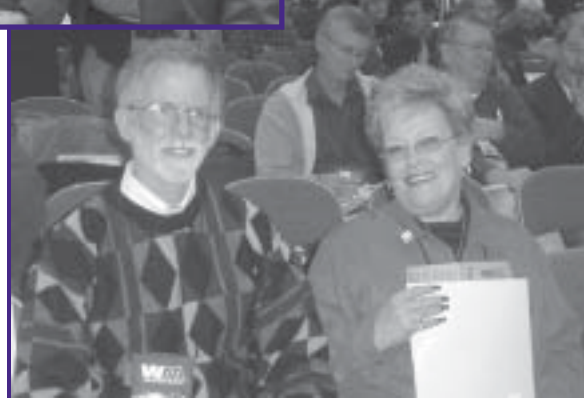


# THE ALABAMA MUNICIPAL **JOURNAL**

January 2003

Volume 60, Number 7

## Scenes from NLC's Congress of Cities



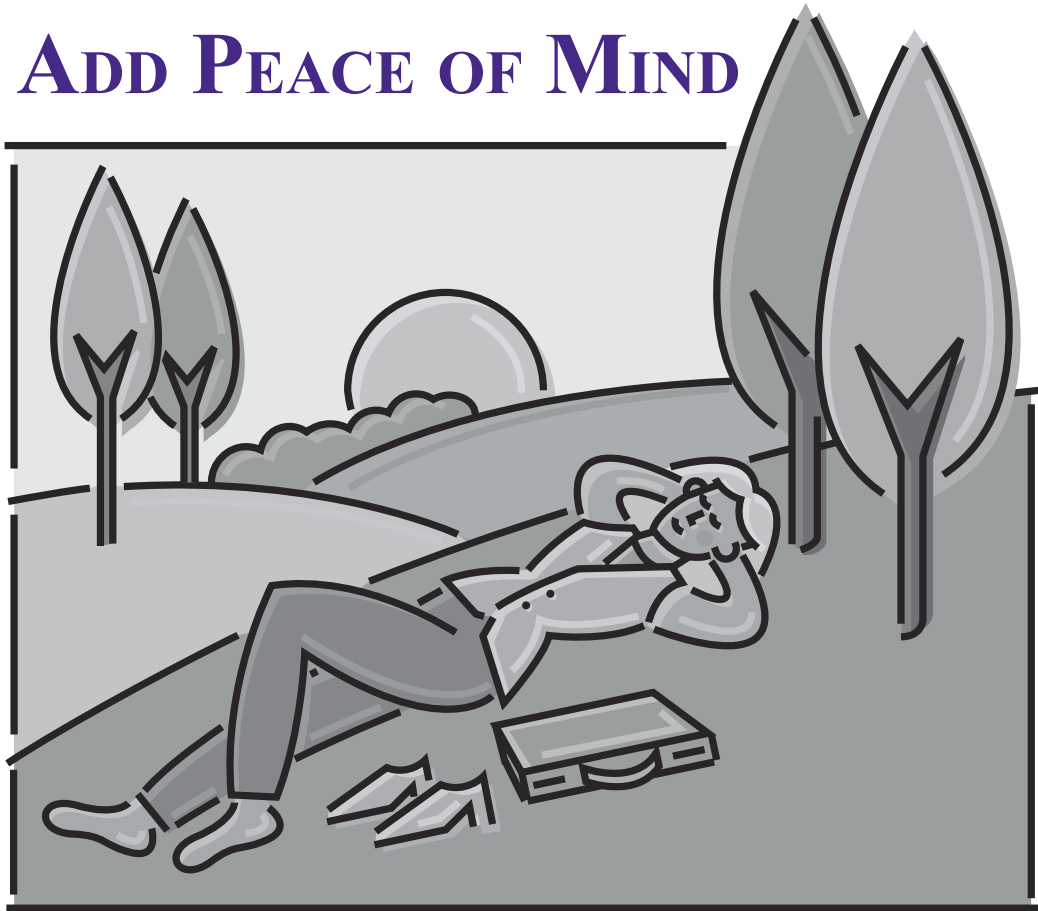
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January 2003 • Volume 60, Number 7

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## Call Before You Dig – A Damage Prevention Solution for Protecting Alabama’s Vital Underground Infrastructure

**Power. Heat. Communication. Water and sewage. We take our utilities so much for granted ...** Today, more and more of the utility companies that supply your home or business with power, gas, water, telephone, sewer, internet and cable television services are delivering those services through cables buried underground. In many cases, it is possible that these cables are not buried very deep and are therefore easy to hit – resulting in both financial cost and potential loss of life.

While utility outages are frustrating and inconvenient, they can also have a darker side that reaches much further than mere inconvenience. Calls to 911 and other emergency services may be impossible. People relying on powered medical equipment, hospital and air traffic operations may suddenly find themselves in serious trouble. In some situations, lack of heat in the winter or cooling in the summer could be life threatening. Day-today business operations may become difficult or impossible – leading to a complete standstill in the affected area.

Protecting this essential infrastructure in Alabama is a top priority for the people who plan, install, operate, repair and regulate underground facilities. It is a responsibility shared by facility designers, facility operators, excavators, regulators and property owners. They understand that underground infrastructures keep energy, communication and transportation services flowing.

### Call Before You Dig

Before beginning any excavation project, notification to underground facility owners a minimum of 48 hours prior to digging is *required* by Alabama Act 94-487.

Once the call is received from the excavator, contractor or property owner intending to dig, the information pertinent to the excavation is transmitted immediately to the utility so they can mark the location of their underground facilities within 48 hours. The underground facility operator will locate and mark the location of their facility with their respective color code marks free of charge for the excavator.

### Digging responsibly is the only way to dig. The alternative could mean disaster.

“The impact of unsafe or careless digging practices is real and often costly – in terms of personal injury and damage to underground lines, property and environment,” said Annette

Reburn, executive director of Alabama One Call – a non-profit organization established to provide a centralized one call notification system as a means to safeguard against injury and loss of life, to protect public services and to prevent damage to underground facilities by providing for prior notification of excavation and demolition activities.

To quantify the magnitude of risk, during the seven-year period of 1995 through 2001, the Department of Transportation’s Office of Pipeline Safety reports that there were 947 outside force accidents involving hazardous liquid and natural gas pipelines in the U.S., resulting in 250 injuries, 67 fatalities and more than \$255 million in property damage. These figures do not reflect damage caused by severed cables and/or wire affecting services such as telephone and cable television.

*continued page 12*

## Job Listing

### PLANNING DIRECTOR, City of Florence

The City of Florence is accepting applications until January 31, 2003, for the position of Planning Director. The Planning Director directs the planning of the physical development of the urban area and formulates long range, intermediate, and special planning programs. Other responsibilities include, but are not limited to, developing new and updated plans, programs, and regulations for the urban area; researching and managing the grant program for the Planning Department; planning, organizing, directing, maintaining, and revising the comprehensive plan for the City and its planning jurisdiction. Must be a graduate from an accredited four-year college with a degree in planning or closely related field, with a minimum of six to ten years of progressively responsible, related experience. Experience in local government planning is preferred. American Institute of Certified Planners (AICP) certification is desired, or must have the ability to attain certification within three years of employment. Must have a valid driver’s license. Salary range: \$50,562.98 - \$59,485.86. Interested candidates should contact the City of Florence Personnel Department for an application and a complete job description. Phone-(256) 760-6360; Fax-(256) 740-4140; E-mail LThompson@floweb.com; Mail - City of Florence, Personnel Department, P.O. Box 98, Florence, AL 35631. The City of Florence is an Equal Opportunity Employer.



# The President's Report

George W. Roy  
Mayor of Calera

## NLC Elects New Officers and Board Members During Congress of Cities

Newly elected NLC President John DeStefano Jr., mayor of New Haven, Conn., urged the delegates to the 2002 Congress of Cities to draw on their shared passion for public service to lead the organization in the coming year.

“The National League of Cities doesn’t derive its energy, mission and purpose from its Officers,” DeStefano told the voting delegates to the annual business meeting after they had elected him NLC’s 78th President. “It comes from you. You are truly inspirational. When we come together as the National League of Cities, we find that we are part of something bigger than ourselves. Never forget that what you do is something special.”

DeStefano moved quickly upon his election to rally the assembled delegates to press for prompt action to authorize the \$3.5 billion in federal funds that had been promised nearly a year ago to support local homeland security.

Shortly before his election as President, DeStefano talked about his personal commitment to investing in early childhood success — a commitment that led to the NLC Advisory Council Report, “Our Children, Our Future: Promoting Early Childhood Success in America’s Cities and Towns.” DeStefano issued a “challenge about fairness” to overcome the “violence of indifference.”

“There is a group of Americans who before the race even begins start out behind,” DeStefano said. “It is the kid who arrives at kindergarten with no chance to achieve that possibilities that God gave to him or her. We are better than that.”

DeStefano urged the delegates use the resources developed by the Advisory Council and the NLC Institute for Youth, Education, and Families and become a “community of caring.”

NLC First Vice President Charles Lyons of Arlington, Mass., said he was proud to serve as a leader of NLC — an “organization that is driven by all of its members to settle our differences and work together to make all cities, villages and towns prosperous.”

Lyons pledged to “work with the NLC Officers, the talented Board of Directors and our quality staff to fight for the values that all American people deserve.”

Newly elected second vice president Anthony A. Williams, mayor of Washington, D.C., said he appreciated being “befriended” by the Virginia and Maryland state municipal leagues who supported his candidacy for NLC leadership. Williams is the first mayor of the nation’s capital to serve as an NLC officer.

“This is a very special moment for me as an adopted child to be standing here 45 years later as both the mayor of Washington, D.C., and second vice president of the National League of Cities,” Williams said.

Williams said he looked forward to working with the officers and Board of directors to carry out the leadership agenda during the coming year.

Delegates to the annual business meeting also chose 16 elected officials and four state municipal league directors to two-year terms on the NLC Board of Directors and one elected official to a one-year term. Those newly elected Board members join the past presidents and 20 second year Board members to make up the 2003 leadership team.

**Note:** The Alabama League of Municipalities congratulates Cynthia McCollum, councilmember from Madison, who was elected to serve a two-year term on NLC’s Board of Directors.

### 2002 NLC Leadership

#### Officers

President: John DeStefano Jr., Mayor, New Haven, Conn. First VP: Charles Lyons, Selectman, Arlington, Mass.

Second VP: Anthony A. Williams, Mayor, Washington, D.C. Immediate Past President: Karen Anderson, Mayor, Minnetonka, Minn.

#### Past Presidents

Clarence Anthony, Mayor, South Bay, Fla.  
Glenda Hood, Mayor, Orlando, Fla.

*continued next page*

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William Hudnut, III, Vice Mayor, Chevy Chase, Md.  
Sharpe James, Mayor, Newark, N.J.  
Bob Knight, Mayor, Wichita, Kan.  
Brian O'Neill, Councilman, Philadelphia, Pa.  
Cathy Reynolds, City Council President, Denver, Colo.

#### **Board of Directors**

Brenda Barger, Mayor, Watertown, S.D.  
Ron Bates, Mayor, Los Alamitos, Calif.  
Sally Beals, Mayor, Centerville, Oh.  
Conrad Bowers, Mayor, Bridgeton, Mo.  
Rozelle Boyd, Councillor, Indianapolis, Ind.  
Michael Buehlhorn, Village President, Swansea, Ill.  
Steve Burkholder, Mayor, Lakewood, Colo.  
Leo Chaney, Jr., Councilman, Dallas, Tex.  
Roger Claar, Mayor, Bolingbrook, Ill.  
Catherine Connolly, Executive Director, League of Arizona  
Cities and Towns  
Jim Dailey, Mayor, Little Rock, Ark.  
Alex Fekete, Mayor, Pembroke Pines, Fla.  
C. Virginia Fields, Manhattan Borough President, New York,  
New York  
Carolyn Floyd, Mayor, Kodiak, Alaska  
Del Haag, Councilmember, Buffalo, Minn.  
Scott Hancock, Executive Director, Maryland Municipal League  
S. Ellis Hankins, Executive Director, North Carolina League  
of Municipalities  
George Harvell, Mayor, Millington, Tenn.  
Charles Jennings, Commissioner, Arkansas City, Kan.  
Willa Johnson, Councilwoman, Oklahoma City, Okla.  
Helen Kawagoe, City Clerk, Carson, Calif.  
Mamie Locke, Mayor, Hampton, Va.  
Christopher Lockwood, Executive Director Maine Municipal  
Association  
**Cynthia McCollum, Councilmember, Madison, Ala.**  
Don Moler, Executive Director, League of Kansas  
Municipalities  
Carlton Moore, Commissioner, Fort Lauderdale, Fla.  
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Municipalities  
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Ann Simank, Councilmember, Oklahoma City, Okla.  
Jeanie Smith, Executive Director, Mississippi Municipal League  
Daniel Soza, Council Member, Saginaw, Mich.  
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# Municipal Overview

By  
PERRY C. ROQUEMORE, JR.  
*Executive Director*

## NLC Report: Second Session of the 107th Congress

The second session of the 107th Congress accomplished little and has left the nation's cities and towns uncertain about what, if any, future assistance they can count on from Washington to help them meet new homeland security challenges.

Only two of the 13 "must-pass" appropriations bills met the September 30, 2002, deadline for passage. The Department of Defense and its Military Construction programs have up-to-date funding levels for 2003 while all other programs are funded at FY2002 levels under a continuing resolution (CR), which expires January 11, 2003.

This method of funding 2002 municipal priority programs is a mixed blessing. For example, the CR continues full funding for the Local Law Enforcement Block Grant, the Community Oriented Police program and the Highway Trust Fund even though President Bush's 2003 budget request would virtually eliminate these two popular public safety programs and would cut \$4 billion from the Highway Trust Fund. For now these programs are adequately funded.

The CR creates a disadvantage for many of NLC's 2002 priorities, particularly protecting the homeland. New programs proposed for 2003 and existing programs seeking new funding are out of luck since Congress failed to finalize eleven 2003 appropriations bills. For example, the \$3.5 billion First Responder Initiative promised in the president's budget has not been authorized or funded. There is also no money to reimburse states and localities the \$22 million per month owed them by the Transportation Security Administration (TSA) for "temporarily" providing their law enforcement personnel at the nation's 429 commercial airports. To add to these burdens, Congress passed a new port security bill just before leaving town without any funding at all. Meanwhile Amtrak is limping along without the increased funding it needs to operate and reorganize.

After months of contentious debate before the election, the lame duck Congress returned to Washington to authorize the new Department of Homeland Security and to complete the conference report on terrorism reinsurance. Funding for the new department, the first responder initiative and other homeland security related programs will occur sometime next year.

And more bad news for cities: In recent days President Bush has recently insisted that the incoming Republican leaders in the Senate must cut \$10 billion in discretionary funding from the eleven 2003 appropriations bills left unfinished. This means that many of the cuts proposed in Bush's 2003 budget request will probably be upheld.

### NLC 2002 Priorities

This article provides a wrap up of the second session of the 107th Congress focusing on National League of Cities 2002 priorities, which include: 1) protecting the homeland, 2) sustaining federal support for critical municipal programs, 3) protecting local revenue and taxing authority, 4) ensuring racial justice and equality, 5) investing in children and 6) balancing international trade agreements with local authority. NLC has had considerable success on these priorities but there is more work to be done in the 108th Congress.

### Progress on Protecting the Homeland

NLC made progress on a number of initiatives designed to enhance the country's ability to prepare for and respond to terrorism.

### Department of Homeland Security

The Congress agreed to authorize the NLC-supported Department of Homeland Security with virtually no funding. It may take three to five years to consolidate and coordinate the responsibilities of some 22 government agencies including the Customs and Immigration and Naturalization Services, the Secret Service, the Federal Emergency Management Agency, the Coast Guard, the Border Patrol, Transportation Security Administration, etc.

### First Responder Planning Grants

The first funding for the \$3.5 billion First Responder Initiative, \$100 million, was included in the 2002 supplemental. It will be distributed to the states in late December and 75 percent must eventually go to local jurisdictions. These outright grants are to help in the development of comprehensive, statewide coordinated, terrorism preparedness and response plans that deal with

*continued next page*

training, equipment and exercises. Also in this supplemental, \$25 million was made available to cities and states for Citizen Corps activities and training for Community Emergency Response Teams across the country. This funding is in anticipation that Congress will authorize and fund the \$3.5 billion First Responder Initiative.

### **Bioterrorism, Port Security and Pipeline Safety**

Passage of the Bioterrorism Act of 2002 provided \$160 million to local jurisdictions to conduct vulnerability assessments, revise emergency response plans and provide security upgrades for drinking water systems. Passage of the NLC-supported Maritime Transportation Security Act authorizes threat assessment grants to local port authorities, but unfortunately, Congress could not agree on how to fund the important new port security requirements. After years of hard work, Congress approved the NLC – supported Pipeline Safety Improvement Act (HR 3609) to strengthen the nation’s pipeline safety laws. HR 3609 reauthorizes the nation’s pipeline safety program through 2006. It mandates periodic inspections of all pipelines, increases civil penalties for violations, strengthens operator qualifications, expands protections for whistleblowers and authorizes new funding for research and technology programs.

### **Local Law Enforcement at Commercial Airports**

At NLC’s request, Transportation Secretary Norman Mineta instructed the Transportation Security Administration (TSA) to stop threatening to close commercial airports as a means of forcing local jurisdictions to provide their local law enforcement personnel for security at these airports. Also, after considerable pressure from NLC and others, the TSA agreed to deputize for liability local law enforcement officers assigned to the nation’s 429 commercial airports and to agree to reimburse local jurisdictions for their costs.

### **Other**

In consultation with NLC and other state and local public interest groups, the White House Office of Homeland Security developed a Homeland Security Advisory System (5-level alert). However, the Office of Homeland Security gave limited guidance on how to adapt it locally.

The Administration’s proposal to create a Terrorism Information and Prevention System (TIPS) was blocked due to widespread opposition from NLC, civil rights groups and privacy advocates. We also successfully derailed a Justice Department directive that would have given local police the authority to enforce immigration law. This was accomplished by working with the Department of Justice and by expressing our strong opposition to the White House.

## **More Work to Do on Protecting the Homeland**

The administration and Congress failed to provide the promised \$3.5 billion first responder funding directly to cities or by any delivery system, and created the organizational structure for a new Homeland Security Department with virtually no funding. Also, NLC did not succeed in its efforts to pass the Homeland Security Information Act, which that would have required direct communications between federal agencies and local authorities.

### **Critical Municipal Programs**

#### **Highway Trust Fund**

Thanks to support from NLC and multiple coalitions, the House and Senate passed legislation to reinstate \$4.4 billion of the President’s proposed \$8.7 billion cut in the Highway Trust Fund, authorizing \$27.7 billion in 2003 instead of the \$23.3 billion proposed by the President. However, Bush is expected to force appropriators to cut billions from this fund when they return in January 2003.

#### **American Dream Downpayment Act of 2002**

NLC succeeded in blocking funding for the Administration’s only initiative in this area, the American Dream Downpayment Act of 2002 (S. 2584 and H.R. 4446). The legislation would have authorized \$200 million of the HOME Investment Partnership program to be set aside specifically for downpayment assistance while eroding local flexibility in a block grant program. The Senate VA HUD Appropriations bill did not include any funding for the Administration’s initiative.

#### **Assistance to Dislocated Workers**

During the debate and votes on the President’s Trade Promotion Authority (TPA), NLC worked to protect local authority in international agreements and to get included trade adjustment provisions that will provide 65 percent of the cost for dislocated workers’ health insurance for one year. And in another unemployment related issue, Congress provided an additional 13 weeks of unemployment assistance (H.R.3090) to workers dislocated due directly or indirectly to September 11, 2001.

#### **Amtrak Stays Afloat**

With pressures from NLC and dozens of other advocates for national passenger rail service, the President and the Congress agreed to provide \$205 million in the 2002 supplemental appropriations to help Amtrak stay afloat until FY2003. However, Bush is opposed to providing the \$1.2 billion in 2003 that Amtrak says is needed to provide services



while it reorganizes.

### **More Work for Critical Municipal Programs**

#### **2003 Appropriations Still on Hold**

No 2003 appropriations were passed to fund any of NLC's priority programs. Currently all funding is provided through a continuing resolution (CR) based on 2002 funding levels. This does not fund any of the new NLC-supported homeland security proposals.

#### **Local Law Enforcement at Airports Costs Cities**

The House, the Transportation Security Administration (TSA) and airport administrators have proposed eliminating a security requirement to federalize law enforcement at the nation's 429 commercial airports. This could leave states and localities with serious exposure to liability and an unfunded mandate of approximately \$22 million per month. NLC continues to work to resolve this issue.

#### **No Final Commitment to Water Infrastructure Investments**

Both House and Senate committees reported legislation to enhance the federal financial commitment to municipal drinking water and wastewater infrastructure. However, the legislation died because of controversial new mandates accompanying the newly authorized funding. Since both Congress and the Administration now acknowledge the major water infrastructure-funding gap (\$23 billion a year), NLC will be working with the Water Infrastructure Network coalition to pass legislation on this issue in the 108th Congress.

#### **Federal Housing Trust Fund Fails to Advance**

Despite the national shortage of affordable housing and the downturn in the economy, no significant housing or economic development legislation was enacted by the 107th Congress. NLC worked with a large housing coalition to develop an amendment authorizing a federal Housing Trust Fund, which was blocked by the House Republican leadership.

#### **Highway Trust Fund Doesn't Get Ethanol Tax**

After being held up for more than a year, the House/Senate conference failed to pass a final energy reform bill (S. 519 and H.R. 4). Though it came to naught, NLC succeeded in getting language considered by the conference that would have authorized moving ethanol taxes to the Highway Trust Fund to bring in an additional \$400 million per year.

### **Protecting Local Revenues and Taxing Authority**

#### **Do No Harm**

More often than not, NLC has to follow a "do no harm" approach as our lobbyists work to reduce regulatory burdens and to block federal initiatives harmful to cities. For example on the regulatory front, we worked successfully this year to get the IRS to revise its rulemaking regarding advanced long-term contracts for natural gas purchases funded with municipal bonds, preventing adverse bond rulings for municipal gas utilities. The agency had begun several audits of municipal gas utility transactions, claiming that such advance prepayments for natural gas resulted in arbitrage violations of municipal bonds.

NLC, working with a coalition of local interest groups, has also filed comments opposing a Federal Communications Commission declaratory ruling changing the definition of cable modem from a cable service to an information service. If allowed to stand, this regulatory action would eliminate local governments' authority to control their rights of way and to charge for use of this valuable citizen-owned asset.

#### **Collective Bargaining Blocked**

With a lot of help from the state municipal leagues and despite aggressive lobbying in both the House and Senate by the International Association of Fire Fighters, NLC successfully blocked a collective bargaining proposal (H.R. 1475) which would have given all state and local emergency personnel the right to select a bargaining agent to negotiate with their government employers.

#### **Telecommunication Industry Threatens Local Authority**

Working with other state and local organizations, NLC blocked a telecommunication industry move to prolong the moratorium on taxing Internet access and to redefine business activity taxes in H.R. 2526. This bill would have removed the responsibility of most state and local businesses to pay business activity taxes and could have cost more than \$9 billion in annual revenue losses. In another telecommunication industry effort to discredit cities, NLC successfully lobbied the membership of the National Association of Regional Utility Commissioners (NARUC) to prevent its endorsement of a telecommunications white paper blaming cities for slow deployment of broadband.

In a case important to municipal authority, the Ninth Circuit Court of Appeals recently reversed a federal district court decision that a city's franchise transfer decision is

*continued next page*

essentially legislative in nature and entitled to broad deference by the courts. The court found that local governments are empowered to examine the impact of the sales prices paid for cable on future rates paid by consumers. It also clarified that the parent company's finances are a legitimate issue and local governments can deny a cable franchise transfer based on this. The case was *Charter Communications v. County of Santa Cruz* and NLC submitted an amicus in support of Santa Cruz.

### **Energy Legislation Blocked**

NLC successfully prevented the passage of comprehensive energy legislation that attempted to include an electricity restructuring provision. This would have authorized the Federal Energy Regulatory Commission (FERC) to control the siting of transmitting utilities to join a Regional Transmission Organization (RTO); repealed FERC's authority to review mergers; expanded FERC authority over public power systems; required FERC to conduct a rulemaking on incentive and performance-based transmission rates; and weakened consumer protection laws such as the Public Utility Holding Company Act (PUHCA).

### **Faith-Based Initiative Fails to Progress in the Senate**

NLC helped slow progress in the Senate of the Administration's faith-based initiative (S. 1924, the CARE Act) by working with Senators Reed (D-R.I.) and Durbin (D-Ill.) to draft and build support for amendments to the Act that would protect state and local civil rights laws from preemption by the Act.

### **More Work to Do on Revenues and Taxing**

Congress and the Administration failed to propose and appropriate enough funding for the Census Bureau's American Community Survey so it could develop a new methodology to report accurate Census numbers annually to eliminate the need to use the Census long form in 2010.

### **Ensuring Racial Justice and Equality**

There were no legislative victories related to this priority except for the introduction of strong predatory lending legislation in both the House and the Senate, which was not acted on. NLC also actively supported Hate Crimes and profiling bills, which made no progress this year and are not expected to have any legs in the new 108th Congress.

### **Investing in Children**

Children's issues appeared to be very low-priority in the 107th Congress. Many proposals were introduced to reauthorize the Temporary Assistance to Needy Families

(TANF) Block Grant and the Child Care Development Block Grants (CCDBG). While there was much contentious debate, there was no final action on these two pieces of legislation.

There were two major TANF proposals on the table H.R. 4337, the Republican's legislation passed by the House that closely mirrors President Bush's welfare proposal and The Work, Opportunity, and Responsibility for Kids (WORK) Act of 2002 passed by the Senate Finance Committee in June. The TANF block grant was scheduled to expire on September 30th 2002 so Congress voted to extend the program in its current form through March 31st, 2003. This is in anticipation that Congress will address TANF reauthorization when the 108th Congress convenes in January. Sources say that these two pieces of legislation will be the framework for bills in the 108th Congress.

The foremost issue in the reauthorization of the Child Care Development Block Grant was funding. In his FY 2003 budget proposal President Bush did not increase the funding for child care. However, H.R. 4337 provided an additional \$1 billion in child care funds, a victory for the National League of Cities. NLC was further pleased to learn that the WORK Act provided an additional \$5.5 billion in child care money. Unfortunately, neither bill progressed. There is talk that these reauthorizations and that of the Individuals with Disabilities Education Act (IDEA) will move forward when the 108th Congress convenes.

### **Balancing International Agreements with Local Authority**

NLC was successful in getting Senator John Kerry (D-Mass.) to introduce our amendment to the 'fast track' Trade Promotion Authority bill and to have our issues debated on the Senate floor. The amendment would have limited foreign investors to no greater legal rights than U.S. Citizens under the Constitution, directed U.S. trade negotiators to observe the principles of the due Process Clause of the Constitution, and ensured that "mere diminution in the value" of private property does not constitute expropriation (a "takings" claim).

Although this amendment was tabled in the Senate, the U.S. Trade Representative's Office (USTR) has included the "no greater rights provision" in its negotiations of trade agreements with Singapore, Chile and in the Free Trade Agreement for the Americas. ■

*This article was prepared by Cameron Whitman, Director of Policy and Federal Relation, National League of Cities.*

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# Dig Safely

continued from page 4

According to Reburn, "Motivating additional excavators and property owners to adopt safe digging practices will ultimately save lives, protect property and the environment." Her organization is currently participating in a national campaign known as "Dig Safely."

## "Dig Safely"

"Dig Safely" urges both professional and non-professional excavators to take the following steps: 1) Call Alabama One Call 48 hours prior to excavation at 800-292-8525, 252-4444 (B'ham Area), or #DIG for cellular calls with certain local providers. 2) Wait for the site to be marked with paint, flags or stakes. 3) Respect the underground facility operator's marks. 4) Dig with care – always hand dig or use non-invasive methods near marked lines.

- If you come into contact with an underground line, notify the facility operator immediately.

- If damage creates an emergency, take immediate steps to safeguard health and property.

The campaign reminds underground facility operators to do the following: Respond to the Alabama One Call location request and mark lines accurately and with the proper utility/facility color.

## Benefits of "Digging Safely"

Digging, trenching, boring, augering and blasting are all inherently dangerous to life and property. Even under ideal conditions with a minimum of underground utilities or other obstructions the risk of potential damage is high.

Coordination, communication and cooperation between excavators, contractors, homeowners, property owners and utility owners can help to reduce the risk of damage and:

- Reduce the chance of injury to employees and citizens.
- Maintain uninterrupted utility service to the citizens of Alabama.
- Reduce insurance premium payments.
- Reduce Workers' Compensation payments.
- Reduce non-productive down time.
- Optimize job scheduling activities.
- Reduce damages to expensive excavating equipment.
- Reduce or eliminate the payment of property damage claims.

*This article was provided by Alabama One Call. For more information on Alabama One Call or Alabama's Underground Damage Prevention Act 94-487, contact Michele Dory, Damage Prevention Coordinator at 205-414-1846; mdory@al1call.com or visit: www.al1call.com.*

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- Call Before You Dig. (As required by Alabama Act 94-487)
- Wait the Required 48 Hours to Allow the Underground Utilities Nearby to be Marked.
- Respect the Color Coded Utility Marks Painted on the Ground.
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# ENVIRONMENTAL OUTLOOK



By Gregory D. Cochran  
Director, State and Federal Relations

## NLC's Advocacy and Lobbying Efforts

The National League of Cities (NLC) Board of Directors has launched a major effort to strengthen NLC's advocacy and lobbying during 2003. Drawing on a year-long process led by newly elected President John DeStefano, the Board adopted a comprehensive action plan designed to ensure that NLC is the "best and most effective public interest lobbying organization in America."

The plan was adopted during the Board meeting in conjunction with the Congress of Cities in Salt Lake City. The Board also accepted the final report of the Working Group on Homeland Security, endorsed a new Corporate Partners Plan and reaffirmed its commitment to press for federal funding to support local homeland security efforts.

The advocacy action plan was developed by the Board Policy and Legislative Committee which met four times during the year to explore ways of strengthening NLC's lobbying and advocacy. It included input from the state municipal league directors through both a survey and a discussion at the state league directors' workshop in August. NLC works closely with the 49 state municipal leagues to carry out the federal lobbying agenda.

"The focus of our work has been exclusively on federal advocacy and lobbying," DeStefano told the Board. "While we touched on other NLC programs and services in our discussions, our report provides specific action steps that we believe must be taken in 2003 to achieve our goals and to ensure that NLC is in fact and in perception the premier lobbying organization for America's cities and towns."

The plan is built on the assumption that "lobbying and advocacy are NLC's most important services, and they are essential to sustaining membership."

Specific action steps endorsed by the Board include:

- Refining and clarifying the process for setting annual advocacy priorities to provide opportunities for member input, build broad commitment to the priorities, ensure clear guidance to NLC's lobbyists on expected outcomes and be able to measure performance against the priorities. Under the new plan, the NLC Officers will set the federal advocacy priorities at their January leadership meeting based on input collected at meetings during the Congress of Cities.
- Strengthening both internal and external communications to ensure that members know about action related to the priorities and to draw national attention to NLC's advocacy work on behalf of cities. As part of this action step, NLC plans to redesign both the look and content of *Nation's Cities Weekly* and hire a public relations consultant to support the advocacy agenda,
- Creating new partnerships with three congressional caucuses and three new national organizations to strengthen NLC's lobbying and gain support for NLC priorities.
- Increasing direct involvement of city officials in carrying out the lobbying agenda.
- Recognizing and honoring members of Congress for their support of NLC priorities and local issues.
- Carrying out at least one hearing on a major priority during 2003 and carrying out one national lobby day to bring local officials to Washington to advocate on a high priority issue in addition to a visible lobbying effort during the Congressional City Conference.

*continued next page*

- Optimizing the Congressional City Conference as a lobbying tool by rearranging the schedule to maximize city official participation in a “city lobby day” event on Capitol Hill on Tuesday, March 11. The conference brochure, which was distributed at the Congress of Cities and mailed to city officials describes the new schedule and focus.

The NLC Officers plan to review progress on the plan on a monthly basis and provide regular reports to the membership on progress.

In other business, the Board formally established a corporate partners program to provide a structure for involving corporate leaders in meaningful ways. The program was approved in concept as part of the FY 2003 budget process in July.

Beginning next month, corporations will be able to join NLC as “partners” for a \$10,000 annual fee. The overall mission of the program is to promote the exchange of ideas between corporate leaders and the leaders of America’s cities in order to strengthen local government, encourage economic competitiveness, and promote civic engagement.

Companies that join the NLC Corporate Partners Program during its first nine months of operation will be considered charter members and will automatically serve on an NLC Corporate Advisory Council through September 30, 2005.

Corporate partners will participate in a corporate roundtable discussion at NLC’s annual conference, assist in strengthening NLC’s best practices capacity, receive discounts on booth costs at the Congress of Cities, and work closely with a designated senior staff person to ensure a productive partnership.

More details about the program will be available to potential partners early next month.

The Board also reviewed outcomes from the Working Group on Homeland Security which was established in January by then-President Karen Anderson, mayor of Minnetonka, Minn., to serve as NLC’s front line in developing tools and resources for city officials.

Committee Co-Chairs Michael Guido, mayor of Dearborn, Mich., and Mary Poss, councilmember from Dallas, reviewed three products that emerged from the year long effort – two guidebooks on homeland security and a summary of lessons learned from a series of meetings with first responders in New York City last summer. Those

resources were printed for distribution at the Congress of Cities and are available on NLC’s web site at [www.nlc.org](http://www.nlc.org).

Guido and Poss urged the NLC Officers and Board to continue NLC’s “visible attention” to homeland security both in terms of federal lobbying and in providing up-to-date resources for city officials as needs and challenges change.

The Working Group recommended and the Board agreed to:

- Maintain homeland security as a top advocacy priority in the coming year;
- Ensure continued staff attention to homeland security in terms of lobbying, communication, information sharing and resource development; and
- Continue the Working Group on Homeland Security for another year to support the NLC leadership and provide a central resource on emerging issues and challenges. ■

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# THE LEGAL VIEWPOINT

By Ken Smith  
Deputy Director/Chief Counsel

## Video Gaming and the “Chuck E. Cheese” Law

They dot the landscape of many, if not most, municipalities in Alabama. They are adult-gaming arcades. With names like “Lucky Lady” and “Little Biloxi” these arcades offer casino-style video gaming – similar to what can be found in Mississippi or Nevada – to adults. As many of these arcades as exist, though, the question remains – are they legal?

Section 65 of the Alabama Constitution, 1901, prevents the legislature from authorizing “lotteries or gift enterprises for any purposes ... or tickets in any scheme in the nature of a lottery.” But what constitutes a lottery? In *Opinion of the Justices*, 692 So.2d 107 (Ala. 1997), the Alabama Supreme Court noted that a lottery consists of three elements: (1) a prize, (2) awarded by chance, (3) for a consideration. However, the Court noted that, “[A]s long as some degree of skill is required in a gambling activity, that activity differs from a lottery in kind, rather than in degree. In such a case, the issue is not the *degree* of skill involved, but whether *some* skill is involved.” Thus, if skill is involved, laws authorizing other types of gambling do not violate Section 65. For instance, in *Opinion of the Justices*, 287 Ala. 334, 251 So.2d 751 (1971), the Alabama Supreme Court held that laws authorizing pari-mutuel wagering do not violate Section 65 because although pari-mutuel betting is gambling, it is not a lottery.

In 1996, the Alabama Legislature passed Section 13A-12-76, Code of Alabama, 1975, generally referred to as the “Chuck E. Cheese” law. This law purported to legalize certain activities on “bona fide coin-operated amusement machines” that would otherwise be prohibited by other Alabama anti-gambling laws. Essentially, the law allowed the use of these machines for amusement purposes where some skill was involved, provided that the only award for winning was either a replay or non-cash certificates or

merchandise worth up to \$5.00. Following passage of this law, the adults arcades quickly began proliferating, leaving local and state officials to wonder whether they had any power to restrict them. Many local governments chose to merely license fees for operating these businesses. Others, though, actively sought to close these operations down, arguing that they violated Alabama law.

In *Opinion of the Justices*, 795 So.2d 630 (Ala. 2001), the Alabama Supreme Court held that a Senate bill that would authorize video machine gambling at racing facilities violated the constitutional prohibition against lotteries because “chance” is the fundamental nature of such games. This opinion, though, was advisory and addressed only the proposed legislation the Court was asked to rule on. Therefore, the holding could not be used to invalidate the “Chuck E. Cheese” law and close the arcades.

However, the Alabama Court of Civil Appeals recently released *State v. Ted’s Game Enterprises*, \_\_\_ So.2d \_\_\_, 2002 WL 31780143 (Ala. Civ. App. 2002), which directly addresses the law. This case holds that the law contravenes the ban on lotteries and schemes in the nature of lotteries found in § 65 of Alabama’s Constitution. This article discusses this holding.

### Facts

In September 1998, the State, on the relation of John M. Tyson, Jr., as District Attorney of Mobile County, filed a complaint seeking the forfeiture of 20 video-game machines, currency and documents law-enforcement officers had seized from nine stores located in Mobile County. The State alleged that the seized machines were “slot machines and video gambling devices, paraphernalia, currency and records,” which, pursuant to the criminal gambling statutes,

*continued next page*

were contraband and were used and intended for use in unlawful gambling activity, and therefore should be condemned and awarded to the State pursuant to Section 13A-12-30 of the Code.

The State later dropped the charges without prejudice against 12 of the machines which were returned to Ted's and amended its complaint to seek a declaratory judgment, alleging that the machines owned and distributed by Ted's are illegal "slot machines" and "gambling devices" under Alabama's criminal gambling statutes and that they were not "bona fide coin-operated amusement machines" protected by Section 13A-12-76. The trial court disagreed, finding that, even though skill may be only a "minor factor," in playing the machines, this was sufficient to protect them under Section 13A-12-76. The trial court further concluded that the machines, by definition, were not "slot machines" under Section 13A-12-20.

Despite the foregoing findings, the trial court also determined that the eight machines seized from Ted's that were still in the State's possession offered rewards exceeding the statutory limit of \$5 on a single play and that, for this reason alone, they were illegal gambling devices and were subject to forfeiture.

### Section 13A-12-76 <sup>1</sup>

The Court of Civil Appeals disagreed with the trial court's conclusions concerning the construction of this Section, as well as the application of Section 65 of the Alabama Constitution. To start with, the Court of Civil Appeals acknowledged that the reason for the enactment of Section 13A-12-76 was unclear. In fact, the court noted that, "the manner in which that statute is 'constructed' makes it, and its intended relationship to the criminal gambling statutes, an enigma."

Ted's argued that subsection (d) of 13A-12-76 should be construed as an exception to all of the criminal gambling statutes by making the play of a coin-operated amusement machine (COM) legal. By the specific language of the statute, Ted's contended, COM players could accumulate winnings for the successful play of a bona fide COM, as defined in the statute.

The court, though, found that the "biggest problem with Ted's argument is that Section 13A-12-76(d), by its express terms, only purports to legalize the play of a 'bona fide COM' the statutory definition of which includes the following language:

"[t]he term 'bona fide coin operated amusement machine does not include the following:  
" ...

- "j. Machines which are not legally permitted to be operated in Alabama.
- "k. Slot machines.
- "l. Video poker games."

The court went on to note that,

"The State contends, quite correctly, that this court is obliged to apply the plain meaning of this statutory language. If we do so, we find that the very statute that, according to Ted's, is intended to exempt a certain set of machines from the criminal prohibitions against 'gambling devices' and 'slot machines,' excludes those very 'gambling devices' (because they are 'machines which are not legally permitted to be operated in Alabama') and 'slot machines' from the set of machines to which the statute supposedly applies."

This alone, though, did not resolve the issue in the court's mind. The court was still confused as to why the legislature enacted 13A-12-76 and by the structure in which the statute was written. Thus, the court found it necessary to turn to the issue of "what limits, if any, Section 65 (Alabama Constitution, 1901) imposes on the application of Section 13A-12-76."

### Section 65

As noted above, Section 65 essentially prohibits lotteries in Alabama. The Court of Civil Appeals entered into a lengthy discussion of the history of lotteries, citing *Opinion of the Justices, No. 373*, 795 So.2d 630 (Ala. 2001), and pointing out that Alabama follows the "American Rule," which holds it is possible for a game or activity to be considered a lottery even if skill is involved in determining its outcome. The court went on:

"In explaining the degree of skill required to avoid the anti-lottery provisions of Section 65, the Justices wrote:

"As stated previously, § 65 not only prohibits lotteries, but it also prohibits any "gift enterprise" or "scheme in the nature of a lottery." "In this State, therefore, the public policy is emphatically declared against lotteries, or any scheme in the nature of a lottery, both by Constitution and by statutes. . . . *The very purpose of this broad declaration was to put a ban on any effort at evasion or subterfuge.* . . . Moreover, the fact that it was necessary to amend the Constitution to except "bingo" from § 65's blanket prohibition on lotteries also demonstrates the broad construction that section has been given."

Thus, the court found that the legislature intended Section 65 to be given a broad reading by the courts and that every type of gambling that was “in the nature of a lottery” was banned by Section 65. But what types of gambling fit this rule? The court explained that, in the Supreme Court’s *Opinion of the Justices No. 373*:

“ ‘If the result of the distribution is to be determined solely by skill or judgment, the scheme is not a lottery, even though the result is uncertain or may be affected by things unforeseen and accidental. Where elements both of skill and of chance enter into a contest, the determination of its character as a lottery or not is generally held to depend on which is the dominating element.’ ”

Quoting *Minges v. City of Birmingham*, 251 Ala. 65, 36 So.2d 93 (1948), the court noted that “it is not necessary that this element of chance be pure chance, but it may be accompanied by an element of calculation or even of certainty; that is sufficient if chance is the dominant or controlling factor.”

Further,

“What it means for either skill or chance to be predominant, and to be in a ‘qualitative or causative’ sense, was addressed in the oft-cited decision in *State ex Inf. McKittrick v. Globe-Democrat Publishing Co.*, 341 Mo. 862, 110 S.W.2d 705 (1937). In *McKittrick*, the Missouri Supreme Court considered the issue of whether a puzzle contest sponsored by a newspaper was a lottery. The contest involved a series of cartoons published over a period of time, each of which contained clues as to the name of a famous individual. When the first cartoons were published, the clues were simple and the lists of names provided to aid contestants in solving the puzzles were short. As the contest progressed, the cartoons became more subtle, the lists of names from which to choose became longer, and the task of determining the correct name became more difficult. As to some of the cartoons near the end of the contest, however, more than one name was ‘equally appropriate’ and, therefore, a contestant’s selection of the winning name became a matter of chance. With those facts before it, the Missouri Supreme Court . . . drew the following conclusion from its review of the cases:

‘[T]he fact that skill alone [would] bring contestants to a correct solution of a greater part of the problems does not make the contest any the less a lottery if chance

enters into the solution of another lesser part of the problems and thereby *proximately influences the final result.*’

“ ‘[T]he rule that chance must be the dominant factor is to be taken in a qualitative or causative sense rather than in a quantitative sense. . . .’ the issue therefore is not ‘the mere proportions of skill and chance entering in the contest as a whole.’ ”

And, citing *Morrow v. State*, 511 P.2d 127 (Alaska 1973):

“Skill or the competitors’ efforts must sufficiently govern the result. *Skill must control the final result, not just one part of the larger scheme.* . . . Where “chance enters into the solution of another lesser part of the problems and thereby proximately influences the final result,” the scheme is a lottery. . . . *Where skill does not destroy the dominant effect of chance, the scheme is a lottery.*”

Thus, the Court of Civil Appeals held:

“Based on the foregoing, we conclude that whether a game or activity constitutes a ‘lottery’ depends on whether chance remains ‘an integral part which influences the result’—is chance meaningful in determining the outcome of the game—or does skill override the effect of the chance? Does chance, as the *McKittrick* Court put it, ‘proximately influence [ ] the final result,’ or does skill, in the words of the [the Alaska Court in *Morrow*] ‘destroy the existence or effect’ of the chance? If the former and not the latter, it can hardly be said that the skill predominates over the chance in the qualitative or causative sense contemplated . . . As long as chance matters – as long as chance makes a meaningful difference in the outcome – the activity differs in kind, not just in degree, from a game of skill.”

Ted’s also made a very novel argument that the COMs in this case did involve the use of skill. As the court phrased it:

“Ted’s also argues over the meaning of the word ‘skill.’ Ted’s elicited and seeks to rely upon testimony (1) that identifying that a game is a game is a ‘skill,’ (2) that finding and understanding the directions of a game is a ‘skill,’ (3) that ‘finding where the coin goes [is] a skill,’ (4) that ‘finding which button to press’ is a ‘skill,’ and (5) ‘that actually playing the game [is] a skill.’ Ted’s also relies upon testimony that ‘skill’ would include a

*continued next page*

‘strategy or tactic based on knowledge of a particular game’s features,’ on the rules of the game, the knowledge of probabilities, and ‘the ability to see what is relevant or significant in a particular game.’”

The court was not persuaded by these arguments, though, finding that “the word ‘skill’ speaks to the ability, through the application of human physical or mental capacity, to actually cause a desired outcome of a game when the game is played.

Thus, the court concluded that Section 13A-12-76 may not be read “so as to legalize games or activities in which skill does not, as discussed herein, predominate over chance in determining the outcome.

### Conclusion

So where does this leave local regulation of adult video gaming? Clearly, this decision provides a precedent for local governments seeking to prohibit COMs that involve luck to win rather than skill. The League encourages local officials to closely examine machines that they feel violate Alabama’s anti-gambling laws to determine what, if any, level of skill is necessary to become a competent player on that machine. If chance plays a significantly larger role in winning than skill, *State v. Ted’s Game Enterprises* indicates that a court would uphold efforts to remove the machines. This decision, as is clear, would have to be made on a case-by-case basis.

It is worth noting, though, that at press time it seems that an appeal of this case is likely. The League will, of course, report any future developments. ■

<sup>1</sup> Note that the discussion of the case has been shortened significantly due to space limitations. As a result, at times this article may appear somewhat cryptic. The League urges readers to read the full text of the decision prior to applying the holding.

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- Date of injury and description of injury
- Name and address of medical provider
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# Legal Notes

By Lori Lein  
League Counsel

## COURT DECISIONS

**Zoning:** Developer's application for rezoning was improperly granted because the original request was defective, the city had no authority to grant a rezoning request without first receiving and considering any recommendation of the city planning commission, and the rezoning ordinance was not published in its final form, in violation of a zoning regulation requiring any proposed changes to a zoning ordinance be included in a second legal notice. *Speakman v. City of Cullman*, 829 So.2d 176 (Ala. Civ. App. 2002).

**First Amendment:** A municipal ordinance banning commercial advertising in a city's navigable waters did not violate advertising boat owner's First Amendment rights where the city passed the ordinance to preserve the natural beauty of the coastline and to prevent the creation of a carnival-type atmosphere; although the advertising was protected commercial speech, the aesthetic value of the coastline for a city that is heavily dependent on tourism could not be overstated and there was no narrower ban on waterfront advertising that would effectively avoid the problem. *Ex parte Walter v. City of Gulf Shores*, 829 So.2d 186 (Ala. 2002).

**Legal Expenses:** Where the authority to set the compensation rates of contract attorneys rests solely with the mayor, a letter from the city attorney informing a contract attorney of the hourly compensation rate did not establish that the city attorney had apparent authority to accept a contract attorney's offer of a different hourly compensation rate and thereby bind the city to a unilateral contract even though the letter was written at the mayor's request and indicated that the contract attorney should contact the city attorney with any questions. *Brannan and Guy, P.C. v. City of Montgomery*, 828 So.2d 914 (Ala. 2002).

**Courts:** If a municipality is physically located in two counties, venue for a premises liability suit against the municipality is appropriate in either county, regardless of where the municipality's seat of government is located. *Ex Parte City of Haleyville*, 827 So.2d 778 (Ala. 2002).

**Boards:** The appointment of a board member to a municipal board for a shorter term than that prescribed by statute does not void an otherwise valid appointment; instead, the appointment is simply construed to be for the statutorily prescribed length of time. The fact that a city council member died between the time the council made an appointment to a gas board and the time the council should have made the appointment did not render the appointment invalid, where the council member died prior to the expiration of his term. Though the vacancy in the office of the council member existed by reason of his death, it had no effect on the term of office so that, in effect, prospective appointments were made and took effect before the expiration of the appointing powers' terms. *Gilbert v. Wells*, 473 So.2d 1042 (Ala. 1985).

## Decisions From Other Jurisdictions

**First Amendment:** A municipal ordinance banning the peddling of merchandise, including books, on public sidewalks within 1000 feet of an arena does not serve the city's asserted interest in maintaining the flow of pedestrian traffic absent objective evidence that that flow is disrupted by the book sales, bans too much speech to be narrowly tailored, does not afford an ample alternative avenue of communication, and thus is not a reasonable time, place, or manner restriction on speech compatible with the First Amendment. *Weinberg v. Chicago.*, — F.3d — (7<sup>th</sup> Cir. No. 02-1372); 71 L.W. 21 (Dec. 3, 2002). *continued next page*

## ATTORNEY GENERAL OPINIONS

**Advertising:** There is no specific state law prohibiting the use of advertising on municipal police vehicles. 2003-031.  
**NOTE:** While generally there is no specific law prohibiting the use of advertising on police vehicles, the advertisement of certain commodities such as alcohol, tobacco, and firearms may be prohibited or regulated by specific provisions of state and/or federal law.

**Jails:** Both the county commission and the sheriff should be parties to any contract with a municipality to house municipal prisoners in the county jail. The decision of whether to accept municipal prisoners lies solely within the discretion of the sheriff, unless there is a current agreement between the county, the sheriff, and the municipality for the sheriff to accept municipal prisoners. 2003-032.

**Streets and Roads:** If a municipality has not adopted roads for maintenance under the procedure set out in Sections 11-49-80 and 11-49-81 of the Code of Alabama 1975 nor has it assumed responsibility for by exercising sole authority over those roads, then the municipality is not responsible for the material costs of maintenance, paving, and scraping of roads within its corporate limits. 2003-034. **NOTE:** This opinion relates to specific facts presented by the Town of Argo who has never exercised any control or authority over any roads within its corporate limits, nor has it annexed any new territory since July 1995. See Section 11-49-80 of the Code of Alabama 1975.

**Annexation:** Pursuant to Section 11-42-40, *et seq.*, of the Code of Alabama 1975, parcels of property proposed to be annexed into a municipality are not required to be contiguous to each other so long as each parcel is contiguous to the corporate limits and thus, holding a single election covering the various parcels proposed to be annexed is proper. 2003-038.

**Elections:** Absentee ballots postmarked prior to the day of the election, but received after the day of the election, are not to be counted and canvassed. 2003-036.

**Elections:** Procedure proposed to count timely received absentee ballots that were discovered by election officials on a day after the other absentee ballots were counted is appropriate under state law. 2003-028; 2003-029.

## Obituaries

### Robert "Bob" Ham

**Robert Preston "Bob" Ham, Sr.**, councilmember in Fort Payne since 2000, died on November 4, 2002, at age 72. He had served on the Collinsville City Council in the 1950's. Mr. Ham also served on the Fort Payne Industrial Development Board for nearly 12 years, helped found the Depot Museum, was a member of the board of directors for the DeKalb-Cherokee Counties Natural Gas District, was active in many civic clubs and was a city board member for AmSouth Bank for 11 years.

Mr. Ham was a successful businessman, having built the city's largest and most modern television cable system. At the time of his death he owned Fort Payne Hardware, an industrial supply business. Ham was a veteran of the armed forces, having served in the Air Force. He is survived by his wife, several children and grandchildren. ■

### Robert Howard Ham

**Robert Howard Ham**, former mayor of Andalusia, died on November 28, 2002. Ham, a haberdasher, was elected mayor in 1964. He had served as mayor pro tem for the four years prior to his term as mayor. He is survived by his son and two grandchildren. ■

### Therman Whitmore

**Therman Whitmore**, former mayor of Oxford, died on December 6, 2002. He was 73. Whitmore, a longtime employee of Barbers Dairy, was appointed mayor in 1982 and held that post for about three years. Following his tenure as mayor, he served as Calhoun County's beer tax supervisor and then as a school bus driver. He is survived by his wife and two daughters. ■

### Obed Alto Monk

**Obed Alto Monk**, former councilmember of Brewton, died on December 18, 2002. He was 83. Monk served on the Council from September 13, 1960 until January 28, 1966. He was a United States Army veteran of WWII and also served a term on the Escambia County Commission. Monk was also a member of the First Baptist Church, American Legion, Greater Brewton Area Lions Club and served on the Brewton Airport Board. He is survived by his wife of 62 years, three daughters, five grandchildren and five great grandchildren. ■

*The League extends its deepest sympathy to the families of our municipal colleagues.*

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# Speaking of Retirement

*Prepared by the staff of the Retirement Systems of Alabama and edited by  
Mike Pegues, Director of Communications.*

## Most Frequently Asked Questions from Retired Members

### **When will I receive my retirement benefit check?**

The ERS issues retirement checks on the last working day of the month. For example, if your retirement date is February 1, 2003, your first check will be issued on Friday, February 28, 2003, which is the last working day of the month. Electronically deposited checks will be deposited on that same day.

The ERS strongly encourages retirees to elect to have their retirement benefit checks sent directly to their bank by electronic funds transfer (EFT), also known as direct deposit. Members using direct deposit do not have to worry about lost, stolen, or damaged checks, nor arrange for someone to deposit their checks when they are out of town or unable to go to the bank. This service is free, secure, reliable and convenient.

To obtain a Direct Deposit Authorization form, contact the ERS at 1-800-214-2158, extension 399.

### **Will I automatically receive a Cost-of-Living Adjustment (COLA) every year?**

No. COLAs for state retirees are made on an ad hoc basis by the state legislature. The amount of the increase is based upon the provisions of the legislation. COLAs for retirees of Section 12 agencies (non-state member agencies) usually require approval of the governing body of the ERS agency, which must fund the cost of living increase for persons retired from that agency.

### **What will be deducted from my retirement benefit check?**

The following amounts may be deducted from your retirement benefit check:

- Federal income taxes
- Health insurance premiums if applicable

Your retirement benefit is **not** subject to Alabama income

tax. If you move to another state, your benefit will be subject to that state's tax laws. You can find information about other states' tax laws at [www.1040.com](http://www.1040.com).

### **May I change my beneficiary after I retire?**

If you selected the Maximum benefit or the Option 1 benefit, you may change your beneficiary or beneficiaries at any time.

If you selected the Option 2 or Option 3 benefit, you may name a new beneficiary under either of the two following conditions:

- If the named beneficiary dies before the retired member, or
- There is a divorce between the retired member and the beneficiary

The retired member should contact the ERS for information and forms. Generally, there will be a recalculation of the benefit amount for the retired member and beneficiary. The replacement beneficiary must be in place for at least two years to become effective. However, if the retired member dies within this two year period, no monthly benefit is payable.

### **I retired on disability. What are the requirements for me to continue receiving disability retirement?**

A disability retiree will be reviewed once each year for the first five years and once every three-year period thereafter until age 60 (52 for State Police) to determine whether the retired member remains disabled.

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Prepared by the Communications staff of the Retirement Systems of Alabama. To have your questions answered in "Speaking of Retirement", please address them to Mike Pegues, Communications, Retirement Systems of Alabama, 135 South Union St., P. O. Box 302150, Montgomery, Alabama 36130-2150.

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