

The Community Foundation of Greater Birmingham is a permanent community endowment whose mission is to serve the community by connecting caring people and key resources with community needs. It accomplishes this mission through grantmaking funds established by local individuals, families, businesses and agencies.

In 2001, The Community Foundation awarded some \$9.4 million in more than 1200 grants. Out of that total, approximately 10 percent went to environmental organizations, primarily in the five-county greater Birmingham area.

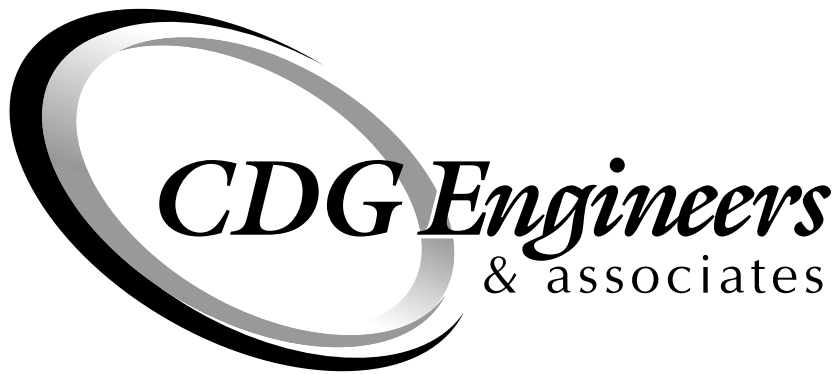
In 2000, The Community Foundation made one of its largest grants in the environmental area to The Nature Conservancy of Alabama. That grant was \$375,000 over two years for the "Now and Forever Alabama: Save Our Last Great

Places" capital campaign. In the most recent round of grantmaking, which ended March 15, 2002, grants were made to the Cahaba River Society (supporting Upper Cahaba River Planning); Southern Environmental Center (Woodlawn Ecoscape project); Cawaco Resource Conservation and Development Council (Landscape design in 72 municipalities); and several other groups based in the Birmingham metro area.

All of these grants were made from Unrestricted and Field of Interest Funds. For example, the Burnie and Verda Clifton Memorial Fund, a Field of Interest Fund with the Community Foundation of Greater Birmingham, lists the environment, as well as health and human services, as the areas that it supports.

In addition, individuals, families and corporations can use The Community Foundation to make a difference in the charitable causes they care about by setting up an Advised Fund for grantmaking. Once they establish a grantmaking fund, they can recommend grants from it to other nonprofit organizations.

To learn more about the Community Foundation and the wonderful service it provides to communities across the Birmingham metro area, visit their website at www.foundationbirmingham.org or call **205-328-8641**. Information on how to make a gift to the Foundation, as well as applications for grant proposals, can be accessed at the site. ■



Utilities
Water
Wastewater

Roads and Drainage
Natural Gas Systems
Environmental Compliance

P.O. Box 278
1840 US Hwy 29 N
Andalusia, Alabama 36420
(334) 222-9431

P.O. Box 2079
200 West Alabama Avenue
Albertville, Alabama 35950
(256) 891-3458



By Ken Smith
Director, Legal Services & Computer Programs

THE LEGAL VIEWPOINT

Municipalities and The First Amendment

The First Amendment to the United States Constitution protects individual liberties in freedom of religion, speech, and peaceful assemblage from intervention by the federal government. These individual liberties are protected from invasion by state and local governments by the Fourteenth Amendment.

The language of the First Amendment is broad, making it subject to a wide range of interpretation. It states that “Congress shall make no law respecting an establishment of religion, or the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for the redress of grievances.” The Attorney General’s Office has held that a determination regarding whether a municipal ordinance is constitutional can only be made by the courts. Attorney General’s Opinion 2000-104.

Municipal officials must be aware of the latest interpretations of the First Amendment. The parameters of the amendment are constantly being redefined by the courts. This article surveys the First Amendment as it relates to municipalities and provides an overview of the major areas involving problems for municipal regulation.

Freedom of Speech and Religion

For many individuals, no personal freedom is more important than the freedom to worship. Wars continue to be fought in many parts of the world to secure this freedom. This desire for freedom was one of the principal reasons the original colonies sought independence from England.

The First Amendment guarantees that every person has the right to worship, or refuse to worship, as he or she chooses. The First Amendment also ensures that government, on any level, will not become involved in establishing one religion over another.

The Establishment Clause was intended to erect a “wall of separation between the church and the state.” *Illinois v.*

Board of Education, 333 U.S. 203 (1948). The goal was not only to stop the intrusion of government into private affairs of religion, but also to prevent the intrusion of the church into the affairs of state. *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

In *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973), the United States Supreme Court set out a three-part test for determining whether a governmental act violates the Establishment Clause. First, the act must reflect a clearly secular legislative purpose. Second, it must have a primary effect that neither advances nor inhibits religion. And, third, it must avoid excessive governmental entanglement with religion. If these three criteria are met, a governmental act does not violate the Establishment Clause.

The Supreme Court has also formulated a test for determining whether a governmental act unconstitutionally burdens the free exercise of religion. In *Winconsin v. Yoder*, 406 U.S. 205 (1972) the Court stated that first, a court must determine whether the regulation in question constitutes such a burden. Then, a court must decide whether the governmental objective can be achieved by a less restrictive method, regardless of whether the governmental interest is of a greater magnitude.

Sometimes government must perform a balancing act when it attempts to avoid the endorsement of religion and conflict with other First Amendment concerns. In *Capitol Square Review and Advisory Board v. Pinette*, 63 LW 4684 (1995), the U.S. Supreme Court held that the board may not, on Establishment Clause grounds, prohibit the erection of a cross in a public square used for public expression. However, the Court ruled that the board could take reasonable actions to eliminate confusion that the cross amounted to state endorsement of religion.

Perhaps the area where cities run into the most trouble with freedom of religion of its citizens is in the regulation of

continued next page

solicitation. While these cases are generally disposed of under a freedom of speech analysis, most of the challenges to municipal solicitation ordinances have been by religions claiming that their right to freely exercise their religion has been taken away. The general rule is that regulation in this area “must be done, and the restriction applied, in such a manner as not to intrude upon the rights of free speech and free assembly.” *Thomas v. Collins*, 323 U.S. 516, 540-541 (1945).

For instance, in *Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640 (1981), the United States Supreme Court was presented with a state statute requiring all groups desiring to solicit or distribute materials at a state fair to do so only from a fixed location. Space at the fairgrounds was rented in a first-come, first-served nondiscriminatory fashion. The Krishnas sought to have this ordinance struck down so they could mingle with the crowd at the fair and distribute their literature. The state argued that its interest was in safety and ensuring the orderly movement of patrons at the fair. The Court upheld this statute as a valid time, place and manner regulation because it did not discriminate against the Krishnas. In addition, the Court noted that the statute allowed members of groups to talk with patrons at the fair, as long as no funds or literature changed hands.

When these ordinances have been struck down, they generally censored a group or allowed one person in the government absolute discretion to decide which groups received permits to solicit and which groups did not. See *International Society for Krishna Consciousness of Houston, Inc. v. City of Houston*, 51 LW 2253 (5th Cir. 1982). Even though funds are being solicited for a religious purpose, if the government has a compelling interest in the reasonable regulation of a protected First Amendment activity, the regulation will be upheld. However, not all regulations will be upheld. A resolution of an airport commission banning all First Amendment activities within the airport terminal was held facially unconstitutional in *Board of Airport Commissioners of the City of Los Angeles v. Jews for Jesus, Inc.*, 55 LW 4855 (1987). In *International Krishna Consciousness, Inc. v. Lee*, 60 LW 4749 (1992), the U.S. Supreme Court held that a regulation banning repetitive solicitation of funds inside a terminal was reasonable. However, bans on the distribution of literature inside terminals violated the Free Speech Clause.

At Christmas many municipalities are also interested in displaying a nativity scene. In *Lynce v. Donnelly*, 465 U.S. 668 (1984), the United States Supreme Court ruled that a nativity scene displayed at Christmas is permissible. It should be noted that the display at issue in this case was merely one part of a much larger display of figures and traditions associated with the Christmas season. Taken in this light,

the majority in this case was willing to permit the display. It is still undecided whether a display of just a nativity scene would be interpreted as a violation of the Establishment Clause. It has been held that allowing the unattended privately-sponsored display of a 15-foot menorah in the rotunda of a state capitol that is designated a public forum does not violate the Establishment Clause. *Chabad-Lubavitch of Georgia v. Miller*, 62 LW 2260 (11th Cir. 1993).

Ordinances are to be construed, if possible, to remove any possible danger that they might be used to restrain or burden freedom of worship. See *People v. Barber*, 289 N.Y. 378, 46 N.E. 2d 329 (1943).

The First Amendment also provides that Congress shall make no law abridging the freedom of speech or freedom of the press. This ban, likewise, is made applicable to state and local governments by the Fourteenth Amendment.

In construing municipal legislation which restricts freedom of speech, a court must examine the effect of the legislation and weigh the circumstances and the substantiality of the reasons advanced favoring the regulation. An ordinance is to be construed, if possible, to remove any danger of its impairing free speech. See *People v. Barber, supra*. Any doubt as to whether an ordinance unconstitutionally infringes upon freedom of speech should be resolved against the ordinance.

Freedom of speech does not prevent the exercise of police or other sovereign powers in many circumstances. For instance, even though streets and parks are recognized as traditional gathering places for the dissemination of ideas and the communication of thoughts, a municipality may require a permit to use the park, provided the permit is not subject to unguided official discretion. *Jamison v. Texas*, 318 U.S. 413 (1943). In order to be valid, a permit requirement must provide standards officials are to follow in issuing the permit.

Parade permit ordinances may violate the First Amendment. The U.S. Supreme Court has held that an ordinance which required applicants for a parade permit to pay an advance fee of up to \$1,000, adjustable by the county administrator on a case-by-case basis, violated the First Amendment. *Forsyth County, Ga. v. Nationalist Movement*, 60 LW 4597 (1992).

The use of sound trucks, loudspeakers or amplifiers is subject to reasonable regulation, provided there is no arbitrary discretion vested in an official to permit or refuse the use of such equipment.

Reasonable time, place and manner restrictions will be upheld as long as the restriction is narrowly tailored to serve a significant government interest and provided alternative channels of communication exist. *Perry Education Association v. Perry Local Educator's Association*, 460

U.S. 37 (1983).

The Eleventh Circuit Court of Appeals has held that a municipal ordinance that bans barkers from distributing handbills in certain districts is designed to reduce litter and sidewalk congestion and does not violate the First Amendment. *Sciarrino v. Key West, Fla.*, 64 LW 2726 (11th Cir. 1996). Commercial speech is subject to more regulation than political or religious speech. In addition, the protection of the First Amendment does not extend to conduct which is not associated with the communication of speech. See *City of Chattanooga v. McCoy*, 645 S.W. 2d 400 (Tenn. 1983).

It must be noted that Congress has recently passed the Religious Land Use and Institutionalized Persons Act (RLUIPA) that prohibits municipalities from taking any action that constitutes a significant burden on religious activities. Additionally, Alabama voters passed Amendment No. 622, Alabama Constitution, 1901, the Alabama Religious Freedom Amendment, that prohibits government from taking any action that constitutes a burden on religion. These actions will have a tremendous impact on the relationship between municipal governments and religious institutions. The League will keep its members updated on developments concerning these provisions.

Cable Television Franchises

In *City of Los Angeles v. Preferred Communications, Inc.*, 476 U.S. 488, (1986), a unanimous Supreme Court held that First Amendment rights to freedom of speech are implicated when a city refuses to permit a second cable television company to operate in the city limits. In this case, Los Angeles held an auction to decide which of several cable television companies would be granted an exclusive franchise to provide cable television services to the city's residents. Preferred Communications, Inc. did not participate in the auction, either because it chose not to or because it did not know about the auction. When Preferred Communications requested permission from the Los Angeles Department of Water and Power to lease space on its utility poles in order to run its cables, the Department stated that it would not lease the space unless Preferred could obtain a franchise from the city. Los Angeles refused to grant the franchise because Preferred did not participate in the auction.

Preferred Communications sued, arguing that the furnishing of cable service was a First Amendment right and because the Los Angeles area was large enough to support more than one cable company, the city had violated the company's right to free speech by denying the franchise. The city admitted that Los Angeles was large enough to support more than one cable company, but contended that the physical scarcity of available space on public utility structures and the limits of economic demand for cable

service justified the city's decision to restrict access to its facilities.

The Supreme Court held, if the facts as alleged proved to be true, that the First Amendment rights of Preferred Communications had been violated. The Court noted that, because cable operators exercise editorial control over what programming they will air, cable television "partakes of some of the aspects of speech and the communication of ideas as do the traditional enterprises of newspapers and book publishers, public speakers and pamphleteers."

However, the Court stated that the city could still legally restrict the company's right to free speech if the interests of society, when balanced against the First Amendment right implicated, outweighed the right to free speech, because, in this case, speech is combined with conduct. The Court declined, though, to formulate a standard for the city to use in deciding whether to grant a cable franchise. A concurring opinion stated that such a standard could only be formulated after factual information concerning the case was gathered at trial.

In *Warner Communications, Inc. v. Niceville*, 59 LW 2195 (11th Cir. 1990), the Eleventh Circuit upheld the right of a municipality to operate its own cable company.

Regulation of Adult Businesses

One of the First Amendment areas in which cities must be particularly careful not to go too far is the regulation of adult businesses. In *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1985), the Supreme Court upheld a zoning ordinance designed to restrict adult businesses to a particular area of the city. However, adult businesses are still protected by the First Amendment which would prohibit a total ban.

The U.S. Supreme Court, though, in *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 566 (1991), concluded that the First Amendment's guarantee of free expression only "marginally" protects nude dancing, and that such expressive conduct is "within the outer perimeters of the First Amendment." In *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989), the Court noted that an adult use regulation is narrowly tailored "so long as the... regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." Provided "the means chosen are not substantially broader than necessary to achieve the government's interests, the regulation will not be invalid simply because a court concludes that the government's interest could have been adequately served by some less-speech-restrictive alternative." Ward thus expressly rejected a requirement that the government utilize the "least restrictive means" or the "least restrictive alternative" in order to meet the narrowly tailored requirement.

continued next page

To pass a valid ordinance regulating adult businesses, a city must demonstrate, by a record of findings, that such businesses cause some secondary effect, such as increased crime, which requires city regulation. These findings may be based on the experiences of other cities. It is not necessary that the city choose the same method of regulation as did the city that made the survey.

Next, the ordinance must be “content neutral.” That is, it must be designed to eliminate the secondary effect without unnecessarily limiting alternative avenues of expression. The goal must be to regulate the time, place and manner of expression, rather than to completely eliminate adult businesses from the community. However, as long as the ordinance is content neutral, the actual intent of the municipal governing body is irrelevant.

Newsbox and Newsrack Regulations

In *New York Times v. City of Lakewood*, 791 F. 2d 934 (6th Cir. 1986), and in *Plain Dealer Publishing Co. v. City of Lakewood*, 794 F. 2d 1139 (6th Cir. 1986), two challenges were filed to an ordinance of the City of Lakewood, Ohio, which prohibited the installation of newspaper boxes on city property without paying rent and which forbid the installation of such boxes on private property without the consent of the owner. The city also passed a zoning ordinance designed to prevent the installation of newspaper boxes on residential property.

The Court in *Plain Dealer* held that a newspaper does not secure any property rights on city property because of the First Amendment. In addition, the Court ruled that newspaper boxes are subject to reasonable zoning ordinances and that placing such boxes on city property without paying rent amounts to a taking of city property. The Court felt, however, that Lakewood’s ordinance gave unbridled discretion to the mayor to grant and deny rental permits, and that requiring insurance for the boxes, as Lakewood’s ordinance did, was unconstitutional. The United States Supreme Court affirmed. *City of Lakewood v. Plain Dealer Publishing Co.*, 56 LW 4611 (1988).

Municipal regulation of newsracks are also subject to First Amendment concerns. In *Cincinnati v. Discovery Network Inc.*, 61 LW 4263, the U.S. Supreme Court held that a city’s ban on the distribution of commercial publications through newsracks located on public property, while permitting such distribution of noncommercial publications, violated the First Amendment for lack of a reasonable fit between the city’s legitimate interests in maintaining safety and aesthetics and its selective method of achieving those interests. The distinction between newsracks distributing commercial and noncommercial speech bears no relationship to the city’s asserted interests and thus cannot be justified by the lesser First Amendment protection afforded

commercial speech. The ban was based on the content of the publications distributed and thus cannot be upheld as a valid time, place, or manner restriction on protected speech.

Sign Ordinances

Each election year, the League receives numerous requests from cities for sample ordinances prohibiting the posting of election signs or other types of signs within the city. The federal courts have construed several sign ordinances in recent years. In a case before the U.S. Supreme Court, *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981), the Court struck down an ordinance seeking to prohibit all outdoor signs other than on-premise advertising signs.

The ordinance provided certain exceptions, permitting some speech in areas where other speech was prohibited. The Court stated that insofar as the ordinance regulated commercial speech, there was no problem. The ordinance proposed to improve safety and the appearance of the city, which were substantial government interests and directly served those goals. However, under certain specified exceptions, the city chose to allow some noncommercial speech while banning others. This, the Court ruled, is not a permissible time, place and manner regulation.

In a second case before the U.S. Supreme Court, *Member of the City Council of the City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789 (1984), the ordinance before the Court prohibited the posting of signs on public property. Taxpayers for Vincent, a group supporting a candidate running for election to the city council, placed campaign ads on utility poles and other public property. City workers routinely removed these signs. The taxpayers filed suit, alleging that the ordinance abridged their freedom of speech.

The Court held that the ordinance was silent concerning any speaker’s point of view and evidence revealed that it was applied in an evenhanded manner. The Court stated that the accumulation of signs on public property presented a substantial government interest which was within the power of the city to prohibit.

Further, the Court found no merit in the argument that the property covered by the ordinance should be considered a public forum subject to special First Amendment protection. The Court stated that the mere fact that the government property could be used as a means for communication does not require that this use be permitted.

In examining these two cases, it seems clear that an ordinance which proposes to ban all advertising, both commercial and noncommercial, on public property which does not constitute a public forum, is valid. Further, restriction of commercial advertising to specifically-enumerated areas

continued page 30



Legal Notes

By Lori Lein
League Counsel

COURT DECISIONS

Elections: State courts lack jurisdiction over municipal election contests by voters whose votes are not counted because the Justice Department refused to preclear their annexations. These votes may not be included in election totals until the annexations are precleared. *Singer v. City of Alabaster*, 821 So.2d 954 (Ala. 2001).

Tort Liability: Discretionary-function immunity does not shield a city, police chief, and police officers from liability for the alleged statutory negligence of a police officer, who, contrary to statutory requirements, failed to impound the car of a driver with a prior conviction for driving under the influence who later the same day was involved in a collision while intoxicated. Further, a municipality's chief executive officer cannot be held vicariously liable for the misconduct of his or her subordinates and thus the doctrine of respondeat superior would not apply under these facts. *Norris v. City of Montgomery*, 821 So.2d 149 (Ala. 2001). **NOTE:** This case involved statutory requirements imposed on local police departments by the Safe Streets Act, which has been repealed.

Property: A city, as fee simple owner of land underlying a dedicated street adjoining a navigable cove, owned the riparian rights to the cove, and thus, owners of the land across the street from the cove were not entitled to build, use, or maintain a pier on the cove. As such, a city building inspector's statement to the landowners that the city had no jurisdiction over the cove and that the landowners could build a pier there, were misstatements of the law. Therefore, the city was not equitably estopped from obtaining a declaratory judgment and injunctive relief to prohibit the landowners from using or maintaining the pier. *City of Orange Beach v. Benjamin*, 821 So.2d 193 (Ala. 2001).

Court Decisions from Other Jurisdictions

Telecommunications: The Telecommunications Act provision that bars states from prohibiting "any entity" from providing telecommunications services clearly states a congressional intent to override the states' regulation of their political subdivisions and thus preempts a Missouri law prohibiting municipalities from providing telecommunications services. *Missouri Municipal League v. FCC*, – F.3d –, 71 L.W. 1135 (8-27-02) (8th Cir., No. 01-1379).

ATTORNEY GENERAL OPINIONS

Appropriations: If the municipal governing body determines that a public purpose would be served by supporting a program sponsored by the Boy Scouts of America, the municipality may enter into a contract with the Boy Scout Council to provide funds for the program in exchange for providing disadvantaged Hispanic and African-American youth access to cub scouting and boy scouting programs. 2002-318.

Incorporation: The probate judge may set an incorporation election on the same date as the November general election and in the same polling place as long as the elections are physically separated in the polling place and the areas of voting are clearly designated. 2002-325.

Education: If local legislation authorizes it, then upon the affirmative vote of a majority of the members of a board of education members of the board may be compensated at a rate in excess of the \$600 per month cap set out in Section 16-1-26 of the Code of Alabama 1975. 2002-328.

SAVE A MILLION \$\$\$\$\$\$ ON WORKMAN'S COMP

Schedule an appointment today to learn more
and receive a **FREE** padfolio.

Our Visual Safety Incentive Program Advantages Are:

- No Start-Up Costs
- Customization
- Fixed Budget
- No Inventory
- Quality & Service
- Experience

OSHA Concerning Incentive Programs:
"By increasing awareness and rewarding
behavior through incentive programs,
employers have seen a reduction in
all injury categories."

"Join the Winning Team"



Junior Davis & Associates, Inc.
2041 Oak Mountain Drive
Pelham, Alabama 35124
205-620-9961 ext. 221
www.juniordavis.com

Junior Davis & Associates, Inc.

CAE CARR & ASSOCIATES ENGINEERS, INC.

CIVIL ENGINEERS & SURVEYORS

Municipal Engineering Services

↳
Roads & Drainage Design

↳
Land & Topographic Surveys

↳
Utilities, Water, Gas, Sewage

↳
Structural Engineering

↳
Site Planning

↳
Plans Review for Code Compliance

2052 Oak Mountain Drive
Pelham, Alabama 35124
205-664-8498 / FAX 205-664-9685

LEAGUE PUBLICATIONS ON DISK ...

ALM Library

Seven of the League's most requested
publications are now on computer disk ...

- Selected Readings for the Municipal Official
- Handbook for Mayors and Councilmembers
- Labor Laws Affecting Municipalities
- Municipal Public Improvement Cost Assessment
- Methods of Extending Municipal Corporate Limits
- Incorporating a Municipality
- Municipal Clerks Manual

MunicipaLaw on Disc

- Summaries of Alabama Attorney General's opinions
- Summaries of Ethics Commission opinions
- Summaries of Alabama and Federal court opinions
- Other court opinions as published in the *Alabama Municipal News*

New Features to MunicipaLaw on Disc:

- *Directory of Municipal Officials*
- *Directory of Municipal Attorneys*
- *Directory of Municipal Judges*

*Use your computer to search by word,
phrase or citation!*

**Both the ALM Library and
MunicipaLaw on Disc are
available in Windows format.**

To order call:

334-262-2566

Municipalities Should Establish Reserves at 10 to 20 Percent of General Fund Revenues

Reported by Perry C. Roquemore, Jr., League Executive Director

The Committee on Finance, Administration and Intergovernmental Relations of the Alabama League of Municipalities met on Thursday, September 5, 2002, at the Montgomery Civic Center. Mayor Barbara Patton of Opelika, Chair, called the meeting to order at 10:15 a.m. The League Director was asked to call the roll. Those members present were: Mayor Barbara Patton, Opelika, Chair; Mayor Charles Murphy, Robertsdale, Vice Chair; Council Member Mervin Huff, Brewton, Mayor Tim Russell, Foley, Mayor Frank Houston, Coosada, Mayor Glen Zorn, Florala, Mayor John D. Harrison, Luverne, Mayor Fred M. McNab, Pinckard, Council Member Margie Sanford, Childersburg, Mayor Lew Watson, Lincoln, Council Member Gary Fuller, Opelika, Mayor Leon Smith, Oxford, Council Member JoAnn Ray, Gadsden, Mayor Gordon Dunagan, Good Hope, Council Member Gwyneth Jones, Guin, Mayor James D. Townson, Guntersville, Council Member Wayne Dunkin, Priceville, Mayor Melvin Duran, Priceville, Mayor Debbie Martin, Centreville, Mayor Barry R. McCulley, Homewood, Dr. Simpson Berry, Council Member, Irondale, Mayor Charles McCallum, Vestavia Hills, City Administrator Chris Miller, Bay Minette, and Administrator/Manager Alan Pate, Hoover. Resource advisors present were: Mr. Bob Young of the Frazer Lanier Company; Sam Wingard, Administrative Office of Courts; Mr. Allen Elrod, Property Tax Division, Alabama Department of Revenue; Ms. Leslie Michaud and Mr. Joe Cohen of the Sales, Use and Business Tax Division, Alabama Department of Revenue. Also present was League Legislative Liaison Hal Bloom, Cameron Whitman, NLC, and League Director Perry C. Roquemore, Jr.

Mayor Patton thanked members for coming out when municipalities are faced with more responsibilities and less revenues. She explained the procedures to be followed during the meeting and also thanked the resource advisors for their assistance. Mayor Murphy also welcomed everyone.

Mr. Bob Young of the Frazer Lanier Company was called upon for his presentation. He stated that the bond market is an important aspect of municipal financing. Historically, U.S. government securities and municipal bonds have been the safest investments. There is good news on the borrowing side and terrible news on the investing side.

Although municipal expenditures have been increasing,

long term interest rates have been on the decline for the last 10 years. Long term interest rates are extremely low now with some falling below five percent. Mr. Young told the committee that these low long term rates will be around for at least another year. Current return on short term investments is around two percent. "Short term" refers to securities with a lifetime of five years or less. "Long term" refers to securities with a life of 20 years or longer.

Since September 11, 2001, there has been a substantial decrease in the Federal discount rate. However, there has not been an equivalent drop in long term municipal bond rates. The Federal discount rate is an investment indicator. The drop in the Federal discount rate has had an effect on short term rates but very little effect on long term borrowing.

The rate of inflation has been very low. Assuming conditions remain the same, Mr. Young expects to see extremely low long term interest rates and low rates on investment income.

He recommended that municipalities set up reserves equivalent to 10-20 percent of general fund revenues.

Mayor Patton thanked Mr. Young for his presentations over the years. She then called upon Mr. Sam Wingard of the Administrative Office of Courts for his presentation.

Mr. Wingard introduced Mr. Tom Payne who has recently been hired by the Administrative Office of Courts for the Municipal Courts Division. Mr. Wingard told the committee that more criminal cases and traffic cases are filed in municipal courts than in the district courts. The municipal court caseload increased from 2000 to 2001. In 2000, there were 635,000 case filings in municipal courts across the state. In 2001, the number of case filings grew to 656,000. In 2000, \$34 million in fines and costs were collected by municipal courts. This figure grew to \$46 million in 2001. Of these amounts, over one-third is sent to various state agencies.

In 2000, municipal courts collected \$6 million in fair trial tax money. After deductions for indigent defense costs at the municipal level, the remaining \$4 million was sent to the state.

Mr. Wingard stated that the Administrative Office of Courts supports the Policies and Goals adopted by the

continued next page

League. His agency wants the League to continue advocating training for court clerks and magistrates and to encourage more municipal judges to go to training courses offered by the Administrative Office of Courts. He urged the League to oppose legislation that would divert additional fines or court cost collections away from the municipal courts to other entities. The Administrative Office of Courts continues to support legislation that would give municipalities 2-5 percent of all court costs collected as an administrative fee for collecting these costs for the state.

He urged the League members to continue to send their police officers to receive training in court procedures offered by the Administrative Office of Courts. He also asked the League to continue to support accountability. Municipalities were urged to make sure that their municipal courts are following proper procedures.

Mr. Wingard stated that the Administrative Office of Courts supports legislation to amend Section 11-45-9, Code of Alabama 1975, which sets the maximum fine for misdemeanors, to allow municipal courts to assess a higher maximum when state law provides for a higher maximum if the case were tried in district court.

In conclusion, he asked municipal officials to make sure their municipal court clerks are following the procedures outlined in Rule 4.11 of the Alabama Rules of Court. Also, it is imperative that magistrates are free to make independent judgments on matters that come before them.

The Chair thanked Mr. Wingard for his presentation and called upon Mr. Allen Elrod, Property Tax Division, Alabama Department of Revenue, for his presentation. Mr. Elrod stated that in FY 2000-2001, \$1.4 billion was collected in property tax for all agencies (state, county and municipal). In FY 2001-2002, the amount grew to \$1.55 billion, an eight percent increase. Municipal property tax collections grew seven percent during the same period from \$306 million (FY 2000-2001) to \$328 million (FY 2001-2002). He pointed out that the growth rate was a statewide average – some areas saw higher increases while other areas saw lower increases. He observed that property tax collections continue to remain fairly stable and fairly predictable. There continues to be an overwhelming demand for real property throughout the state.

He urged the League to encourage municipalities to report new annexations of property to their county tax officials as soon as possible so that property taxes can be collected in these areas. It causes a lot of bad publicity for the city or town when they have to go and charge back taxes on these property owners.

Mr. Elrod stated that he appreciated the League's support of the Fair Disclosure bill which would require actual purchase prices to be placed on deeds. He also told committee members that his department continues to work on a statewide GIS program. The Governor created the Alabama

Geographic Information Council to work on this project. It is a long term project that will benefit the entire state. It is expected that the Federal government will soon have funding available to help local governments fund GIS projects. He added that the National League of Cities supports this effort.

Mr. Elrod was thanked for his presentation. The Chair called on Leslie Michaud, Sales, Use and Business Tax Division, Alabama Department of Revenue, for her presentation. She stated that her department is committed to establishing better communications and cooperation between the Sales, Use and Business Tax Division and local governments. The Alabama Department of Revenue has an excellent web site containing all of the rules and tax rates for the state as well as all local governments. Sample ordinances and resolutions are also available upon request.

The Department allows municipalities to enter into exchange of information agreements with ADOR to obtain confidential tax information for use in local tax administration. More information can be obtained by contacting Mr. Lewis Easterly, Secretary of the Alabama Department of Revenue, P.O. Box 327001, Montgomery, Alabama 36132-7001.

She closed by stating that the Department wants suggestions on how they can better serve municipal governments.

The Chair then called upon Joe Cohen, Director of the Sales, Use and Business Tax Division, Alabama Department of Revenue. Mr. Cohen stated that the Department desires to improve relations with municipal governments. The Department seeks to promote cooperative efforts on both taxation and audit related matters. The Department needs more auditors, but has been hampered by tight budgets. The Department is studying the possibility of partnering with local governments for audit purposes. They want to enhance state and local revenues by reducing costs and obtaining administrative efficiency by sharing information.

Dot com companies have caused a lot of problems and revenue losses. These entities are not required to collect our state and local taxes. Local merchants have a hard time competing with these companies because these companies can sell for less. The number of these companies is growing at a rate of 25-35 percent annually. It has been estimated that Alabama is losing close to \$50 million per year in tax revenues as a result of dot com companies.

The Streamlined Sales Tax Project (SSTP) was established to develop a model that all states could agree to in order to get congressional approval of legislation allowing the taxation of internet sales. The initial SSTP model was not suitable for Alabama. State and local tax officials are working with the SSTP to get modifications in the model that will be much more suitable for our state.

The League, the Association of County Commissions
continued page 29

ADEM and EPA Promote Rehabilitation and Usage of Brownsfields

Reported by Gregory D. Cochran, Director of State and Federal Relations

The League's Committee on Energy, Environment and Natural Resources met at 10:00 a.m. on Thursday, September 5, 2002 with Council Member Debbie Quinn of Fairhope, Committee Chairman presiding. Other committee members present were Committee Vice-chair, Council Member Arthur Davis of Calera, Mayor Don McClellan of Alexander City, Mayor Sue Glidewell of Rainbow City, Mayor Austin Caldwell of Demopolis, Mayor Edward Daniel of Marion, Mayor John F. Bradshaw of Moundville, Mayor Joan Ford of Ragland, Mayor Phil Seagraves of Guin, Council Member Victor Long of Millbrook, Council Member Joe Outlaw of Ozark, Council Member Nell Gustavson of Daphne, Council Member Sadie Britt of Lincoln, Council Member Edward Chambers, Jr. of Blountsville, Council Member Gary Gray of Guntersville, and Council Member Sherroll Tatom, Brundidge. Resource advisors present were Marilyn Elliott, Deputy Director of ADEM; Aubrey White, ADEM SRF Program Manager; Lyn Sisk, Municipal Branch Manager, ADEM Water Division; Lynn Garthright of ADEM Air Division; David Chasteen of ADEM Permit Division; Larry Norris, ADEM Hazardous Waste Branch; David Roberson, Environmental Guidance Corp; and Louie Cardinal, Thornton Farish. Also present was Gregory D. Cochran, Director of State & Federal Relations.

Council Member Debbie Quinn welcomed committee members, thanked them for attending the work session and introduced the resource advisors.

The Chairman called on Larry Norris of the Hazardous Waste Branch of ADEM Land Division for his comments. Mr. Norris stated Alabama land use has moved from being primarily farmland to manufacturing service and retail industries. Abandoned brownfield tracts reduce property taxes to the state; therefore it is the goal of EPA and ADEM to establish new laws and regulations promoting the rehabilitation and usage of these sites. Governor Siegelman signed into law Act number 2001-635 to promote economic development of brownfields by limiting the civil liability on new uses to identified brownfields and preempting third party lawsuits. ADEM received a \$1 million dollar grant from EPA to establish a State Revolving Fund. ADEM is currently developing the application criteria and times lines to begin loaning these funds. Only public entities may apply for SRF

monies. Information about this SRF program can be found on the ADEM website. ADEM will also assist local communities with EPA direct grant applications through technical support and grant writing expertise.

The Chair called on David Roberson, President of Environmental Guidance Corp and Chairman of the ADEM workgroup for his comments. Mr. Roberson thanked the League for supporting the brownfield limited liability legislation and urged the committee to adopt a new policy supporting the newest brownfield legislation. The new legislation would establish the Brownfield SRF program, and allow ADEM and local governments to apply for the \$200 million in EPA funds approved by President George W. Bush. Legislation has also been developed to authorize state and local governments to grant non-educational tax abatements to include ad valorem, construction related transaction taxes and mortgage taxes. These abatements would be used as incentives for assessing, cleaning and redevelopment of contaminated properties.

The Chairman called on Lynn Garthright of ADEM's Air Division for her comments. Ms. Garthright stated that ADEM is continuing to monitor air quality across Alabama and six counties continue to fail meeting the eight-hour standards established by EPA. The following counties are Jefferson, Shelby, Madison, Clay, Russell and Mobile. Ms. Garthright explained that the court challenges of EPA regulations on eight-hour standards are being heard in federal circuit courts in the District of Columbia. ADEM and EPA expect an appeals court ruling in 2002. There is only one year remaining for these counties to reach attainment. Non-attainment penalties include, but are not limited to, restrictions on new industrial development, restrictions on new industrial expansions, reduction of federal highway funds, implementation of specially formulated cleaner gasoline, mandatory auto inspections and continued stricter standards on existing businesses. Also on the horizon, EPA is developing the ground level ozone standards. These recommended standards should be released by 2003. Ms. Garthright predicts that EPA will eventually mandate the use of "clean-gasoline" across America.

The Chair called on David Chasteen, ADEM MS4
continued next page

Permits Division. Mr. Chasteen stated that ADEM is continuing to review the 2000 census data to determine which municipalities will be mandated to participate in the Stormwater Phase II. All communities with populations greater than 10,000 or 1,000 per square mile will be automatically mandated to participate in Phase II. Phase II permits will be required by small MS4's located in urbanized areas and construction activities that disturb one to five acres of land. Stormwater Phase II requires a municipality to develop a Best Management Practices (BMP) plan, public awareness campaign, inventory of connectors to the local wastewater system and develop management plan for new development and construction. BMP's will be reassessed and submitted to ADEM annually. Pollutants include; sediment, floatables, oil, grease and pollutants from illicit discharges. Municipalities must meet six elements of the regulations in order to obtain permits; (1) perform public outreach; (2) perform public participation; (3) adopt non-compliance ordinances; (4) develop construction run-off plans; (5) develop post stormwater program for citizens; and (6) develop internal pollution prevention plans.

The Chair called on Lyn Sisk, ADEM Water Division. Mr. Sisk stated that EPA and ADEM are preparing municipalities for securing drinking water systems. Drinking water systems serving a population greater than 100,000 must submit an assessment plan with emergency evaluation steps to ADEM by March 2003. ADEM has established a website to assist municipalities with the evaluation process. Several other water management regulations are to be released by June 2003 for nutrient levels and antidegradation standards to include streams, wetlands and reservoirs. EPA has new brownwater reuse and redevelopment grant monies available for pilot programs. ADEM can assist municipalities with technical and grant writing expertise to apply for these funds.

The Chair called on Aubrey White, ADEM Drinking Water and Wastewater SRF programs Administrator. Mr. White stated that over \$800 million in SRF loans have been granted by ADEM since 1989. ADEM is continuing to work at lessening paperwork and red tape involved in applying for SRF funding. Current SRF interest rates is 3.5 percent fixed rate for 20 years. The use of SRF programs helps perpetuate the program and allows ADEM to receive administration fees for managing the programs.

Mr. White discussed a newly created federal program, Wet Weather Sanitary Sewer Overflow (SSO) Grant Program by Congress. Congress has authorized \$750,000,000 nationwide for FY02 & FY03 for minimum 55 percent grants for addressing combined sewer overflows (CSO) and sanitary sewer overflows (SSO). Alabama's share would be approximately \$10,000,000 and priority will be given to financially distressed municipalities that are implementing

SSO control plans. Funds are expected to be administered in accordance with other SRF administration requirements.

The Chair called on Marilyn Elliott, Deputy Director of ADEM for her comments. Ms. Elliott stated that ADEM is pleased with the recently passed brownfield and voluntary cleanup legislation (2001 Regular Session) which will provide limited liability to owners and potential buyers of sites where clean up of pollutants is necessary. Ms. Elliott urged the committee to support the newest brownfield legislative proposals.

Gregory D. Cochran thanked the resource advisors for their presentations. The steering committee convened to review and discuss the EENR policy statement. After discussion, Mayor Sue Glidewell made a motion to adopt the changes to the EENR policy statement. Mayor Austin Caldwell seconded the motion. The revised EENR policy statement will appear in the November issue of *The Alabama Municipal Journal*. ■

2002 Highlights for the Congress of Cities to be Held in Salt Lake City

The National League of Cities 2002 Congress of Cities and Exposition will be here very soon. Salt Lake City is eagerly preparing for your visit. As the hosting city, Salt Lake City is putting together an exceptional lineup of events for you:

Mobile Workshops. You can choose from nine Mobile Workshops ranging from TRAX transportation to the Olympic Legacy. New this year, Salt Lake City is offering attending delegates the opportunity to PRE-REGISTER for Mobile workshops. Log onto www.slcgov.com/nlc for Mobile Workshop details and a registration form.

The Mormon Tabernacle Choir will perform just for NLC conference delegates. However, the Mormon Tabernacle Choir is only one reason to attend the Congress of Cities and Exposition. **The Closing Event** is a party won't want to miss. You will sample food and entertainment from Salt Lake City's Native American, Hispanic, Polynesian, African-American, Asian and European communities. You will have an opportunity to participate in pin-trading, one of the most popular "sports" during the 2002 Olympic Winter Games. Entertainment will feature the Flying Aces, an amazing troupe of aerialists, as well as other great acts. When the closing event winds down, you can take advantage of the great shopping available at the Gateway to buy souvenirs for those back home.

For details on the conference and to registration log onto www.nlc.org.

Alabama Department of Forensics Sciences Reduces Services Due to Funding Cut-Backs

Reported by Ken Smith, Deputy Director/Chief Counsel

The League's Committee on Transportation, Public Safety and Communication met at 10:15 a.m. on September 5, 2002, at the Montgomery Civic Center in Montgomery, Alabama, with Chair Councilmember Don Moore of Uniontown, presiding.

Also present were Committee Vice Chair Councilmember Lewis Washington of Wetumpka, and committee members Councilmember Roger Adkinson of Flomaton, Mayor Ken Williams of Saraland, Councilmember Sidney Butler of Saraland, Mayor Curtis Jackson of Autaugaville, Councilmember Harry Hinson of Andalusia, Mayor Wess Etheredge of Daleville, Mayor Chester Sowell of Dothan, Councilmember Jerome Dudley of Ozark, Mayor Bobby Payne of Tallassee, Councilmember Hal Miller of Tallassee, Councilmember Marshall Shaddix of Oxford, Councilmember Cecil Hanson of Piedmont, Councilmember Mack Arthur Bell of Roanoke, Councilmember Tammy Holley of Roanoke, Council President Robert Echols of Gadsden, Councilmember Bill Stewart of Gadsden, Mayor Dan Williams of Athens, Mayor Gerald McGee of Lexington, Councilmember Ross F. Palmer of Rogersville, Mayor George Roy of Calera, Mayor Billy Joe Driver of Clanton, Councilmember Owen Drake of Leeds, Mayor Bobby Hayes of Pelham, Councilmember Randy Dell Kay of Ragland, Councilmember Marva Gipson of Aliceville, Councilmember Johnnie Davis of Greensboro, Mayor Jack Fendley of Pennington, Mayor Harry Mason of Pine Hill and Councilmember Rita Franklin of Selma. Also present were Councilmember George McCall of Prichard and Cameron Whitman from the National League of Cities.

Resource advisors present were Scott Adcock of Alabama Emergency Management, Joe Nix of the Alabama Transportation Department (DOT), Sam Mitchell of the Forensics Department, John Robison, State Fire Marshal, Mike Russell and Wendy Holman of the Alabama Telecommunications Association (ATA) and Alan Benefield of the Peace Officers Standards and Training Commission (POST).

Councilmember Moore called the meeting to order and welcomed those present. He then called on Scott Adcock

to make his presentation.

Mr. Adcock reviewed the policy statements and made several recommended changes. He pointed out that an effort had been made last legislative session to accomplish Statement P-4.4, which concerns the establishment of a dam safety act, but the effort was not successful. He said the legislation is presently being negotiated and he expects it to be introduced again.

Joe Nix from DOT spoke next. He pointed out that he works with DOT's multi-modal division, which oversees the TEA-21 program. He said that multi-modal consists of seven divisions to administer both urban and rural programs. This, he noted, includes a broad range of responsibilities. He said that multi-modal provides funding for various projects through these seven divisions. Mr. Nix also commended the League for its support for adequate funding for DOT.

Councilmember Moore next called on Sam Mitchell for his presentation. He noted that Dr. Jamie Downs, former Director of the Forensics Department, has left Alabama and is working in Georgia, where facilities have been upgraded and are state-of-the-art. The Department is presently operating under an interim director.

Mr. Mitchell said that a bill was in place to provide funding for the Forensics Department. He said that when the DNA database was created, money was available, but that Forensics has had to use general fund money for matching federal funds. Now, he noted, federal revenue sources have just about dried up which has created a backlog of cases. He pointed out that presently some 10,000 drug cases are backlogged and that Forensics was \$2.3 million behind in its revenue until the Governor provided some \$1.2 million to the Department. Part of the problem, he noted, is in getting courts to send funds earmarked for Forensics to the Department.

Mr. Mitchell said that because of cut-backs, Forensics is no longer able to transport corpses and that cities and counties are having to pick up the slack. He said that EMT's want to contract to provide this service for a fee. He said that counties and cities will have to work together to resolve

continued next page

the problems associated with paying the costs of transportation.

Alan Benefield spoke next. Mr. Benefield commended the League for its support and help with training police chiefs. He said that the chiefs are receiving excellent local training and publicity on completion of the training.

He said that the Amber Alert system is a good system and it will soon be on-line in Alabama. It quickly puts the eyes and ears on the street that are necessary to find missing children.

Mr. Benefield encouraged cities and towns to thoroughly investigate the backgrounds of potential police officers. This will save time and money and reduce liability. He said that applicants must be completely truthful on their applications to POST. Otherwise, they are automatically rejected. It is also important for those who certify applications (police chiefs, mayors and others) to be sure the information they are verifying is correct. Out of 1,500 applications last year, about seven were rejected because false information was provided. Mr. Benefield said that this is too many.

He echoed Mr. Mitchell's comments that the biggest issue facing law enforcement today is funding. He said that it is reaching a crisis level and must be resolved. He said that local officials can help with this problem by contacting their legislators when issues arise.

John Robison was called on to make his presentation next. He said that the Fire Marshal's office is a division of the Insurance Department. He has a staff of 31 and has four accelerant-detection canine teams. Among other things, Mr. Robison said that his office is responsible for investigating fires and enforcing sprinkler system regulations.

His office also works with local authorities by inspecting buildings following natural disasters. They post placards on the buildings to inform citizens regarding the status of occupancy and whether the building is safe. His office also regulates access to these buildings by insurance adjusters.

He said that the Fire Marshal's office has very broad authority and touches the lives of the public daily through the enforcement of safety regulations. His Department has grown over the years and has been able to get funding by getting out of the general fund. His office is now supported by the payment of permits and other fees.

Mr. Robison said that he is frequently asked to appoint individuals as deputy fire marshals but that he rarely does so because of the liability associated with the lack of supervision.

Mr. Robison called attention to Statement P-7.5. He said that State Farm Insurance has notified their insureds that they will adopt a new standard concerning the use of ISO ratings. Instead, the ISO rating will merely be one portion when calculating the potential risk of loss and in determining insurance rates. He said that people in smaller

towns will see a larger benefit from this than those in larger urban areas.

He also noted that new signs are being posted at service stations regarding the use of cellular phones. He said that there is presently some controversy over whether cell phones can ignite fires. While there is presently no proof of this, there are issues regarding static electricity. The build-up of static electricity in a person's body can cause a flash fire. They are presently studying the cell phone issue and are posting signs out of caution.

The Chair then called on Mike Russell for his presentation. Mr. Russell said that ATA started in 1965 and currently represents 50 cable providers across the state, which includes the largest providers in Alabama. He also has 80 associate members. This represents some 1,000,000 citizens in Alabama. He said that his association supports the Policy statements as they are.

He noted that ATA has been working to link schools with fiber-optic cable. This has made communication better and has made high-speed access available.

He said that his members are having a difficult time keeping up with requests for cable modems. He noted that the bandwidth isn't presently available, but that his members and the association will continue to work to improve this because the availability of high-speed access is important to help attract new business into an area.

Councilmember Moore thanked the resource advisors for their valuable contributions. The Committee then discussed needed additions and deletions to the League policy statement. After discussion, Mayor Bobby Hayes of Pelham made a motion to adopt the recommended changes to the Transportation, Public Safety and Communication section of the policy statement. The motion was seconded by Councilmember Marshall Shaddix of Oxford. The recommended changes were adopted unanimously. The revised TPSC policy statement will appear in the November issue of *The Alabama Municipal Journal*. ■

GARVERENGINEERS

Since 1919

Municipal • Commercial • Government

- Civil Engineering Design, Planning, and Land Surveying
- Transportation Projects: Airports, Roads, Bridges
- Water and Wastewater Systems; Environmental Engineering
- Water Resources, Hydrology & Hydrogeology
- Environmental Assessments and Studies
- Grant Writing Assistance

256-534-5512

www.garverinc.com

218 Holmes Ave. NE, Huntsville, AL 35801

jdmccarley@garverinc.com

CDBG Distributions Total \$31 Million in 2002

Reported by Carrie Banks, Communications Director

The Community and Economic Development Committee met at 10:15 a.m. on September 5, 2002, at the Montgomery Civic Center with Chairperson Bob Bunting, Mayor of Ozark, presiding.

Present at the meeting were: Mayor Howard Shell, Atmore; Mayor Harry Brown, Daphne; Council Member Wallace Sabin, Loxley; Council President Ron Davis, Prichard; Council Council Member Brentley Kendrick, Robertsdale; Council Member Carol Hall, Spanish Fort; Council Member Jerry Lundy, Mount Vernon; Mayor Rebecca Beasley, Clayton; Mayor Jay Jaxon, Eufaula; Council Member Gary Moore, Tallassee; Mayor Betty Ziglar, Roanoke; Mayor Roy Dobbs, Berry; Council Member Leamon Jarmon, Guntersville; Council Member Don Gentry, Phil Campbell; Mayor Freida Eubanks, Phil Campbell; Council Member Craig Grissom, Russellville; Council Member Robbie Richardson, Russellville; Mayor Wally Burns, Southside; Mayor Clif Knight, Hartselle; Council Member Jimmie Slay, Littleville; Mayor James Whitfield, Leeds; Council Member Thomas Moore, Demopolis; Council Member Robert Thomas, Northport; and Council Member Roberta Jordan, Pine Hill. Technical Advisors: City Manager Sam Gaston, Mountain Brook and City Administrator Perry Wilbourne, Foley.

Resource advisors present included: David Hutchison, Alabama Development Office; Lee Flannory, Alabama Department of Economic and Community Affairs; Jean Bates, U.S. Department of Housing and Urban Development; Beverly Helton, USDA Rural Development; and Steven Barr, Alabama Real Estate Research and Education Center. Also present were Carrie Banks, Communications Director, Alabama League of Municipalities and Lori Lein, League Counsel, Alabama League of Municipalities.

David Hutchison, Assistant Director of the Industrial Recruitment Division with the Alabama Development Office (ADO) led the morning's discussion. The major objective of ADO's Industrial Recruitment division is to attract industry to Alabama, and also to encourage and promote foreign manufacturing investment in the state. The department works closely with other economic developers throughout the state, facilitating a cooperative effort to recruit U.S. and foreign-based companies. The division also recognizes the importance and potential of the state's existing industries and considers retention and expansion of Alabama companies

to be an integral part of recruitment strategies. ADO's Industrial Recruitment staff has targeted several key industries, focusing on facilitating the development of those types of businesses in the state. The targeted industries include electronics fabrication and assembly; plastics and resins; aerospace; automotive equipment manufacturers; wood products; textiles and apparel; food and agribusiness; and distribution, warehouse and back-office facilities. Also, service industries such as finance, insurance, and real estate are now included on ADO's list of targeted industries, opening the door for even more jobs for Alabama's citizens.

Hutchison said that in addition to recruiting new industry into the state, ADO (www.ado.state.al.us) works closely with existing industry projects – such as expansion projects. He said that 60 to 80 percent of all new jobs in Alabama are created by existing industry. Incentives offered to companies include services and tax abatements. Hutchison said the best incentive that Alabama provides to companies is through the Alabama Industrial Development Training (AIDT) office (for more information, visit www.aidt.edu). AIDT provides quality workforce development for Alabama's new and existing industries, as well as expands the opportunities for Alabamians through the jobs created by these industries. Current projects throughout the state include: Hyundai; Honda (\$450 million expansion); Mercedes (\$600 million expansion as well as additional suppliers); and Topray (Nissan supplier out of Japan). He said there have also been a number of Hyundai suppliers visiting Alabama. He concluded by telling committee members that for a community to be attractive to an outside company, it needs to have: a site and perhaps a spec building (80 percent of outside interests begin by asking about a building); identified specific targets (what sort of industry is best suited for the community); an identifiable workforce; and assessable utilities and fiber optics. In addition, the community needs to be active in the recruiting process.

Next, **Lee Flannory** of the Alabama Department of Economic and Community Affairs (ADECA) addressed the committee. He gave a brief overview of the programs offered through the department – particularly the CDBG program. In 2002 the program provided \$31 million in grants for projects that benefit low and middle income populations. That number is down from the \$34 million allotted for 2001. The projection for 2003 is that the allotment will either stay at \$31 million or

continued next page

decrease. Grants are awarded on a competitive basis to implement projects such as water, sewer and road improvements. Money is provided to communities of 50,000 or less. This year, ADECA received 96 CDBG grant requests totaling \$41 million. Thirty-six cities and counties were awarded grants in 2002. Funds are allocated in a once-a-year competition where money is set aside proportionately for a County Fund, Large Cities Fund and Small Cities Fund. Flennory said that ADECA is also responsible for several other funds including the Economic Development Fund, Section 108 Loan Guarantees, the Planning Fund and the Community Enhancement Fund. The application process for 2003 will begin in February/March. He concluded by encouraging officials to complete and return the surveys sent out each year by ADECA.

Jean Bates, Community Builder with the U.S. Department of Housing and Urban Development (HUD) encouraged the committee members to visit HUD's website at www.hud.gov. She explained that HUD's mission is to provide a decent, safe and sanitary home with a suitable living environment for every American. HUD carries out this mission by: providing homeownership opportunities; providing housing assistance for low-income persons through Section 8 housing vouchers, public housing, Section 202 housing for the elderly and Section 811 housing for the disabled; enforcing the nation's fair housing laws; helping the homeless; spurring economic growth in distressed neighborhoods; and helping local communities meet their development needs.

Beverly Helton, with the USDA Rural Development, was the next resource advisor to address the committee. She said that USDA's mission is to partner with state agencies, local governments and private entities to help communities in rural areas to improve their quality of life. USDA works to eliminate substandard housing in rural areas by helping individuals buy, build or rent decent housing. It also creates jobs by funding the growth and creation of rural businesses and cooperatives. Program assistance is provided through direct or guaranteed loans, grants, technical assistance, research and educational materials. Helton said that the USDA's state director, Steve Pelham, is planning team visits to all 67 counties over the next year and a half. The USDA team will spend one day in each county, which will be coordinated through a local contact person in the county. Crenshaw County is the first scheduled visit. Alabama's USDA runs four area offices throughout the state: Huntsville, Tuscaloosa, Bay Minette and Dothan. She encouraged the members to contact one of the four offices for information or assistance. The website for USDA Rural Development is: www.rurdev.usda.gov/al.

Steven Barr from the Alabama Real Estate Research and Education Center at the University of Alabama

(www.arerec.cba.ua.edu) gave the final presentation. He explained that the center was established in 1996 with a full-time staff of five professionals, plus three part-time graduate students and one part-time undergraduate student. Approximately 50 percent of the Center's funding comes through real estate agents in Alabama (\$2.50 per agent per year). The remaining funds are self-generated through consulting services, contract research and the sale of publications and demographic data. The Center does not receive any taxpayer dollars or funds from the University. Recent projects for the Center include: Projection of residential growth patterns for the City of Tuscaloosa; Analysis of Hoover's retail market for the City of Hoover; Evaluation of the economic impact of tourism for the City of Gulf Shores; and Determination of the availability of affordable housing in Baldwin County.

In regard to the current CED policy statements, Barr said it is a good idea to establish reasonable minimum standards for public improvements prior to the approval of subdivisions, and that restrictive covenants are beneficial to both the developer and the homeowners. He also agreed that it is important for municipalities to establish standards for the location of manufactured housing within their jurisdictions. He further said that establishing historic preservation authorities can be beneficial to a community, but that care should be taken to balance historic preservation with economic realities, the best use of property and the need for community growth. In addition, he talked briefly about developing a uniform state building code and that such a code could be helpful for home builders, municipal authorities and home owners, provided the uniform code allows for regional weather and soil differences. He stressed that any effort to develop such a code should include the Home Builders Association of Alabama. He concluded by emphasizing that local municipalities should cooperate with housing sponsors and developers that are seeking to provide affordable housing to areas where it is needed. He feels that local politicians must be willing to stand up to the NIMBYs (not-in-my-back-yard) that often show up at city council hearings to oppose any efforts to provide such affordable housing.

Chair Bunting thanked the resource advisors for their presentations and asked committee members to reconvene after lunch with suggestions for policy changes for the CED committee. All changes/additions were moved for approval by Council Member Jimmie Slay of Littleville and were seconded by Council Member Thomas Moore of Demopolis. The committee then unanimously approved the motion. The revised CED policy statement will appear in the November issue of *The Alabama Municipal Journal*. Chair Bunting thanked the committee members for their participation and adjourned the meeting. ■

Efforts Made Throughout Alabama to Educate the Public About West Nile Virus

Reported by Twanna Miller King, League Legal Researcher

The Committee on Human Development of the Alabama League of Municipalities met at the Civic Center in Montgomery, Alabama on Thursday, September 5, 2002 at 10:13 a.m. Council Member Nancy Sewell of Selma, Chairperson of the Committee, called the meeting to order and thanked all those present for their attendance; with a special thank you to the resource advisors who were present.

The following were present as resource advisors: Ms. Sheryl Matney, Alabama Council for Developmental Disabilities; Ms. Frances Kennamer, Alabama Department of Public Health; Ms. Anne Evans, Alabama Department of Mental Health & Retardation; and Dr. Melissa Galvin, Director of the Alabama Department of Senior Services.

Ms. Sheryl Matney represented the Alabama Council for Developmental Disabilities. She began by stating that the Alabama Council for Developmental Disabilities is federally funded and state mandated. From the federal government, her department received \$1.2 million dollars. From the state, the Council for Developmental Disabilities receives 30 percent for administration services, and 70 percent for the Council to issue out in grants and contracts. The administrative assistance comes from the Alabama Department of Mental Health and Retardation.

Ms. Matney continued by stating that one of the chief roles for the Council for Developmental Disabilities is to help individuals with developmental disabilities feel more useful and counted. For example, during these electoral campaigns, Ms. Matney stated that people with developmental disabilities are particularly interested in candidates who will consider their issues and concerns.

Ms. Matney brought several handouts and a video tape to further educate citizens to the needs of persons with disabilities and to create greater levels of sensitivity for them.

With a great desire to assist persons with disabilities, Ms. Matney continued by stating that the budget for this department is based on an allotment of figures, and that the department had not received an increase in five years. Ms. Matney encouraged the Committee to assist her department by requesting that the federal government increase their budget, and that the state provide monies to the Department of Developmental Disabilities as well.

Ms. Frances Kennamer represented the Alabama

Department of Public Health. She began by stating that there was so much information to bring the Committee, that she was going to begin first with an update on the West Nile Virus, and information about bioterrorism. Regarding the West Nile virus, federal monies have been given to the department for surveillance and education of the West Nile virus itself. However, no monies had been earmarked for helping to control (spray) for the virus, Ms. Kennamer stated. In response to this dilemma, counties and cities themselves are having to spend their dollars to control the spread of this virus. For example, through local funding, Baldwin County has begun spraying.

Ms. Kennamer continued by informing the Committee that efforts have been made in Alabama to train officials and inform the public on exactly what the West Nile virus is. In fact, she continued by stating that last year the Department of Public Health was able to train 150 cities. Dr. Johnston, the State's veterinarian led those training efforts, and 20 percent of all mayor and county commissioners were trained.

The second effort Ms. Kennamer stated has been in the area of surveillance grants. By identifying that two birds in a zipcode have the virus, local officials can determine if the West Nile virus is present. Ms. Kennamer stated that 12-14 zipcodes have confirmed cases. In such cases, using bug spray and emptying standing water is recommended. Ms. Kennamer encouraged the Committee to address the need of monies to provide a statewide spraying event. Until then, she asked the Committee to encourage their cities to come together to spray in their areas. For example, the City of Montgomery, Ms. Kennamer stated, sprays for the virus twice a week.

Ms. Kennamer also informed the Committee on the area of bioterrorism. She stated that the Governor has opened an office on Homeland Security. This office has received \$15 million, which will not include providing security, but assistance during a natural disaster.

Ms. Kennamer also informed the Committee of the progress made in response to policy H-6.2 (b), which encouraged the Alabama Office of Rural Health to increase their physician recruiting efforts in rural areas of Alabama. Ms. Kennamer stated that there has been an increasing trend

continued next page

in the number of physicians practicing in rural areas between 1996 and 1999. Of those physicians who participated in the Physician Placement program, she stated that 10 percent work on a J-1 Visa. Ms. Kennamer also informed the Committee that under the National Health Service Core, students are able to obtain their degrees in the health profession. In 2001, 10 dental students were placed in rural communities. Of the physicians who worked on J-1 Visas, 10 percent have remained in the communities.

Ms. Kennamer also informed the Committee that the Governor has established a state Suicide Prevention Taskforce. Also, an all women's health office has been established as well. Council Member Sellers asked Ms. Kennamer if an all men's health office will be opened. Ms. Kennamer responded that men's health concerns are acknowledged with the Chronic Health Office.

Ms. Kennamer also stated that thanks to modern-age technology, citizens can go to any health department office in Alabama and have their vital statistics needs taken care of. Ms. Kennamer also informed the Committee that a new division in health lifestyle was being established to address preventive healthcare in the areas of food consumption and exercise habits. This division would receive federal funding, Ms. Kennamer stated. In response to this new division, the cities of Uniontown and Pine Apple are participating in vegetable market pilot projects. In fact, Wick vouchers will be able to be used at these two markets. In the area of regulation, Ms. Kennamer stated that the Alabama Public Health Department can now regulate tattoo and body piercing businesses.

Ms. Anne Evans represented the Alabama Department of Mental Health and Retardation, and began by stating that the Alabama Department of Mental Health and Retardation has served 100,000 persons with mental illnesses and substance abuse. She also stated that in collaboration with several other state agencies, a new program called "Our Kids" has been established. This program was given a one-year grant for \$1 million dollars to address the needs of "gap kids" who often "slip between the cracks". These children do not quite meet the criteria of any given state agency, yet need assistance.

Ms. Evans also informed the Committee of a program which has begun in Jefferson City by the mental health courts to take non-violent offenders and point them in the direction of treatment. She also stated additional monies have been given to better foster homes in 10 drop-in mental health centers.

In the area of substance abuse, Ms. Evans stated that drug courts had been established in seven counties. The Department of Mental Health and Mental Retardation had put together the book, *Alabama Substance Abuse Data Book 2000: State and County Profiles of Substance*

Abuse Indicators, which gives statewide trends. These figures are used by her department to determine just where treatment is needed and where to put monies for substance abuse. Ms. Evans did make suggestions to the Human Development section of the League's Policies and Goals.

The last resource advisor was Dr. Melissa Galvin from the Alabama Department of Senior Services. She began by informing the Committee that the number: **1(800)AGELINE** is now able to be called statewide. This number is for information and referral purposes for seniors. Dr. Galvin also informed the Committee that the 211 number is also available in Montgomery county area to call and receive information on the various social services. Dr. Galvin continued with a slide presentation by stating that her department had three specific aims: 1) to plan for the "boom"; 2) to care for Alabama's seniors; and 3) and to provide long-term care.

She also stated that there are 350 senior centers in Alabama. She also encouraged municipalities to apply for grants that are available to upgrade the quality of their senior centers. Dr. Galvin continued by stating that the Department of Senior Services serves well over 17,000 meals per day, and that the department was in the process of assuming a new food contract. Of these meals, 42 percent of them are for the homebound. In fact, 40 percent of seniors suffer from malnutrition, which is higher than the normal rate in Alabama.

Dr. Galvin stated that the two greatest needs that seniors have are transportation and prescription drugs. In fact, 25 percent of the population does not drive. She continued by stating that her department is continuously attempting to help seniors in these areas. The Governor has also established a new program titled, "Alabama Cares" which was established to assist caregivers in the areas of diapers and mowing the grass. These are two great needs that caregivers have.

Dr. Galvin stated that the Senior Workers program had been established to assist senior workers. (More information can be obtained using the 1(800) AGELINE number.)

She also stated that CDBG grants with ADECA are available for senior centers and for funds for energy efficiency. Dr. Galvin encouraged municipalities to take advantage of these funds available. Dr. Galvin also commented on the Medicaid Waiver program. This program is particularly for nursing homes but the care is broader. Dr. Galvin stated. In an effort of allowing persons who are on Medicaid or Medicare to receive at-home care, \$59 million has been set aside for such needs. Dr. Galvin also informed the Committee that the 211 number is also available in Montgomery county area to call and receive information on the various social services


continued page 29

Click Here!

www.municode.com

**Why keep it a secret?
Post it on the World Wide Web.**

Join the over 2,600 other municipalities currently codified with Municipal Code and the over 1,000 who have posted their codes on our website. Visit with us and see for yourself.

- ◆ Codification of ordinances/Folio BoundViews search and retrieval software
- ◆ List services for Clerks, Attorneys, MIS Members and Managers
- ◆ Imaging and indexing of your minutes, ordinances, resolutions, and other important records with our newest imaging software  **L A S E R F I C H E**
a division of Compulink Management Center, Inc.

Municode.com

1-800-262-2633

website: www.municode.com e-mail: info@mail.municode.com

UTILITY SERVICE co., inc

Professional Tank Services for the Utilities and Wireless Markets

• WATER TANKS SERVICES

- Full Service Maintenance Programs
- Interior and Exterior Painting, Repairs, Safety Accessories
- Inspections, Washouts, Disinfections
- New Tank Sales and Leasing

• WIRELESS COMMUNICATIONS SERVICES

- Antenna Site Management for Water Tanks
- Antenna Installations and Site Construction
- Design Reviews/Project Management

Corporate Office: P.O. Box 1354, Perry GA 31069

Toll Free: 800-223-3695 • FAX: 478-987-2991

www.utilityservice.com



Morgan Keegan & Company

Financial Advisor • Underwriter
Municipal Financing

Morgan Keegan & Company, Inc.
Public Finance Group

Tom Yardley • Tom Barnett • Larry Ward
Frank Kohn • Tom Nesbitt • Fred Major

Morgan Keegan Center
2900 Highway 280, Suite 100
Birmingham, Alabama 35223

417 20th Street North
Birmingham, Alabama 35203

800/753-6619 • 205/802-4276

Members New York Stock Exchange, SIPC

FUTURE LEAGUE CONVENTION DATES AND LOCATIONS

April 26-29, 2003
Huntsville

May 22-25, 2004
Birmingham

May 21-24, 2005
Montgomery



NORTH AMERICA



Waste Services

- Solid Waste Collection
- Recycling and Disposal
- On Site Management

Environmental Services

- Hazardous Waste Management
- Emergency Response
- Marine and Specialty Services

Industrial Services

- Industrial Cleaning
- Mechanical Services
- Site Based Maintenance

Montenay Power

- Waste Combustion
- Energy Generation
- Facility Operation and Maintenance

Municipal Marketing

Onyx North America, Corp. | 1605 Main Street, Suite 904 Sarasota, FL 34236 941.953.9111

VIVENDI
Environment
*Traded on New York
Stock Exchange at VE*

Integrated Solutions for a complex environment.

Onyx North America has four highly complementary lines of business that provide solutions to meet your environmental and industrial needs.

HD Minutes

continued from page 25

Dr. Galvin also informed the Committee of the existing programs under the Department of Senior Services. These programs include the Ombudsman program, the Legal Services program and the Insurance Counseling program. Also due to the progressiveness of the Alzheimer's Disease, 40 percent of the population will have dementia problems. The Senior Services Department is assisting family members and persons who are suffering from this disease Dr. Galvin stated. Dr. Galvin also informed the Committee of the Elder Ready Communities. These communities are established to determine what elder-friendly communities should actually look like.

The Secretary took roll. The following were present: Council Member Nancy Sewell, Chairperson, Selma; Council Member Thomas Owings, Brent; Council Member Eloise Clerks, Jackson; Council Member Joe Thomas, Spanish Fort; Council Member Isabell Boyd, Brudidge; Council Member Karen Davis, Dozier; Council Member Gwendolyn D. Coley, Alexander City; Mayor Charles S. Rogers, Oak Grove; Council Member James Harris, Wedowee; Mayor Donald E. Green, PhD., Cullman; Council Member Wayne Sellers, Guntersville; Council Member Sonata Howell, Guntersville; Mayor Harold D. Chandler, Rogersville; Council Member Cora Smith, Brighton; City Administrator Jimmy Gould, Alabaster. Twanna King, League Researcher and acting recording secretary, was also present.

The resource advisors made policy change suggestions. Upon a motion and a second, the recommended changes to the Human Development Policy Statement were approved. There being no further business, the meeting was adjourned at 12:37 p.m. The revised HD policy statement will appear in the November issue of *The Alabama Municipal Journal*. ■

HENDON ENGINEERING ASSOCIATES
CONSULTING ENGINEERS

Quality, Full Service Engineering

Municipal, Civil, Environmental,
Natural Gas, and Electrical Engineering
Instrumentation and Controls



1025 MONTGOMERY HIGHWAY
P. O. BOX 660348
BIRMINGHAM, ALABAMA 35216

PHONE: (205) 823-7480
FAX: (205) 823-7483

e-mail: staff@hendonengineering.com

FAIR Minutes

continued from page 18

of Alabama and the Alabama Department of Revenue have created the Alabama Governmental Tax Administrator's Executive Committee to exchange ideas and information to promote cooperation in the administration of Alabama taxes. The Committee is composed of 12 members – four from the League, four from ACCA and four from the Department.

Three subcommittees have been formed to work on data sharing, joint audits, and tax laws, rules, regulations and interpretations. The group is also expected to look at nexus issues in the future. Substantial progress has been made by the group.

Mr. Cohen also announced that the Division is developing a software disk with all tax forms to mail to all taxpayers to allow them to print out their returns in their office. The disk can be updated via the internet. The forms are bar coded and the process will save a lot of money in the future.

The Chair thanked Ms. Michaud and Mr. Cohen for their presentations. She then asked members to review the *Policies and Goals 2002*. No changes were suggested to any of the existing policy statements.

Mayor Leon Smith of Oxford moved that the committee add a statement urging municipalities to notify local tax officials immediately after annexing of new property into the municipality. The motion, which was seconded by Mayor Lew Watson of Lincoln, passed unanimously.

Mayor Melvin Duran moved that the committee add a new statement calling for legislation to ease the current law's restrictions on who can dispense medication to prisoners. The motion, which was seconded by Mayor John Harrison of Luverne, was adopted unanimously.

Mayor Leon Smith moved that the committee add a new statement to amend state law so as to require insurance companies to use Insurance Service Office ratings when determining fire insurance rates. The motion, which was seconded by Mayor Lew Watson of Lincoln, passed unanimously.

The Chair declared that the new statements would be added to the policy statement. The revised FAIR policy statement will appear in the November issue of *The Alabama Municipal Journal*. ■

of town also seems permissible.

However, when a city provides an exception for certain types of speech, then it is clear that the ordinance is not content neutral and is invalid. This appears to be the major distinction between these two cases. So, to ban signs, a city must, as in all areas of First Amendment speech, be content neutral not only in the wording of the ordinance, but in the enforcement of it as well.

This point is exemplified in the case of *Ladue, Mo. v. Gilleo*, 62 LW 4477 (1994), where the U.S. Supreme Court held invalid a municipal ordinance which was designed to protect valid governmental interests in aesthetics by barring homeowners from displaying any signs on their property except identification, for sale, and safety warning signs, while permitting businesses, churches, and nonprofit agencies to erect signs not permitted at residences. Again, the ordinance was not content-neutral and, therefore, was unconstitutional.

In another case from the Eighth Circuit Court of Appeals, it was held that an ordinance that imposes durational limits on political signs and holds the candidates liable for violations violates the First Amendment. *Whitton v. Gladstone, Mo.*, 63 LW 2724 (8th Cir. 1995).

Selected Court Decisions

Note: These summaries are not intended as a substitute for reading the decision itself.

- The ban of all private displays from the lobby of a government building that is a non-public forum does not violate the First Amendment. *Grossbaum v. Indianapolis-Marion County Building Authority*, 65 LW 2354 (7th Cir. 1996).

- An employer cannot be held liable for failing to accommodate an employee's religious preference for discharging the employee where the employee did not notify the employer that her religious beliefs required her to send letters to co-workers criticizing aspects of their lives. *Chalmers v. Tulon Co. of Richmond*, 65 LW 2408 (4th Cir. 1996).

- The Ninth Circuit has held that a municipality's standardless policy of allowing an unattended religious display on public park property near city hall, while denying other unattended structures in the park, violates the First Amendment. *American Jewish Congress v. Beverly Hills, Calif.*, 65 LW 2074 (9th Cir. 1996).

- A municipality may, consistent with the First Amendment, allow a political party to hold a rally in a public park and exclude persons who are wearing opposing party's campaign materials. *Sistrunk v. Strongsville, Ohio*, 65 LW 2292 (6th Cir. 1996).

- The Eleventh Circuit Court of Appeals has held that a municipal ordinance that bans barkers from distributing handbills in certain districts is designed to reduce litter and sidewalk congestion and does not violate the First Amendment. *Sciarrino v. Key West, Fla.*, 64 LW 2726 (11th Cir. 1996).

- The U.S. Supreme Court has held that the Twenty-first Amendment, which gives states the right to regulate alcoholic beverages, would not uphold a state regulation regarding the advertisement of alcoholic beverages that violates the First Amendment right to free speech. *44 Liquormart, Inc. v. Rhode Island*, 64 LW 4305 (1996).

- The Tenth Circuit Court of Appeals has held that a municipal policy barring the use of a senior center for religious purposes violates the First Amendment. *Church on the Rock v. Albuquerque, N.M.*, 64 LW 2751 (10th Cir. 1996).

- The Third Circuit Court of Appeals has held that a municipal employee has a right to respond to a subpoena to testify in a divorce proceeding against her supervisor and, thus, the supervisor is not protected by qualified immunity from liability in the employee's retaliatory discharge action. *Pro v. Donatucci*, 64 LW 2696 (3d Cir. 1996).

- The United States Supreme Court has held that a municipal government may not retaliate against independent contractors or regular suppliers of products for their campaign stances or opinions. In this case, a wrecker company was removed from a city rotation list because the owner of the company refused to contribute to the mayor's re-election campaign. *O'Hare Truck Service, Inc. v. City of Northlake*, 64 LW 4694 (1996).

- The Sixth Circuit Court of Appeals has upheld a municipal ordinance requiring a six-foot buffer zone between erotic dancers and nightclub customers. *DLS, Inc. v. Chattanooga, Tenn.*, 65 LW 2588 (6th Cir. 1997).

- An employee's reports to supervisors about a single incident of sexual harassment may be protected by the First Amendment. *Azzaro v. Allegheny County*, 65 LW 2667 (3rd Cir. 1997).

- A federal district court in Kentucky has held that closing a county courthouse on Good Friday to give employees a spring break, and not to commemorate a religious holiday, does not violate the First Amendment. *Granzeier v. Middleton*, 65 LW 2589 (DC E.Ky. 1997).

- The Eleventh Circuit Court of Appeals has upheld a municipal ordinance banning tables from public sidewalks as a narrowly-tailored, content-neutral regulation. *International Caucus of Labor Committees v. Montgomery, Ala.*, 65 LW 2730 (11th Cir. 1997).

- In *City of Boerne, Texas v. Flores*, 65 LW 4612

(1997), the U.S. Supreme Court held that the Religious Freedom Restoration Act of 1993 exceeds Congress' power, thus allowing a municipality to deny a building permit to a church based on historic preservation grounds.

- The Second Circuit Court of Appeals has held that a municipal board of education ban on religious services or instruction in public school buildings that have never been used for these purposes while allowing after-hours use for religious discussion is reasonable under the First Amendment. *Bronx Household of Faith v. Community School District No. 10*, 66 LW 1187 (2d Cir. 1997).

- The Second Circuit Court of Appeals has ruled that a city-owned crèche exhibited in a public park does not endorse religion in light of secular decorations. *Elewski v. Syracuse, NY*, 66 LW 1106 (2nd Cir. 1997).

- The Second Circuit Court of Appeals has rejected an employment claim on free speech grounds because the retaliatory action taken by municipal officials was based partially on the protected speech, and partially on political patronage. *McEvoy v. Spencer*, 66 LW 1122 (2nd Cir. 1997).

- A federal district court in Texas has ruled that a school's prohibition against the wearing of rosaries as necklaces pursuant to a general ban against the wearing of gang-related apparel violates the First Amendment. The court also held that the ban against "gang-related apparel" is void for vagueness and fosters arbitrary enforcement. *Chalifoux v. New Caney Independent School District*, 66 LW 1173 (DC S. Tex. 1997).

- In *ISKCON Miami, Inc. v. Metropolitan Dade County*, 67 LW 1074 (11th Cir. 1998), the Eleventh Circuit Court of Appeals held that Miami regulations banning the sale of literature of solicitation of money inside and outside of the terminal facilities does not violate the First Amendment.

- In *Smith v. State Dept. of Public Safety*, 716 So.2d 693 (Ala. Civ. App. 1998), the Court of Civil Appeals held that although a letter to the editor written by a police officer addresses a matter of public concern, the potential disruption to the department and on-going investigations outweighed the officer's right to free speech. Therefore, termination of his employment was proper.

- Prayers and religious songs at graduation by students who are selected by the public high school on the basis of academic merit has the secular purpose of granting top students autonomy to deliver uncensored speech and does not advance nor inhibit religion. *Doe v. Madison School District No. 321*, 66 LW 1764 (9th Cir. 1998).

- The Fourth Circuit Court of Appeals held in *Peck v. Upshur County Board of Education*, 67 LW 1107 (4th Cir. 1998), that a public school's policy of allowing private groups to distribute Bibles by leaving them on tables in public secondary schools on one day per year, when accompanied by a disclaimer that the Board does not endorse the views,

does not violate the First Amendment.

- The Ninth Circuit Court of Appeals held that a municipality may limit advertising space on its buses to commercial speakers. *Children of the Rosary v. Phoenix*, 67 LW 1137 (9th Cir. 1998).

- The Seventh Circuit Court of Appeals has held that the City of Chicago's offer to transfer an officer to a police district without an abortion clinic was a reasonable accommodation of the officer's religious aversion to working security at an abortion clinic. *Rodriguez v. Chicago*, 67 LW 1183 (7th Cir. 1998).

- The Tenth Circuit Court of Appeals has upheld a municipal council's refusal to allow a prayer to open a meeting by a person whose sole use of the prayer would be to denounce prayer at governmental functions. *Snyder v. Murray City Corp.* 67 LW 1268 (10th Cir. 1998).

- The U.S. District Court for the District of Vermont has held that a municipal ordinance limiting indoor and outdoor tobacco advertising to black and white lettering on signs of a specific size was preempted by the Federal Cigarette Labeling and Advertising Act and violates the First Amendment. *Rockwood v. Burlington*, 67 LW 1185 (D.C. Ver. 1998).

- In *Duffy v. City of Mobile*, 709 So.2d 77 (Ala. Crim. App. 1997), the Court of Criminal Appeals held that a noise ordinance which prohibited noise that was plainly audible from a distance of 50 feet was unconstitutionally broad.

- In *City of Mobile v. Weinacker*, 720 So.2d 953 (Ala. Civ. App. 1998), the Court of Civil Appeals held that Mobile's sign ordinance was unconstitutional because it was vague and ambiguous and provided review boards with unbridled discretion.

- In *Moore v. City of Montgomery*, 720 So.2d 1030 (Ala. Crim. App. 1998), the Court of Criminal Appeals upheld the City of Montgomery's distance-based noise ordinance against a constitutional challenge that the ordinance was vague, unreasonable, and overbroad.

- The Fifth Circuit Court has held that a public school's policy of inviting members of the clergy to provide volunteer group counseling on civic virtues and morality to students during regular school hours violates the First Amendment. *Doe v. Beaumont Ind. School Dist.*, 67 LW 1637 (5th Cir. 1999).

- The Fifth Circuit has held that voluntary, student-initiated prayers at public high school graduations must be nonsectarian and nonproselytizing. *Doe v. Santa Fe Independent School Dist.*, 67 LW 1541 (5th Cir. 1999).

- The Illinois Supreme Court held that an Illinois statute that prohibits the operation of motor vehicle sound amplification system above a certain volume level on the highway, but that exempts "vehicles engaged in advertising,"

continued next page

discriminates on the basis of content of speech without advancing a compelling state interest and thus violates the First Amendment's free speech clause. *People v. Jones*, 68 LW 1333 (Ill. Sup. Ct. 1999).

- The Sixth Circuit has held that the First Amendment prohibits allowing prayers at the beginning of a public school board meeting in which students participate directly in discussions. *Coles v. Cleveland Board of Education*, 67 LW 1570 (6th Cir. 1999).

- A county's exclusion of nonresident speakers from a park in front of government buildings restricts more speech in front of a traditional forum than necessary to further the county's asserted interests in reducing maintenance costs and clutter and assuring the mall's availability for use by residents and, therefore, violates the First Amendment. *Warren v. Fairfax County, Va.*, 68 LW 1235 (4th Cir. 1999).

- A municipal ordinance that restricts "focused picketing" in the vicinity of churches and other religious establishments during religious services and for 30 minutes immediately preceding and following them violates the First Amendment's free speech clause. *Olmer v. Lincoln, Neb.*, 68 LW 1236 (8th Cir. 1999).

- The Second Circuit holds that New York City likely violated the free speech rights of members of the Latino Officers Association when it barred them from wearing their police uniforms while marching under the association's banner in ethnic pride parades. *Latino Officers Association, New York, Inc. v. New York City*, 68 LW 1312 (2nd Cir. 1999).

- The Seventh Circuit Court of Appeals found that the city of Chicago's regulation of outdoor advertising of cigarettes is not preempted by the Federal Cigarette Labeling and Advertising Act. *Federation of Advertising Industry Representatives Inc. v. Chicago*, 68 LW 1155 (7th Cir. 1999).

- The Seventh Circuit Court of Appeals held that a city that allowed a private group to display an isolated 15-foot statue of Jesus Christ on a parcel of land, which was once a public park and remains indistinguishable from the rest of the park, grants preferential access to a public forum for the communication of a sectarian message in violation of the First Amendment's Establishment Clause. *Freedom From Religion Foundation, Inc. v. Marshfield, Wis.*, 68 LW 1475 (7th Cir. 2000).

- The United States Supreme Court held that a public indecency ordinance that makes it a summary offense to knowingly appear in a public place in a "state of nudity," defining a "public place" to include "places of entertainment, taverns, restaurants, [and] clubs," is a content-neutral regulation that does not violate the First Amendment. *Erie, Pa. v. Pap's A.M.*, 68 LW 4239 (U.S. 2000).

- The U.S. Court of Appeals for the Ninth Circuit held

that a city's refusal to cover the cost of a religious group's use of a public park for observance of National Day of Prayer, while covering costs of similar civic events sponsored by other groups, constitutes viewpoint discrimination in a limited public forum. The court found this as a violation of the First Amendment's right to free speech, which is not justified by a city's interest in avoiding an Establishment Clause violation. *Gentala v. Tucson, Ariz.*, 68 L.W. 1652 (9th Cir. 2000).

- Ohio's state motto "With God All Things Are Possible," a quotation from the Bible, implicitly endorses Christianity to the reasonable observer and thus violates the First Amendment's Establishment Clause. *American Civil Liberties Union of Ohio v. Capitol Square Review and Advisory Board*, 68 L.W. 1670 (6th Cir. 2000).

- The Seventh Circuit Court of Appeals held that the First Amendment's Free Speech and the 14th Amendment's due process clauses shield public employees from termination for refusing to authorize release of confidential attorney-client, medical, and financial information absent a government justification for requiring the disclosures. *Denius v. Dunlap*, 68 L.W. 1628 (7th Cir. 2000).

- The United States Supreme Court held that Chapter 2 of 1981 Education Consolidation and Improvement Act, which channels federal funds to local education agencies to acquire, for use in public and private schools, instructional and educational materials has a secular purpose and does not have the effect of advancing religion, and therefore does not violate the First Amendment's Establishment Clause. *Mitchell v. Helms*, 69 LW 1013, 6/28/00.

- The United States Supreme Court held that a public school district's policy authorizing high school students to vote on whether to include a student-delivered "invocation" or "message" at football games and, if so, to elect a student to deliver it involves state-sponsored religious speech, rather than private speech, and results in coerced participation of those present at games in religious exercise in violation of First Amendment's Establishment Clause. *Santa Fe Independent School District v. Doe*, 68 LW 4525, 6/19/00.

- A state agency employer's interests in avoiding both the disruptive effect of employee's religious proselytizing of agency's clientele and the potential establishment clause violation outweighs the employee's right to engage in religious speech at work. Thus, disciplining employees for such speech does not violate the First Amendment's free speech clause. *Knight v. Connecticut Dept. of Public Health*, – F.2d – (2nd Cir. No-00-7289, 12/12/01).

- The Eleventh Circuit held that a public school does not violate the establishment clause when it allows high school seniors to vote on whether to have opening and closing messages at a graduation ceremony. Additionally, it is acceptable for the students to elect a student speaker whose

message may not be reviewed by school officials, because this lacks state control over content, and therefore does not foster state-sponsored religious speeches in violation of the Establishment Clause of the United States Constitution, First Amendment. *Adler v. Duval County School Board*, 69 LW 1715, No. 98-2709, 5/11/01.

- Public housing authority regulations that bar nonresidents, except those having legitimate business on premises, from distributing literature or engaging in door to door canvassing in a public housing complex is an unreasonable method of achieving the goal of crime prevention and strikes at the core of a democratic system when applied to political campaigners who identify themselves as such to a housing manager, and thus violates the First Amendment to the United States Constitution as applied to them. *Vasquez v. El Paso Housing Authority*, 70 LW 1311 (5th Cir. 2001).

- The United States Supreme Court held that the First Amendment shields individual and media defendants from civil tort liability under both federal and state privacy statutes for disclosing a tape, which contained a lawfully obtained conversation about a public issue, regardless of whether they have reason to know that the tape was not lawfully intercepted. *Bartnicki v. Vopper*, U.S., 69 LW 1701, No. 99-1687, 5/21/01.

- The Eleventh Circuit Court of Appeals has held that a residence equipped with cameras through which paying Internet subscribers can view the activities of the residents who are paid to live in the house is not subject to a zoning ordinance that defines adult businesses as those which offer

adult entertainment “to members of the public.” *Voyeur Dorm LC v. Tampa, Fla.*, 70 LW 1185 (11th Cir. 2001).

- A lower court decision invalidated, at the summary judgment stage, a municipal ordinance that prohibits more than one adult entertainment business in the same building or structure, on the grounds that the city failed to present evidence upon which it could reasonably rely to demonstrate a link between multiple-use adult establishments and negative secondary effects, is reversed and remanded for further findings. *Los Angeles v. Alameda Books Inc.*, – U.S. – (2002); 70 L.W. 43 (May 14, 2002).

- A municipal ordinance that makes it unlawful to engage in noncommercial door-to-door solicitation without a permit violates the First Amendment. *Watchtower Bible & Tract Society of New York v. Stratton, Ohio*, – U.S. – (2002); 70 L.W. 48 (June 18, 2002).

- Provisions of the 2000 Religious Land Use and Institutionalized Persons Act barring imposition of land use regulations that substantially burden religious exercise provided that such burden affects commerce or permits individualized assessments of proposed property uses unless the regulation is a least restrictive means of furthering a compelling governmental interest are a valid exercise of Congress’s authority under the commerce clause and Section 5 of the 14th Amendment to enforce the free exercise and the free speech clauses of the First Amendment. *Freedom Baptist Church v. Middletown Township*, – F.3d. –; 70 L.W. 44 (May 21, 2002). ■

National League of Cities • 79th Congress of Cities & Exposition



December 3-7, 2002 • Salt Palace Convention Center • Salt Lake City, Utah

Conference and Registration Materials Online: www.nlc.org • Exposition: 800-564-4220 • Questions: 888-319-3864

Perspectives

Valley City Clerk Receives Master Municipal Clerk Designation

Martha Nell Cato, MMC, City Clerk of the City of Valley, has received the Master Municipal Clerk designation through the IIMC Master Municipal Clerk Academy Program. She joins two other active municipal clerks in Alabama who have achieved the prestigious MMC designation.

The Master Municipal Clerk Academy was established to further the professional education and to enhance the performance of today's municipal clerk. All Academy members must demonstrate that they have actively pursued educational and professional activities and have remained informed of current events in local government. Academy points are earned through the completion of IIMC-recognized Academy Programs, attendance at professional seminars and workshops; teaching or writing in the profession; participating in professional meetings and conferences; and being recognized for unusual accomplishments. To date, approximately 15 percent (210 clerks) of the IIMC's 10,300 members have qualified for the Academy status.

Cato has been employed with the City of Valley since January 1984, and has served as City Clerk since October 1992. Active in her professional affiliations, she is a member of the Alabama League of Municipalities, Alabama Municipal Clerks Association, State of Alabama Certified Planning Official Advisory Committee, State of Alabama Your Town, State of Alabama Revenue Officers Association, East Alabama Regional Planning and Development Commission and East the Alabama Senior Advisory Committee. ■

Take a closer look.

ITC DELTACOM's *Association Endorsement Program*

For a no-obligation assessment of your telecommunications services, please contact our Customer Care Center at 800.239.3000, select Option 1, and request your call be transferred to the nearest ITC^DeltaCom Branch Sales Office.

In addition to enjoying exclusive association discounts and great savings, your participation in ITC^DeltaCom's Association Program enables you to directly support the ongoing endeavors of the Alabama League of Municipalities.

***ITC^DeltaCom, Proudly Endorsed
by the Alabama League of
Municipalities since July, 1992.***

Dedicated
Internet Access

Data Networks

Customer
Premise
Equipment

Long Distance

Local Services

Enhanced
Services

www.itcdeltacom.com

Convention 2003: Huntsville, April 26-29

PUT OUR EXPERIENCE TO WORK FOR YOU.

Over 300 Alabama Municipalities Have.

The League's **Municipal Revenue Service** for collection of delinquent insurance license taxes has more than 50 years experience of responsible and aggressive collection of lost revenue, currently for over 300 communities in Alabama.

Contact us today and let our proven professionals get the job done efficiently and effectively.

Together our strength in numbers works for you.

ALABAMA LEAGUE OF MUNICIPALITIES

535 Adams Avenue • Montgomery, AL 36104

334-262-2566 or 888-255-0434



**ADVERTISE WITH
THE LEAGUE!**

Call

334-262-2566

or visit our web site at

www.alalm.org

for more information.

**Visit the League
On-line**



www.alalm.org

Insuring the Future of Local Government



Is *YOUR* future covered?

STEVE WELLS, PRESIDENT
334-386-3863

Rated A- by
A.M. Best

JIM CHAMBLEE, SALES MANAGER
334-386-3863

Toll Free at 866-239-AMIC(2642)

110 N. Ripley Street • Montgomery, AL 36104 • www.AMICentral.org