

The Alabama Municipal JOURNAL

October 2009

Volume 67, Number 4

2010 Municipal Quality of Life Awards

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- Sample "Starter" Social Networking Policy
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The Alabama Municipal JOURNAL

Official Publication, Alabama League of Municipalities

October 2009 • Volume 67, Number 4

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The Alabama Municipal Journal is published monthly by the Alabama League of Municipalities, 535 Adams Avenue, Montgomery, Alabama 36104, telephone (334) 262-2566. Website: 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.

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A Message from the Editor

It is not so much for its beauty that the forest makes a claim upon men's hearts, as for that subtle something, that quality of air that emanation from old trees, that so wonderfully changes and renews a weary spirit. – Robert Louis Stevenson



This magnificent live oak, which has been my favorite tree since childhood, is located along a secluded drive near the Intracoastal Waterway in southeastern NC.

The Alabama Municipal Journal goes digital!

In August we began posting a digital version of the *Journal* to our website (in addition to the PDF files we've been posting for quite some time). While it doesn't replace the actual printed copy, this electronic format is designed to mimic the print version. If you visit our website at www.alalm.org, you'll see the latest issue of the *Journal* posted on the home page. Click on that icon and you'll be able to turn pages, zoom in and out as well as click on website links throughout the publication. As technology evolves (and budgets tighten), we are making a concerted effort to provide our membership with important information in the timeliest, most cost efficient manner possible. While I don't envision that the *Journal* will become "paperless" anytime soon, the League wants to make sure it's always available with a few clicks of your computer! We'll continue to post a PDF version to the website as well.

Annual Photography Contest: November 6 deadline

The November 6 deadline for the League's Annual Photography Contest is less than a month away so don't miss your opportunity to enter a picture from your municipality! The winning photo will be featured on the cover of the League's *2010 Annual Directory and Vendor Listings* which is distributed in January. Other entries may be used in the *Alabama Municipal Journal*, as well as other League publications, throughout the year. Pictures of municipal/historical buildings, parks, streets downtowns, city festivals ... all are acceptable. Because the winning photo will appear on the cover of the *Directory*, the picture must be vertical shot taken at a high resolution so the print quality is not compromised. We've received a few images that are horizontal and, therefore, do not qualify for the contest. Please make sure your submissions comply with all the requirements and that a completed entry form, which can be downloaded from our website is included. For more information and an entry form, visit www.alalm.org and click on the 2010 Municipal Photo Contest icon on the right side of the home page. Previous contest winners were: Wetumpka's Bibb Graves Bridge by Frank Williams (2008) and Tuscaloosa's RBC Centura Bank Building by Jeff Motz (2009).

NLC Congress of Cities – November 10-14

The 2009 National League of Cities (NLC) Congress of Cities will be held November 10-14 in San Antonio, Texas at the Henry B. Gonzalez Convention Center. For 86 years, this unique national conference has offered solutions for moving communities forward. Through innovative programming, participants strengthen their ability to lead and grow America's cities, towns and villages. The Exposition at the Congress of Cities is one of the largest exhibits for city officials and employees to come face-to-face with the companies that serve municipal needs. Municipal representatives looking for products and services to assist them in meeting the changing demands of their communities will find many potential solutions within the Expo. Visit www.NLCCongressofCities.org for more information about the program, registration and exhibits.

Municipal Quality of Life Awards: December 1 deadline

The deadline for the League's 2010 Municipal Quality of Life Awards program is December 1, 2009. Materials were mailed to every mayor and clerk the last week of September and are also posted online (click on the icon on the right side of the home page at www.alalm.org). Please take time to read through the brochure and send in your entry. Winners will be recognized at the League's 2010 Annual Convention in Mobile; receive a special plaque; be featured in a video shown at the Convention; be spotlighted on the League's website; and featured in the *Alabama Municipal Journal*. This program is definitely worth your time.

Carrie

The President's Report

Roy H. Dobbs
Mayor of Berry



ACJIC Providing Free Software for Creating/Managing Crime Arrest Reports

As League president, I represent our organization, along with Tracy Roberts, the League's Assistant General Council, as a nonvoting advisory member of the Alabama Criminal Justice Information Center (ACJIC), which was established in 1975 by the Alabama Legislature as the state agency responsible for gathering and providing critical information for Alabama's law enforcement and the criminal justice community. ACJIC serves as the state's criminal history repository agency – collecting, storing, retrieving, analyzing and disseminating vital information relating to certain crimes, criminals and criminal activity. In addition, ACJIC operates a Command Center 24 hours a day, seven days a week, to provide and assist criminal justice agencies with authorized access to its information systems.

Leading the nation in the development of ground-breaking technology, ACJIC connects local, state and federal law enforcement agencies to the National Crime Information Center (NCIC) administered by the Federal Bureau of Investigation (FBI) and also provides access to law enforcement in all 50 states and internationally via Nlets, the International Justice and Public Safety Network. State-specific information systems developed and administered by ACJIC include **AlaCOP**, Alabama's secure web portal for authorized law enforcement and criminal justice officers, and the Alabama Law Enforcement Tactical System (**LETS**), a secure Internet-based system accessible only to authorized criminal justice agencies to share vital information maintained by Alabama state agencies such as Alabama driver license, boat registration, corrections and automobile tag registrations.

In an effort improve efficiency and provide more real time access to crime data, the ACJIC Commission passed a rule this past April for all Incident/offense (I/O), Arrest and Supplemental reports to be transmitted to ACJIC electronically beginning January 2010. ACJIC is working diligently to minimize the burden on submitting agencies. Per this new rule, paper reports created on or before December 31, 2009 may be mailed to ACJIC through January 31, 2010; however, all reports created *after* January 1, 2010 should be sent electronically.

In order to facilitate this effort, ACJIC is providing free software to agencies that do not have a Records Management SYSTEM (RMS) for creating and managing crime and arrest

reports. The UCR Local Template for Reporting and Analysis (ULTRA) is a smart-client application that is available to all enforcement agencies in Alabama. This software allows agencies to create and submit Alabama Uniform I/O, Arrest and Supplemental Reports to ACJIC via the Internet. Features of ULTRA include:

- UCR data submissions to ACJIC on real-time (or near real-time) basis
- LETS searching capability while connected to the Internet
- Allowing users to “drag and drop” LETS query results into IO and Arrest reports
- Spell checking
- Generation of Printable reports
- Driver's license reader capability
- Ability for officers to search and review all their agency reports

While this system does not offer a dispatcher or jail management component at this time, ULTRA offers an effective solution at no cost for agencies who wish to be able to enter, search and retrieve state I/O, Arrest and Supplemental Reports. Additionally, the system allows local agencies to store information on local ordinance violations and non-criminal events for local agency use only. For agencies with a proprietary RMS system, ACJIC also provides external submission specifications that allow agencies to submit reports created using their own software. This allows vendors to create an XML file that can be submitted to ACJIC via web services on behalf of their clients. These specifications have been provided to the following vendors: Global Software, In-Sync, Interact, Intergraph, New World Systems, Southern Software, Spillman Technologies, Sunguard (THE) and Vision AIR Public Safety. If you use another vendor or have an “in-house” solution for your agency, please let ACJIC know so the they can supply your software provider with the date submission specifications.

If additional information on ACJIC, visit www.acjic.alabama.gov. For additional information on ULTRA, contact Maury Mitchell, ACJIC Director, or Becki Goggins at 334-517-2400. ■

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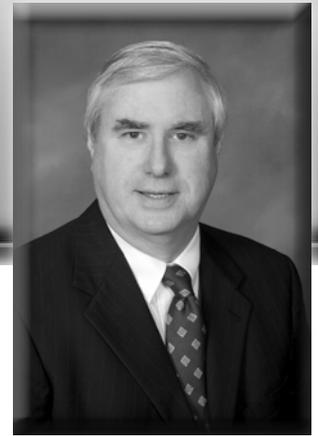
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Municipal Overview

Perry C. Roquemore, Jr.
Executive Director



NLC Survey Finds Cities' Financial Conditions Worsen

Note: This article by Gregory Minchak first appeared in the September 8 issue of *Nation's Cities Weekly*.

Cities are in the early stages of registering the effects of the nation's economic downturn, according to NLC's annual report on fiscal conditions. The report finds that the ability of cities to meet their financial needs will worsen through 2010 and beyond. "The current economic situation is wreaking havoc on city budgets," said NLC President Kathleen Novak, mayor, Northglenn, Colo. "Although we are beginning to see signs of a possible recovery in the national economy, city officials will need to be more proactive than ever in terms of monitoring their budgets, reevaluating budget priorities and identifying new revenue and savings opportunities."

The report, "City Fiscal Conditions in 2009," reveals that cities face significant budget gaps (-2.9 percent) this year due to the decline of income (-1.3 percent) and sales tax (-3.8 percent) collections. These taxes are typically the earliest source of city revenue to decline as job losses in a community increase and consumer purchases decrease. Property taxes, which make up the bulk of city revenue nationwide, are beginning to slow (1.6 percent growth) as real property assessments are adjusted to reflect declining housing values. Because most city tax revenue is collected only at a few specific points during the year, or over the course of several years in the case of property tax revenue, there is usually a time lag of 18 months to several years before economic shifts have an impact on city fiscal conditions.

Michael A. Pagano, the report's co-author and a professor at the University of Illinois at Chicago, cautions, "Cities face the burden of confronting the effects of the downturn for years after any recession ends. This means that cities will be navigating the implications of the downturn for awhile longer, even if the business climate turns around immediately."

In the face of declining revenue and increasing expenses, city finance officers are pessimistic about cities' abilities to meet their financial needs. Nine in 10 (88 percent) say this year will be difficult in meeting fiscal needs, while 89 percent expect the same in 2010. This is the worst outlook the report has detailed in 24 years. Under state law, most cities are required to balance their budgets, which means their

expenses cannot exceed revenues in a given budget year. According to the report, to meet projected budget shortfalls, cities are taking a number of steps to cut back expenses or raise revenue. Cities are instituting hiring freezes or layoffs (67 percent), canceling capital infrastructure projects (62 percent) and cutting services other than public safety (32 percent). Many are decreasing spending on non-personnel operating expenses.

To raise revenue, according to the report, cities are increasing the fees charged for city services or increasing taxes. Four in 10 (42 percent) cities are increasing the level of fees they charge and 25 percent are creating new fees for some services. The report indicates that 25 percent of cities have increased property taxes.

Most of the available economic data points to a slow recovery beginning sometime in 2010. Housing is expected to recover slowly with consumer spending remaining at low levels. Since these are the main drivers of property tax and sales tax revenue streams, cities will continue to endure a difficult economic environment in the coming months.

"Cities will be seeing difficult conditions for some time," said Chris Hoene, co-author and director of research and innovation for NLC. "The impact of the housing market drop is really just beginning to be felt. City leaders and residents will need to work together more than ever to make decisions about the future of their communities in terms of the types and levels of services cities will provide in the next few years."

The report also calls for a greater coordination of effort among local, state and federal governments in responding to these challenges.

"It is imperative that as the national economy recovers, the nation keeps its attention focused on the recovery of our cities," said NLC Executive Director Donald J. Borut. "The fiscal health of our cities is essential to keeping our nation innovative and competitive on the world stage."

The City Fiscal Conditions Survey is a national mail and online survey of finance officers in U.S. cities conducted in the spring and summer of each year. This is the 24th edition of the survey, which began in 1986. For more information, visit www.nlc.org. ■

~~\$14~~ Million Dollars



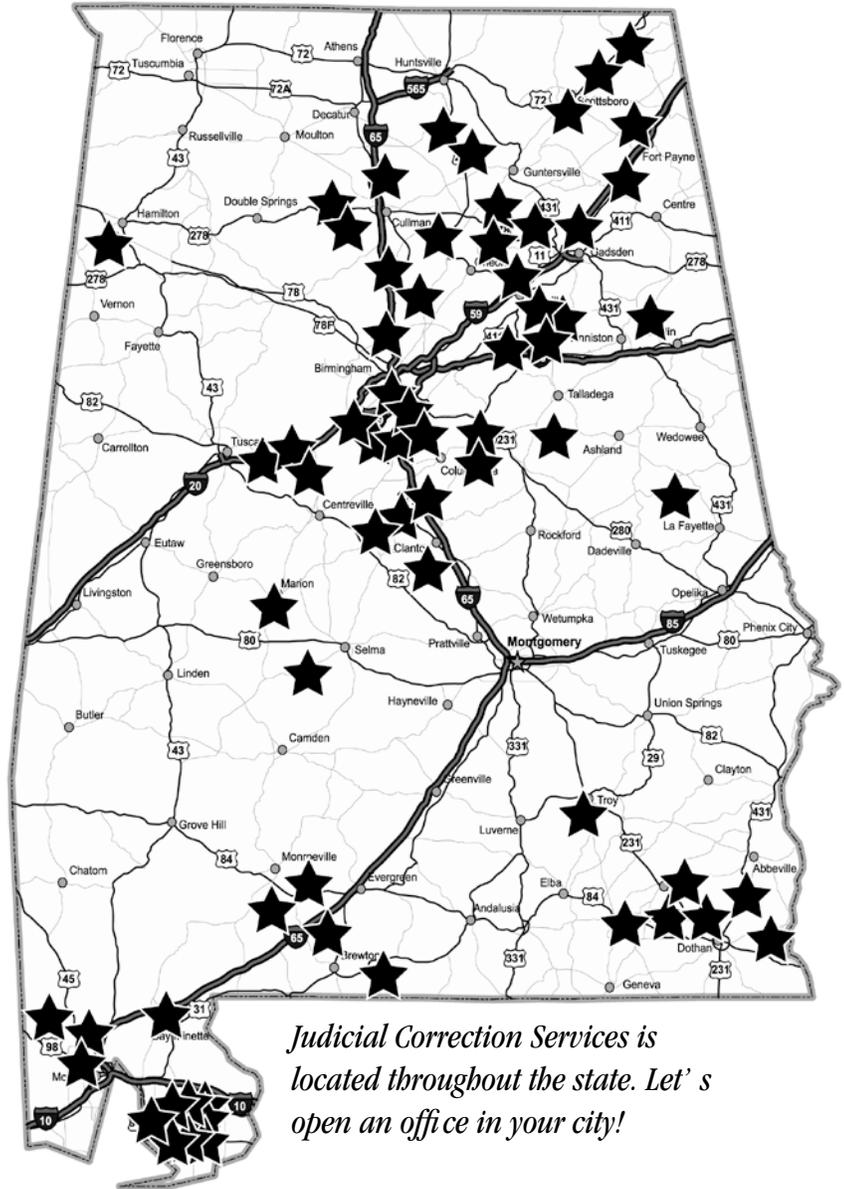
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FAIR Committee Minutes, August 13

By: Perry C. Roquemoire, Jr., ALM

The Committee on Finance, Administration and Intergovernmental Relations of the Alabama League of Municipalities met on Thursday, August 13, 2009, at League Headquarters. Mayor Gary Fuller of Opelika, Chair, called the meeting to order at 9 a.m. He welcomed those in attendance and thanked members for coming to this important meeting. Mayor Fuller also thanked the resource advisors for taking time to attend the meeting to keep members informed as to activities of state agencies. Councilmember David Hooks of Homewood, Committee Vice Chair, also thanked members for their attendance.

The League Director was asked to call the roll. Those members present were: Mayor Gary Fuller, Opelika, Chair; Councilmember David Hooks, Homewood, Vice Chair; Mayor Jamie Tillery, Bay Minette; Councilmember Adam Bourne, Chickasaw; Councilmember Debbie Quinn, Fairhope; Mayor Charles Murphy, Robertsdale; Councilmember John Glover, Headland; Mayor Fred McNab, Pinckard; Mayor Tony Wilkie, Centre; Councilmember Claude "Bud" Kitchin, Lincoln; Mayor Carroll L. Watson, Lincoln; Councilmember Robert Avery, Gadsden; Councilmember Jenny Folsom, Cullman; Mayor Ray Nelson, Fayette; Councilmember William T. Powers, Gurley; Councilmember Karyl Rice, Pelham; Councilmember Teresa Nichols, Pelham; Councilmember Andrea Hunter, Westover; Councilmember N. Craig Sanderson, Irondale; and Councilmember Charles Allen, Thomasville. Resource advisors present were: Mr. Bob Young, President, Frazer Lanier Company; Mr. James R. Mayberry, Local Tax Unit Manager, Alabama Department of Revenue; Ms. Shelley Tice, State Land Agent, Property Tax Division, Alabama Department of Revenue; Mr. Bob Hill, General Counsel, Alabama Alcoholic Beverage Control Board; Mr. Angelo Trimble, Alabama Coalition Against Domestic Violence; and Eric Locke, Staff Attorney, Administrative Office of Courts. Also present was League Director Perry C. Roquemoire, Jr.

Mr. James Mayberry, Local Tax Unit Manager, Alabama Department of Revenue told the committee that there are concerns over revenues and how they can be increased. He suggested that one of the quickest ways to raise revenues is to combine expenses. He said the Department is having one person perform an audit and share the results with all other departments in an effort to save costs. He stressed that communications between departments is crucial. Business license tax records should be compared with sales tax records to discover discrepancies. Municipalities, whether self-administered or not, are invited to enter into an exchange of

information agreement with the Department as long as the information is used for tax-related purposes and the parties understand the confidentiality rules.

The Department has set up a pilot program to study consumer use taxes and the reporting thereof for state tax purposes. If successful, the program may be used to help collect non-reported consumer use taxes. Mr. Mayberry further reported that most taxpayers now file and pay their state taxes electronically and that auto sales tax receipts are now increasing. The recent tax holiday also bumped up sales tax receipts. Taxes for local governments overall are down for the year. The Chair thanked Mr. Mayberry for his report.

Mr. Bob Young, President, Frazer Lanier Company, told the committee that the municipal bond industry in terms of buyers was relatively healthy. Individuals are good buyers of bonds and some banks are purchasing bonds. A large part of the industry was lost last year as most hedge funds went by the wayside. He said the good market we are in today is due to being in a low inflationary environment. In today's market, short term rates are extremely low. Longer term rates have been increasing. He also reported that rating agencies are giving Alabama municipalities and counties a higher rating than in other areas of the country.

As far as bond insurers are concerned, we have gone from six bond insurers to one – FSA. Having an underlying credit rating is much more important in today's market. Rates, according to Mr. Young, look okay for the next three months. He advised cities to not hold out if funds need to be borrowed. The Chair thanked Mr. Young for his presentation.

Ms. Shelley Tice, State Land Agent, Alabama Department of Revenue, said she had examined the League's *Policies and Goals 2009*, and applauded statements **F-1.14** (calls for true purchase prices to be placed on deeds) and **F-1.17** (requiring municipalities to send tax rates to ADOR). It is important that the correct tax rates be posted for each jurisdiction on the ADOR website. She said that a number of counties have received federal money to complete GIS mapping. She also emphasized that training of property tax appraisers is crucial. ADOR has a relationship with the Center for Governmental Services at Auburn University to provide instruction in this area. She informed members of new legislation relating to the redemption of Class III (owner-occupied residential property) (Act 2009-508). The Chair thanked Ms. Tice for her presentation.

Mr. Robert Hill, General Counsel, Alabama Alcoholic Beverage Control Board, reported that ABC revenues are

increased this year and distributions to local governments should at least be in the same amount as last year. The Legislature enacted three new local Sunday sales laws and four new local draft beer laws during the 2009 Regular Session and increased the allowable alcoholic content for beer from 6% to 13.9% and for table wine from 14.9% to 16.5%. There are certain exceptions for businesses that have only an off-premise license.

It was suggested that Policy Position **F-2.9** be deleted due to the passage of the new municipal-option bill. A recent opinion of the Attorney General provides that a municipality cannot call a special election to hold a wet-dry referendum. Mr. Hill was thanked by the Chair for his report.

Mr. Angelo Trimble, Coalition against Domestic Violence, told the committee that simple assaults and domestic homicides were up and aggravated assaults were down. He applauded the Legislature for enacting Act 2009-656, which established authority for domestic violence fatality review teams. Mr. Trimble recommended the adoption of a new policy position to read as follows:

“F-5.15. That the League commends the Alabama Legislature for its passage of Act 2009-656, providing for the establishment of domestic violence fatality review teams and team memberships, and further providing for confidentiality of the review team process and information. The purpose of domestic violence fatality reviews is to encourage governmental and non-governmental agencies

that encounter domestic violence to work together within an environment of trust and openness to study fatal and non-fatal incidents of domestic violence and suicides. The goal of the domestic violence fatality review team is to learn how to prevent domestic violence through early intervention and improve the quality of individual and institutional responses to parties involved in domestic violence relationship. Municipal governing bodies are strongly encouraged to provide any assistance that is appropriate and available, including meeting space, to ensure the success of the review teams.”

The Chair thanked Mr. Trimble for his report.

Mr. Eric Locke, Staff Attorney, Administrative Office of Courts, reported that the training for magistrates had been reduced to only 50 hours and the course can now be completed within one year, which should help reduce training costs. He pointed out that both corrections funds and a port of local court costs can be used to pay for the cost of magistrate training. He also told the committee that the Alabama Judicial Study Commission is considering a rule to require judges to obtain 12 hours of CLE with six hours covering municipal court issues. The Chair thanked Mr. Locke for his presentation.

The Chair asked the committee to review the FAIR Committee portion of the League’s *Policies and Goals 2009*. Mr. Roquemore and members discussed the policy statement and several new and amended policy positions



Workers Comp Insurance Premiums for 2010

As medical care costs continue to rise, the Municipal Workers Comp Fund (MWCF) works to keep your premiums as low as possible. In 2009, 51% of the 623 MWCF members received a full 10% off their premium by appointing a Safety Coordinator; signing a **Statement of Commitment, Post Accident Drug Testing Agreement**; and having an approved Medical Protocol in place.

2010 Statement of Commitment

The *Statement of Commitment* is a two-page document comprised of safety standards that each member endeavors to follow. It is updated annually and mailed to every MWCF member during November. **If it is signed and returned by December 1, 2009, a 3% discount will be reflected on the 2010-2011 billing.** This two-page document must be renewed each year.

Post Accident Drug and Alcohol Testing Program

The MWCF provides an additional 3% discount for those members that commit to a *Post Accident Drug and Alcohol Testing* program. In order to qualify a member must sign a "Participating Commitment" (which will be enclosed with the above mentioned document) and have such program certified by their attorney that the member's drug and alcohol policy is Fourth Amendment compliant. Unlike the *Statement of Commitment*, this document does not have to be renewed each year.

Medical Protocol

Another 3% discount is available to those members who establish and implement a *Medical Protocol*. This program is a great benefit to both the member and the claims management team. A sample protocol will be included in the November mail out for those members that do not yet have one on file. For further information regarding this discount, call Matt Graham at Millennium Risk Managers at **1-888-736-0210**.

MWCF members who participate in all three programs will receive a bonus 1% discount – earning those members a full 10% discount on their annual premium for 2010! **All members are encouraged to watch for the *Statement of Commitment* information packet coming to you in November and return it promptly to take advantage of these benefits.** It will also be available for downloading on our website by going to the MWCF page at www.alalm.org.

were added. Mayor Lew Watson of Lincoln moved adoption of the amendments to the policy statement. The motion, seconded by Council Member Debbie Quinn of Fairhope, passed unanimously. There being no further business, the meeting was adjourned at 12:10 pm.

Policy Recommendations:

That Policy Position F-1.16 be amended by deleting the word "meaningful" and by inserting in lieu thereof the word "comprehensive"

That Policy Postion F-1.17 be amended to read as follows: "F-1.17. That the League encourages all municipalities to promptly send amended or new municipal ad valorem, sales, use, lodgings, gasoline, or tobacco tax rates to the Alabama Department of Revenue as required by law."

That Policy Position F-1.18 be deleted as no longer necessary.

That Policy Position F-2.9 be deleted as this was accomplished in the 2009 Regular Session of the Alabama Legislature.

That Policy Position F-5.15be renumber to Policy Position F-5.16.

That a new Policy Postion F-5.15 be added to read as follows: "F-5.15. That the League commends the Alabama Legislature for its passage of Act 2009-656, providing for the establishment of domestic violence fatality review teams and team memberships, and further providing for confidentiality of the review team process and information.

The purpose of domestic violence fatality reviews is to encourage governmental and non-governmental agencies that encounter domestic violence to work together within an environment of trust and openness to study fatal and non-fatal incidents of domestic violence and suicides. The goal of the domestic violence fatality review team is to learn how to prevent domestic violence through early intervention and improve the quality of individual and institutional responses to parties involved in domestic violence relationship. Municipal governing bodies are strongly encouraged to provide any assistance that is appropriate and available, including meeting space, to ensure the success of the review teams. (August, 2009)"

That Policy Position F-10.14 be amended by adding to following sentence at the end of the current statement: "The amount of hours of training required to become certified has been greatly reduced and certification can now be acquired in less than one year. Further, money from the corrections fund and a portion of the local court costs can be used to pay for the required training."

That a new Policy Position F-11.2 be added to read as follows: "F-11.2. That the League seek legislation to correct problems with the municipal election laws that arose during the 2008 municipal elections."

That Policy Position F-12.18 be amended by deleting the word "ammended" and by inserting in lieu thereof the word "amended". ■



Municipal and Public Finance Group

(Left to Right)

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The Legal Viewpoint

Social Media, The Law and You

by Donna Eich Brooks, Attorney at Law, Lehr Middlebrooks & Vreeland, P.C.

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Introduction

Here's a day in my life these days. E-mail received on Friday, July 24th (details and names changed to protect the innocent as well as the not-so ...):

We have an issue that I am not sure how to handle and I feel that other employers may be having the same problem – FACEBOOK! We have employees that are using Facebook on company time. We also have employees that are using Facebook at home and putting information that does not reflect positively on the hospital. Following are some of the comments posted by employees:

So glad tonite is last nite at St. Elsewhere. It has been one heck of a week and I've been informed that there was a full moon tonite!! Aaah. Please crazies (and their families) just wait til tomorrow nite ok? Better yet, the hospital is closed tonite for repair. Will reopen at 8 am tomorrow! Lol

Ok half the work week down at St. Elsewhere! Is there a welcome sign outside of the entry for idiots? And since when did people think we provide a hot meal and HBO? It is not a hojo!

These were done on duty:

Just working going to get my patient ready for surgery poor thing he has tubes in almost every orifice.

Could the doc plez just not make rounds until after 4 am so I don't have to anything else?!?!

We do have a policy about conduct outside the hospital. Can we discipline the employees who are posting this information off duty? Do we need a new policy that deals specifically with the new technology being used for communication?

Then, on August 11, a client calls because a front-line employee – who is “friends” with her supervisor on MySpace – posted a blog that indicated roughly the following:

I can't shake this depression. I tried to end it all a few weeks ago. I've researched the best way to commit suicide. It's harder than you might think. This bipolar has got me down. Some days, I just want to go postal.

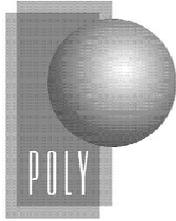
It is, in fact, a brave new world for employers. Where do they go from here?

What's “Private” About Social Media?

The strict rule: if it's on the Internet it can never be private; this rule should also apply to voicemail recordings, text messages, etc. Unlike oral communication, this form of communication remains somewhere: Google cache, the originating computer or phone, or other electronic records. It doesn't go away. Couple this never-before-seen ability to communicate with millions (gajillions?) with what may be an ultimate inability to secure data, and the chances are if someone wants to obtain electronic data, they can.

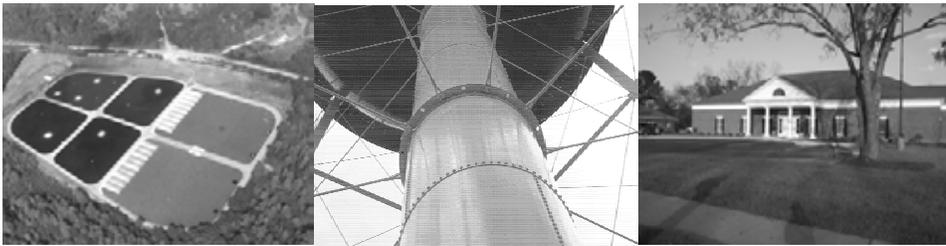
Most of us know if we post something in a public forum, whatever we post is no longer private. That rule applies to the Internet the same as it does to the bathroom wall at the I-75 truck stop or a billboard on I-65. It just feels different somehow, but it's not. If you then add in the complicating factor that major social networking sites (MySpace and Facebook) provide limits on access to a profile, as do some blog services, then it seems like we can speak and type freely. When only certain people can access our social networking site, it gives us a sense of whispering – talking behind everyone's back. We can say things we wouldn't say at a company meeting, for instance. Some people might mistake this feeling for “privacy.”

At the most basic level, however, even semi-private, limited access profiles and blogs should be considered accessible via subpoena or through a third party who has access. Even beyond the reach of a subpoena, there is the risk of the privacy setting that seems restricted, but may not be in practice. Facebook allows profiles to be limited by networks (cities, schools) or friends of friends, both



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settings that make it easy for complete strangers, perhaps strangers who do not have our best interests at heart, to examine the content. Profiles on Facebook may be set as private, but when photos are added they have to be added with settings stating only “friends” can view them, or else people who you are not friends with can view your photos (even though they couldn’t view your profile). Suddenly, things aren’t so private anymore.

Even more difficult, as indicated above, some supervisors are friends with their subordinates. Some clients are friends with their business contacts. And if they aren’t now, the day will come when the client Friend Request is sent and received. Suddenly, someone either has overheard the whispering or is tapping you on the shoulder and you’re wondering what to do.

So How Do We Deal With Electronic “Conversations”?

Communication through social media sites is not that different from communication in person – it just is more dangerous because it *feels* different. In the scenario where the front-line employee is talking about “going postal” and the supervisor is a friend: it really is no different than if the employee walked into the supervisor’s office and said those things. There is a record the supervisor was a friend and was privy to the communication. The employee knows the supervisor could see the comments. They cannot be ignored.

Does this mean suddenly the supervisor is responsible for ensuring he or she reads every post on every subordinate’s page? Probably not; there is a reasonableness standard. If the supervisor has 400 friends, it would be easy to understand he or she was not following every subordinate’s post. But it does lead to two conclusions:

1. This is why there may be an inherent risk in “friending” subordinates. We now have a factual issue: did the supervisor see the post at issue? We know the supervisor had access.

2. If the supervisor regularly posts on the subordinate’s page, if the supervisor commented on posts before and after one that is at issue, if the supervisor has a small number of “friends” – these factors increase the chance that the supervisor is charged with taking action in response to troublesome posts.

We have to train our employees and supervisors (and probably ourselves) that – contrary to popular practice right now – they have to be much more circumspect about what they put on social media sites than what they might say in an every-day out-of-the-office conversation. Consider this an opportunity to educate employees on privacy settings, decorum, and the permanency of the internet.

Even more importantly, supervisors remain in a position to represent the company, even off duty. We may argue in litigation that these posts are outside the scope of

employment, but employers need to be proactive about ensuring that supervisors understand that off-duty posts (as well as off-duty texts, cell phone messages, etc.) to subordinates must still be professional and not suggest any harassment, discrimination, or retaliation.

How Much Do You Want to Know?

Really, anything in an employee’s Internet profile that could reflect negatively on his or her employer or prospective employer might form a legal basis for firing or refusing to hire. Just because it’s legal, however, for employers to use these sites to research their employees’ private lives doesn’t mean it’s a good idea. And public employers, of course, must proceed more cautiously.

Consider that internet profiles frequently disclose a great deal more personal information that employers are not legally permitted to consider when making employment decisions (like age, race, national origin, ethnicity, disability, religion, pregnancy, marital status, etc.). If employers are accessing this information and then making an employment decision, they’re risking that they may have some difficult explaining to do later. The employer’s “best case scenario” is to be able to state honestly: “I had no idea that this employee was Muslim; therefore, her religion played no role in my decision.” Facebook posts exclaiming “Blessed Ramadan to you!” would of course undermine this argument.

In addition to exposing you to information you do not necessarily want, recognize that policing after-hours speech may take a negative toll on employee morale. There is also some question as to whether this might constitute “spying” and might be prohibited conduct under the National Labor Relations Act. This likely depends on how openly the employee’s information is posted (and conversely how much trouble it was for you to gain access), but expect this to be a developing area of the law.

Bottom line: train your supervisors on the risks of “friending” their employees. They can learn more than they ever wanted to know, as discussed above, and be forced to take action. Treat information gained through these electronic means as information gained through more traditional means and take action as appropriate.

What Good Are Social Media Sites Anyway?

Social networking can be a very positive form of recruitment, although it is not without its danger zones. But you want to keep up with the times and avoid relying on archaic recruiting methods. Recognize that some companies – as government contractors – are subject to fairly specific regulations regarding their high-tech recruiting efforts. Regulations issued by the OFCCP (Office of Federal Contract Compliance Programs¹) related

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TPSC Committee Minutes, August 11

By: Tracy Roberts, ALM

The League's Committee on Transportation, Public Safety and Communication met at 9:00 a.m. on August 11, 2009, at League of Municipalities' office in Montgomery, Alabama, with Chair, Councilmember Marva Gipson of Aliceville, presiding.

Also present were Vice Chair, Councilmember Jeddo Bell of Greenville, Secretary Tracy Roberts, Assistant General Counsel for the Alabama League of Municipalities. Committee members present were Councilmember Christopher Norman of Bay Minette, Councilmember Roger Adkinson of Flomaton, Mayor Ken Williams of Saraland, Councilmember Sidney Butler of Saraland, Mayor Jason Jewell of Andalusia, Councilmember Fred Watts of Millbrook, Council Member Davy Lindsey of Opp, Mayor Jim Byard of Prattville, Councilmember Ed Hanson of Piedmont, Councilmember John Hatley of Southside, Mayor Gary L. Livingston of Eva, Mayor Melvin Duran of Priceville, Mayor Melton Potter of Scottsboro, Councilmember George E. Johnson, Sr., of Tuscumbia, Mayor Paul D. Jennings of Argo, Mayor George Roy of Calera, Councilmember Jeffrey M. Denton of Chelsea, Councilmember Jerry D. Pate of Helena, Mayor Kenneth Coachman of Fairfield and Councilmember Alberta Dixon of Thomasville.

Resource advisors present were Ed Paulk the State Fire Marshal, Alan Benefield of the Alabama Peace Officers Standards & Training Commission, Anna Tadlock of the Alabama Criminal Justice Information Center (ACJIC), Fred Sington of the Aviation Council and Stephanie Blankenship of the Aviation Council, Cecil Colson of the Alabama Department of Transportation, Mark Fowler of the Alabama Cable Telecommunications Association, Yasamie Richardson of the Alabama Department of Emergency Management, Dr. Kenneth Snell of the Alabama Department of Forensic Sciences, Rod Kennette of the Alabama Department of Forensic Sciences and Art Faulkner of the Alabama Department of Homeland Security.

Councilmember Marva Gipson called the meeting to order and welcomed those present. She called attention to the Policies and Goals and encouraged participation. She then called on the Resource Advisors to make their presentations.

Ed Paulk the State Fire Marshal gave a brief overview of the services of the Fire Marshal's office and discussed Building Codes and Building Safety. He discussed State Fire Codes and encouraged opposition to Mini/Max requirements.

Allen Benefield with APOSTC discussed the Standards of Officer certification, background checks on law enforcement officers, continuing education requirements and E-Post.

Anna Tadlock from the Alabama Criminal Justice Information Center (ACJIC) presented an overview of the agency's programs including the Alabama Background Check System, SNAP, Quick Access and ULTRA. She also discussed the use of ACJIC and LETS to conduct background checks on volunteers.

Fred Sington of the Aviation Council discussed issues related to the Air Safety Standards Act and expressed support of League Policies T-6.2, T-6.6 and T-6.9.

Cecil Colson with the State Transportation Department gave a PowerPoint presentation through which he discussed federal aid for transportation and Transportation Enhancement Activities.

Mark Fowler of the Alabama Cable Telecommunications Association presented an overview of the status of cable in Alabama, discussing the AT&T franchise agreements as well as the Alabama Broadband Initiative.

Yasamie Richardson with the Alabama Department of Emergency Management gave a slide presentation and informed the committee of the AEMA's emergency support functions. She discussed the new enhancements at AEMA including new buildings, a new media center and new website. She also gave an overview of AEMA shelters, supplies and communications. She suggested a language alteration to Policy P-4.1 to reflect the name of her Agency properly as the Emergency Management Agency.

Rod Kennette, Deputy Director of the Alabama Department of Forensic Sciences gave an overview of his office and discussed the locations of the various DFS facilities. He discussed the functions of DFS and concerns over funding. He made a suggested change to a typographical error in Policy P-8.13 changing the word natural to national, expressed concern over the meaning of Policy P-8.14 and suggested deleting Policy P-11.7 because Violent Crime Response Unit no longer exists.

Dr. Kenneth Snell, Alabama's Chief State Medical Examiner spoke about the role of the medical examiner's office. He reported that when he took over one year ago there were over 1500 open autopsies yet to be performed and that number is now below 300. He reviewed the response plan for the recovery of bodies, and informed that his office would not be resuming deceased transport services after October 1 as had been reported. He suggested rewording to Policy P-8.7 to replace "local physicians" with "forensic pathologists."

Art Faulkner, the Communications Officer and State 911 Coordinator for the Alabama Department of Homeland Security gave an overview of the functions of his office and discussed funding and funding opportunities. He suggested a change in wording to Policy P-4.2 to replace “(E911)” with “(NG911)”.

Councilmember Jeddo Bell thanked the Resource Advisors for their valuable contributions. There was a recess for lunch and the committee reconvened after lunch at 12:45 to discuss the proposed amendments to the Policies and Goals.

Proposed Policy Changes

Amend **T-1.3** to read: “That the League urges the Alabama Legislature to adopt stronger laws to regulate the hauling of loose material (sand, gravel, **scrap metal**, etc.) on public roads and highways.”

Delete **T-6.8** and renumber the following policies accordingly.

Delete **P-2.3** and renumber the following policies accordingly.

Amend **P-4.1** to read: “That the League urges

municipalities wishing to lend aid to sister municipalities during times of disaster contact their local Emergency Management **Agency** and then contact the State Emergency Management **Agency** before sending materials or manpower to stricken areas. (September 2007)

Amend **P-4.2** to read: “That the League urges telephone companies with 911 service to monitor problems with such services and to correct such problems. Further, the League urges municipalities to actively improve their 911 services through the enhanced system (NG911).”

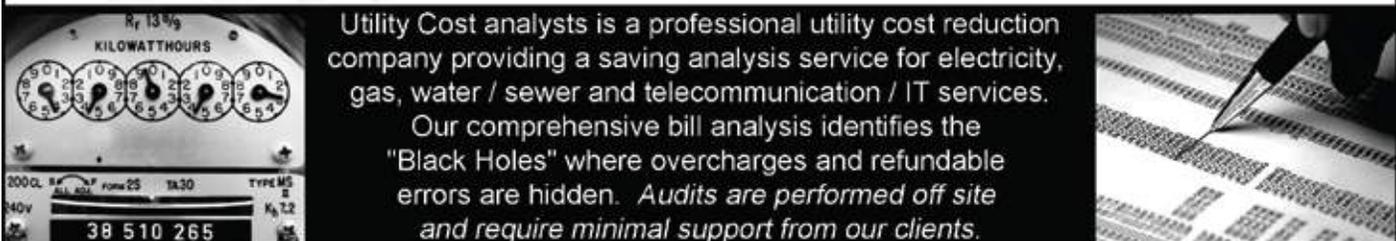
Add **P-7.12** to read: “The League opposes any additional legislation affecting a municipality’s ability to adopt or set building codes, fire codes and standards”

Delete **P-8.7** and renumber the following policies accordingly.

Amend **P-8.13** to read: “The League supports federal funding for the Forensic Improvement Act for the creation of **national** evidence testing standards.” Delete **P-11.7**. ■

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HD Committee Minutes, August 17

By: Twanna Walton, ALM

The Committee on Human Development of the Alabama League of Municipalities met at the League headquarters in Montgomery, Alabama on Monday, August 17, 2009. Mayor George Evans of Selma, Chair, called the meeting to order at 9:03 a.m. He began by welcoming all those present and introduced Committee Vice Chair, Council Member Sadie Britt of Lincoln, and the Human Development Committee Acting Secretary, Twanna Walton.

The following persons were present: Mayor George Evans, Selma, Chair; Council Member Sadie Britt, Lincoln, Vice Chair; Council President Howard Rubenstein, Saraland; Council Member Will Sconiers, Andalusia; Council Member Jimmy Young, Pinckard; Council Member Deborah Chambers, Valley; Council Member James Harris, Wedowee; Council Member Wayne Sellers, Guntersville; Council Member Tayna Rains, Dutton; Council Member Richie Sparkman, Trinity; Mayor Tom Henderson, Center Point; Mayor Charles W. Penhale, Helena; Council Member Leigh Hulsey, Helena; and Council Member Bridgette Jordan Smith, Vincent. Also present was Twanna Walton of the League staff.

State agency resource advisors present were: Mr. J. Walter Wood, Jr., Alabama Department of Youth Services; Mr. Albert Head, Alabama Arts Council; Mr. Ray Clenney, ADECA; Mr. John Hawkins, Alabama Department of Public Health; and Dr. Eddie Johnson, Alabama Department of Education.

Dr. Eddie Johnson, from the Alabama Department of Education was the first speaker. He distributed several publications produced by the Department of Education. The Alabama Math, Science, and Technology Initiative (AMSTI) brochure explains how schools can join AMSTI, a program supported by Governor Riley, and the benefits Alabama students, as well as teachers, would have as a result of participation in this program. The Alabama Success Career Guide is an exceptional guide used to prepare students for the workforce. He also discussed several of the Department's other programs including the Alabama Reading Initiative Project for Adolescent Literacy, the Access Distance Learning Program, and the Alabama 'First Choice' Program. Additional information on all programs can be located at their website located at www.alsde.edu/html/home.asp

Dr. Johnson stated that League members could assist the department by contacting their legislators and informing them of the availability of these educational opportunities. He also said that League members could encourage the Legislature to continue its funding for education. He further reported that the Department of Education was rethinking the state's exit exam. When it was created, then Governor James wanted grades 3-12 tested. Thus far, only grades 3, 6 and high school are tested. He also stated that just because a student could

pass the exit exam does not predict success in life. The ACT exam is much better for that purpose. Regarding the League's policy statements, he pointed out that Policy Position H-3.9 should be amended to reflect the fact that the school dropout age had increased from 16 to 17 years of age. He concluded by encouraging municipalities to make sure their schools were receiving all their allotted monies.

Mr. John Hawkins, Alabama Department of Public Health, reported that Alabama had one of the top preparedness centers in the country. Alabama's "All Kids" program, a state subsidized health insurance program for children in low-income families, had seen an increase in dental and mental health benefits due to efforts by the Obama administration. The program's funding was assisted this year by increased tobacco taxes. Currently, 69,252 of the lowest income children in Alabama are receiving health, dental and mental healthcare from the All Kids program. The only prerequisite to participate in the program is citizen verification.

Mr. Hawkins followed with a briefing on the H1N1 virus and the necessary conditions for a pandemic: 1) a virus with general population susceptibility; 2) efficient person-to-person transmission; and 3) it must cause human disease. Due to viruses such as the H1N1 – the world has become a smaller map. Alabama is following PI Emergency Orders, which include: vaccine rationing, determining places of isolation and quarantine, and the like. According to Mr. Hawkins, incidents of H1N1 in Alabama have, thus far, been sporadic; however, with the start of a new school year the numbers may increase. He also said there have been early seasonal flu cases but it is difficult to tell if they are related to H1N1. He stressed that if a person has a fever above 100 degrees, they are to stay home for two days after the fever is over. He also said one to twenty percent of households will get H1N1 and that subsequent illness typically occur 2-3 days after the first person becomes ill with ages 0-4 having a higher chance of developing the virus. Conversely, people 65 and older will more likely develop seasonal flu than H1N1.

Mr. Hawkins also discussed the underlying conditions of those who tend to contract the virus, such as asthma and obesity (particularly in children). He said pregnant women were very susceptible and could become very sick or die due to the virus. (These women tended to be 20-25 weeks expecting.) Of the 1141 cases confirmed in early August, the average age has been 12 while two-thirds of the cases were individuals less than 18 years old. This virus has the potential of affecting 1 out of every 2 people after the fever reaches 100 degrees. Such a pandemic had not existed since 1957. The Alabama Department of Public Health has increased its

continued on page 22

LEGAL CLEARINGHOUSE

NOTE: Legal summaries are provided within this column; however, additional background and/or pertinent information will be added to some of the decisions, thus calling your attention to the summaries we think are particularly significant. We caution you *not* to rely solely on a summary, or any other legal information, found in this column. You should read each case in its entirety for a better understanding.

ALABAMA COURT DECISIONS

Courts: The rule requiring a defendant to reserve a particular issue on appeal is not to be applied to appeals from a municipal court or a district court judgment to the circuit court for a trial de novo. A defendant is not required to file a motion to withdraw his guilty plea before he can proceed to the circuit court for a trial de novo. Application of the rule would limit the statutory authority of the circuit court to conduct a de novo review, and, thus, would affect the jurisdiction of the circuit court. *Ex parte Sorsby*, 12 So.3d 139 (Ala. 2007)

Courts: A defendant may waive the right to be present in court at any proceeding, including trial, upon meeting one of the following conditions: (1) with consent of the court, by an understanding and voluntary waiver in open court or by a written consent executed by the defendant and by the defendant's attorney of record, filed in the case, or (2) by the defendant's absence from any proceeding, upon the court's finding that such absence was voluntary and constitutes an understanding and voluntary waiver of the right to be present, and that the defendant had notice of the time and place of the proceeding and was informed of the right to be present. *Thompson v. State*, 12 So.3d 723 (Ala. Crim. App. 2008)

Courts: A defendant was entitled to withdraw his guilty plea after the court imposed a longer sentence than was indicated in a plea agreement, although the trial court had warned the defendant during the plea hearing that it was not bound by the plea agreement. The defendant did not know when he entered his plea if court would sentence him in accordance with the agreement, and did not discover that the proposed sentence had been

rejected until the actual sentencing hearing. *Andrews v. State*, 12 So.3d 728 (Ala. Crim. App. 2009)

Schools: A former school principal who was hired as a probationary principal for a period of one year was not entitled to an annual evaluation 90 days prior to the termination of his contract; rather, only contract principals were entitled to such evaluations under the Teacher Accountability Act, and therefore, the former principal was not eligible for a contract extension due to the board of education's failure to evaluate. *Holmes v. Macon County Bd. of Educ.*, 11 So.3d 205 (Ala. Civ. App. 2006)

Search and Seizure: A defendant did not have a Sixth Amendment right to have counsel present when a sample of his blood was obtained pursuant to a search warrant. No formal adversarial proceedings had been initiated against the defendant when the warrant was secured and served. *Brown v. State*, 11 So.3d 866 (Ala. Crim. App. 2007)

Search and Seizure: An officer's search of a defendant's pockets did not exceed the scope of the defendant's consent to search for weapons. A typical, reasonable person would have understood that a search for weapons could include a search of the pockets. *State v. Freeman*, 12 So.3d 714 (Ala. Crim. App. 2007)

Zoning: The "substantive immunity" rule is a narrow exception to the general rule that a municipality or a county is chargeable with the negligence of its employees or agents performed in the line and scope of their duty. The decision regarding how a zoning ordinance should be enforced is as much a legislative matter as is the enactment of a zoning ordinance. A governmental entity is entitled to substantive immunity from tort claims related to enforcement of a conditional zoning resolution. *Payne v. Shelby County Com'n*, 12 So.3d 71 (Ala. Civ. App. 2008)

DECISIONS FROM OTHER JURISDICTIONS

Civil Rights: Motorists who were barred from entering a high-crime neighborhood when they could not or would not give information requested by police officers in roadblocks at "Neighborhood Safety



Zones” are entitled to a preliminary injunction in a civil rights action challenging the constitutionality of the stops. *Mills v. District of Columbia*, 571 F.3d 1304 (D.C. 2009)

Public Records: The audio recording created by digital electronic court reporting systems exists for the purpose of creating a record of the court proceedings, but is not, in and of itself, an “electronic record” of the proceedings, for purposes of rule governing access to judicial branch records. The court record is comprised only of matters that are part of the official business of the court, and does not comprise all the miscellaneous sounds and conversations in the courtroom before, during and after a proceeding. *Media General Operations, Inc. v. State*, 12 So.3d 239 (Fla. App. 2 Dist. 2009)

Search and Seizure: Evidence seized by law enforcement officers in compliance with Fourth Amendment decisions by the federal appellate courts need not be suppressed if those decisions are subsequently overruled by the U.S. Supreme Court. *U.S. v. McCane*, --- F.3d ---, 2009 WL 2231658 (10th Cir. 2009)

ATTORNEY GENERAL’S OPINIONS

Courts: The municipal judge is tasked with the general authority to supervise all municipal court employees. A municipality may provide for the appointment of court personnel by ordinance. If the municipal ordinance does not address the appointing authority for court personnel, the mayor is the appointing authority. The magistrates are considered the chief officers of the municipal court administrative agency under the supervision of the judge. However, a municipal court clerk/magistrate may be removed, for good cause, by the appointing authority or by a 2/3 vote of the council. Where the mayor is not the appointing authority, the mayor may temporarily remove the court clerk/magistrate, for good cause, and then must report such removal and the reasons therefore to the council at its next regular meeting where the council may sustain the act of removal by the mayor by a majority vote of those

elected to the council. AGO to Honorable Robert K. Jordan, September 8, 2009

Fire Protection: The mayor of a city or town does not have oversight over who may be accepted as a local volunteer firefighter if the volunteer fire department is organized as a nonprofit corporation. A volunteer fire department organized as a nonprofit organization with a board of directors as its governing body is separate and apart from the governance of the municipality in which the volunteer fire department is located. AGO 2009-098

Public Works Bid Law: Contracts for the repair, improvement and maintenance of a water storage tank are subject to the bidding requirements of the Public Works Bid Law. A tank contract that exceeds \$50,000 must be bid. AGO 2009-100



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medical capacity. Hospital beds have been increased to 7000 and surgical mask supplies have been increased to 425,000. He encouraged municipalities to create backup plans to assist their employees during such times and give adherence to non-pharmaceutical preventions. These include voluntary isolation, dismissal of student, and modifications of work place schedules and practices. Personal prevention practices, such as washing hands frequently; getting vaccinated; and by staying home if ill until 24 hours after fever goes away, should be practiced.

Mr. Hawkins said the H1N1 vaccine should be available in mid-October. The initial vaccine and supplies to give the shot will be free. However, administration fees are possible. Initial target groups for the vaccine are: ages 6 months to 24 years, pregnant women, people with household contact of infants under six months old and healthcare/emergency service personnel. Schools, hospitals, pharmacies and other community immunizers will be likely vaccine delivery sites. Municipalities could assist by helping organize volunteers needed to administer the vaccine. The H1N1 virus is reportable in the same manner as flu. Much more information is posted on the Department of Public Health's website at: www.adph.org

The next speaker was Mr. Walter Wood, Jr., Alabama Department of Youth Services. He reported that his agency is currently updating its emergency management division to include a protocol for the flu virus. He added that their emergency personnel would be receiving their updates from

FEMA. Regarding reform efforts, Mr. Wood said his agency is working to change the way people think of children/youth who have been institutionalized. He said children 'in trouble' are not dangerous children. His agency strives to ensure that youth entering the correctional facility are better educated and encircled with people who care. The school district that educates the youth at his agency is accredited by SACS and is only one of three facilities in the Correctional Association that have received this accreditation. The strong emphasis in academics is because most youth who are under Youth Services are 4-5 years behind their age group academically. He said his agency has begun to collaborate with the Alabama Writer's Association to encourage those at the facility to "pick up the pen vs. the fist".

In addition, the Alabama Youth Services division is moving from the 'custodial order' to more of a treatment facility. To assist in this effort, the Mt. Meigs facility also has a sex offender treatment coordinator. Individuals 65 years and older who have not been treated stand a 99% chance of committing a sex offense crime again. Auburn University's social work department has assisted the Alabama Department of Youth Services effort to create their current sex offender treatment program.

During the last 5-6 years the population of institutionalized youth has grown tremendously. Many of the youth currently incarcerated have not committed a crime, but are institutionalized because they skipped school or violated curfew. Unfortunately, once institutionalized they are

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systematically exposed to worst environment. To confront this problem directly, Alabama Department of Youth Services met with the Chief Justice and the Legislature and, as a result, legislation now prohibits committing troubled children to state custody. Last year, the Department of Youth Services further stepped up to funnel money back to the local level to provide assistance where it is really needed – in helping families. Mr. Wood said municipalities could assist his agency by working with local detention centers, probation officers and juvenile court judges in their area.

Representing ADECA, Mr. Ray Clenney reported that the Recovery Act Money (federal stimulus money) allowed for 6,000 children to participate in the Summer Youth Program. He also said scholarships were available for job training Jefferson county, Mobile county and the remaining 65 counties. The summer employment program was based on income and potential for youth to be drop-outs. He also added that the Summer Youth Program was a great ready-to-work program.

Mr. Al Head from the Alabama Arts Council was the final speaker. He reported that the primary function of his department is to administer statewide arts and cultural grants, some of which are awarded to municipalities and schools. Grants to schools are in the area of arts education and the principal of the school must apply. Technical assistance grants are also provided. The Alabama Arts Council provides over 350 grants per year. Their funding comes from a combination of sources including the state Legislature and basic state grants. The agency was awarded \$4 million last year for visual grants; grants to municipalities in the area of arts; and community grants. Amounts as small as \$1,000 have been awarded. He added that grants to cities are often awarded for cultural facilities.

The Alabama Arts Council has a number of partnership programs, including the Alabama Alliance, the Alabama Dance Council and the Alabama Writer's Forum. Another partnership is with Design Alabama where five mayors participate in an annual retreat to discuss design issues and challenges in their cities and towns. This is an incredible assistance available for communities. Mr. Head also said that his agency was actively seeking to preserve jobs in the arts and that grant workshops are available. For more information on grant availability and deadlines visit the Council's website at www.arts.state.al.us.

The Chair thanked every resource advisor for their participation. After engaging in lengthy discussions about its Policies and Goals, the Human Development Committee made several policy changes to the Human Development Policy Statement. The 2009-2010 year recommendations of the Committee on Human Development are attached and made a part of these minutes.

There being no further business, the meeting adjourned at 12:02 P.M.

Policy Recommendations

The Committee recommended the following new policy statement: **H-2.19 That the League encourages municipalities to take advantage of the NLC prescription discount card program.**

H-3. Education and Cultural Resources

That policy position H-3.9 be amended by deleting the following after the word "from" on line 2: "16", and by adding the number: "17".

That policy position H-3.10 be amended by adding the following at the beginning of the policy statement: "(a)".

That policy position H-3.10 be amended by adding the following after the word "education." On line 2: "(b) Further, the League urges the Legislature to take any and all means necessary to prevent further proration in Alabama schools."

That policy position H-3.12 be deleted due to Alabama schools now having computers in their schools and that policy positions H-3.13 through H-3.21 be renumbered to reflect the deletion of policy position H-3.12.

H-5. Employment and Training

The Committee recommended the following new policy statement: **H-5.13. That the League encourage the state to continue the summer youth employment program under the Workforce Development Division.**

H-6. Health Care

That policy position H-6.8(a) be amended by adding the following after the word "Nile" on line 2: "and H1N1".

That policy position H-6.9 be amended by deleting the following after the word "continue" on line 1: "and", and by adding the word: "to maintain".

H-7. Mental Health and Mental Retardation

That the subject heading H-7. Mental Health and Mental Retardation be amended by deleting the following after the word "Health": "and Mental Retardation" to reflect the state agency's change in name.

That policy position H-7.1 be amended by deleting the following after the word "health" on line 5: "and mental retardation".

That policy position H-7.2 be amended by deleting the following after the word "health" on line 2: "and mental retardation".

That policy position H-7.4 be amended by deleting the following after the word "health" on line 3: "and mental retardation".

That policy position H-7.5 be amended by deleting the following after the word "health" on line 3: "and mental retardation".

That policy position H-7.6 be amended by deleting the following after the word "health" on line 2: "and mental retardation". ■

CED Committee Minutes, August 19

By: Lori Lein, ALM

The Community and Economic Development Committee met at 9:00 a.m. on Wednesday, August 19, 2009, at the offices of the Alabama League of Municipalities in Montgomery, Alabama with Chairperson Ben Reed, Council President from Gadsden, presiding.

Present at the meeting were: Committee Chair Council President Ben Reed, Gadsden; Committee Vice-Chair Councilmember Jimmy Madison, Berry; Mayor Jerry Lundy, Mount Vernon; Councilmember Verdell Trotter-Dees, Mount Vernon; Councilmember Edward H. Carroll, Sr., Orange Beach; Councilmember Brentley Kendrick, Robertsdale; Councilmember Newton Cromer, Saraland; Mayor Bill Stewart, Satsuma; Councilmember Terry Powell, Andalusia; Councilmember Luther Upton, Evergreen; Mayor Robert Williamson, Florala; Councilmember Joe R. Outlaw, Ozark; Councilmember Kathy Holt, Wetumpka; Mayor Charles C. Gilchrist, Glencoe; Councilmember Walter Jacobson, Sylacauga; Councilmember Ray Edwards, Valley; Mayor Roy Dobbs, Berry; Mayor Phil Segraves, Guin; Councilmember Elaine W. Junkin, Guin; Councilmember Mignon Bowers, Athens; Councilmember James Stewart, Irondale; Mayor Mike Grayson, Demopolis; Councilmember O'Neal Shaw, Valley; and Councilmember Thomas Moore, Demopolis.

Resource advisors present included: Gary Faulkner, Alabama Development Office; Shabbir Olia, Alabama Department of Economic and Community Affairs; Charles Franklin, U.S. Department of Housing and Urban Development; Beverly Helton, USDA Rural Development; and Greg Clark, Central Alabama Regional Planning Commission. Also present was Lori Lein, Deputy General Counsel, Alabama League of Municipalities. Following roll call, Chairperson Reed called on Mayor Charles Gilchrist to deliver the invocation.

Reports of the Resource Advisors

Shabbir Olia with the Alabama Department of Economic and Community Affairs began the morning's presentations by providing a status update for the CDBG program. He stated that the past five years leading up to the current economic situation have been busy for his office due in large part to projects that resulted from both hurricane Ivan and Katrina. He also discussed with the committee the slowing down of most projects after the award of money due to the number of agencies involved in moving a project forward. He gave as an example a sewage treatment plant in South Alabama that has been held up for the past three years due to

regulatory issues involving the US Fish and Wildlife Service, the Alabama Historical Commission and the Alabama Department of Environmental Management.

After his opening remarks, Mr. Olia discussed the status of American Reinvestment & Recovery Act (ARRA) funds. Alabama was awarded \$7M dollars of ARRA funds for the CDBG program despite the fact that survey work by ADECA showed that there were almost \$5B worth of shovel ready projects in Alabama. ADECA had requested \$50M ARRA funds for the CDBG program and received \$7M. He also discussed the Homeless Prevention and Housing Program which is administered through ADECA. As with previous presentations to the committee, Mr. Olia then went through the standard CDBG funding opportunities available to municipalities. ADECA has \$26M, not including the separate funding from ARRA, in the program for 2009 and funding announcements will be made in September. Mr. Olia concluded his presentation by requesting the assistance of all municipalities in completing a survey sent out by ADECA related to the program which allows ADECA to complete its required comprehensive plan to submit to HUD. Mr. Olia made no specific recommendations for changes or additions to the committee's policies and goals.

Gary Faulkner with the Alabama Development Office (ADO) began his remarks by covering the history of ADO and the agency's focus on facilitating job development in the state. Specifically, he discussed the partnership approach that ADO takes with other state agencies and private industry. He pointed out to the committee the changing nature of economic development in that it is moving away from mostly industrial projects to include retail/commercial, tourism and governmental projects such as renewable energy. Mr. Faulkner went through a very informative PowerPoint presentation outlining the current state of economic development in Alabama and pointing out to the committee the location and business advantages to Alabama as a result of not only our statutory incentives but our talented and trained workforce. He strongly encouraged municipalities to participate in the Economic Development Partnership of Alabama (EDPA) program and to check www.edpa.org and make sure that any available location sites in a particular municipality are listed on there. He concluded his remarks by discussing a corporate survey that looks at site selection factors and discussed how this survey is performed annually. Many of the factors of importance have shifted over time. The number one site selection factor in the latest survey is highway accessibility. He also reminded municipalities that when considering economic development opportunities

locally they should never forget existing industry because it accounts for 69% of job creation in the state. Mr. Faulkner asked that the committee consider as a policy and goal a statement of support for the EDPA. Upon questioning from Mayor Phil Seagraves of Guin, he also asked the committee to urge the Legislature to provide adequate funding to ADO for marketing.

Charles Franklin, with the U.S. Department of Housing and Urban Development (HUD) was the third resource advisor to address the committee. Mr. Franklin went through the policies and goals of the committee related to HUD and discussed why they were still appropriate. He did focus on C 4.12 relating to ADECA providing a more fair and equitable distribution of funds between large and small municipalities. Mr. Franklin informed the committee that HUD frequently reviews ADECA's criteria and manner for distributing funds and is of the opinion that ADECA's method for awarding funding is fair and equitable. Apart from a brief discussion of CDBG funding for entitlement communities, Mr. Franklin discussed the HOME investment partnership program. While HUD oversees the program, it is administered at the state level through the Alabama Housing Finance Authority. Mr. Franklin pointed out that while the program allows for support to both apartment financing and single resident home financing, the Alabama Housing and Finance Authority has

given clear preference to apartment financing over the past several years. While HUD does not take any position on this, he felt the committee should be aware of this when looking at its policies and goals. Mr. Franklin concluded his presentation by briefly covering ARRA funding through the Neighborhood Stabilization Program (NSP), Homelessness Prevention and Re-Housing Program (HPRP) and CDBG programs.

Beverly Helton, with the USDA Rural Development, began her remarks by addressing funding under ARRA. USDA Rural Development has approximately \$3B dollars available nationwide in its Business and Industry programs, almost \$20M available in its Rural Enterprise program and \$2.5B available in its Broadband loan and grant programs. After some background information on the various USDA Rural Development programs, Ms. Helton provided examples of Alabama municipalities who have utilized the programs during the past year. For instance, in the Rural Business Enterprise grant program that is available to non-profits and public bodies with a population of 50,000 or less, the City of Talledega received just under \$100K. Under that same program, the Town of Eclectic received approximately \$73K, the Town of Riverside received just under \$100K and the City of Bridgeport received \$375K. The City of Bridgeport secured the funding to assist with utility



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installation. Ms. Helton next discussed the Broadband program which has funds available from ARRA and is administered jointly through USDA and the Commerce Department. She recommended that anyone interested in the program visit www.broadbandusa.gov for further information. Ms. Helton concluded her remarks by going through the committee's policies and goals that relate to USDA Rural Development and thanked the committee and the League for its support of USDA Rural Development. She made no recommended changes or additions to the policies and goals.

Greg Clark of the Central Alabama Regional Planning Commission provided the committee with brochures from the Alabama Association of Regional Councils and discussed the history of the association and how the various planning districts were established. The purpose of the regional councils is to coordinate planning locally and statewide. They promote regionalism by working together and sharing resources to meet needs and take advantage of opportunities such as grant programs. The councils are funded in whole or in part by member local governments and the governing bodies of the councils are primarily composed of local government elected officials and appointed representatives of local communities and state government. Because he knew it would be of particular interest to the committee, he discussed the various services regional councils can provide in terms of economic assistance and grant writing. In addition, he discussed the other services they provide, including administrative services such as assistance with municipal incorporation, redistricting, mapping and printing and Geographic Information Systems (GIS). They also provide physical services such as weatherization programs, natural disaster assistance, transportation planning and historic preservation. Other services that can be provided by a regional council include economic services such as job training and economic development financing assistance, as well as community development services such as assistance with planning and zoning. Mr. Clark concluded his remarks by recommending that the committee consider urging the Alabama Legislature to provide authority to municipalities to annex unincorporated lands that have become an island and are completely surrounded on all sides by corporate limits.

At 12:20 p.m., Chair Reed thanked the resource advisors for their presentations and after some discussion, the committee made recommendations for changes to existing policies and goals as well as the addition of new policies and goals. Chair Reed thanked the committee members for their participation and adjourned the meeting at 12:35 p.m.

Policy Recommendations

As recommended by League staff, the following policies and goals should be deleted and the remaining policies and goals renumbered accordingly:

C- 1.3 relating to pre-zoning of property prior to annexation

should be deleted due to the passage of Act 2009-629.

C-1.13 relating to reducing planning jurisdiction to less than 5 miles should be deleted due to the passage of Act 2009-498.

New policies and goals:

C-5.19 That the League encourage municipalities to participate in the Economic Development Partnership of Alabama (EDPA) program. (August 2009).

C-1.19 That the League urges the Alabama Legislature to pass legislation to allowing municipalities to annex territory that is completely surrounded by municipal corporate limits without any petition or election. (August 2009).

C-3.14 That the League encourages the Alabama Housing Finance Authority to consider more funding opportunities through the HOME partnership programs for single family residences. (August 2009).

C-5.20 That the League urges the Alabama Legislature to provide adequate funding to the Alabama Development Office for marketing purposes so that ADO may continue its efforts to market Alabama to potential businesses and industries worldwide. (August 2009).

C-5.21 That the League urges our Congressional Delegation to oppose any "Cap and Trade" legislation that would unfairly impact utility costs in Alabama thereby making it more difficult to attract new business and industry to the state. (August 2009) ■

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EENR Committee Minutes, August 25

By: Greg Cochran, ALM

The Energy, Environment and Natural Resources Committee met at 9:00 a.m. on Tuesday, August 25, 2009, at the Offices of the Alabama League of Municipalities. Present at the meeting were: Council Member Kenneth Mount, Andalusia; Mayor Ron Davis, Prichard; Council Member Hazel Griffin, Andalusia; Mayor Terri Carter, Repton; Council Member Charles Meeks, Troy; Mayor Johnny Smith, Jacksonville; Council Member Billy Pearson, Lincoln; Council Member Hermon Graham, Florence; Council Member Joseph Pampinto, Muscle Shoals; Mayor David Frings, Alabaster; Mayor Dennis Stripling, Brent; Council Member Roger Barlow, Center Point; and Mayor Rusty Jessup, Riverside. Resource advisors present included; Chris Howard, ADEM Air Division; Lee Warren, ADEM Water Division; Dennis Harrison, ADEM Water Permit Division; Phillip Davis, ADEM Land Division; and James Dailey, ADEM SRF Program Administrator. Also present was Gregory D. Cochran CAE, Alabama League of Municipalities.

Reports of the Resource Advisors:

Chris Howard from the Alabama Department of Environmental Management Air Division discussed the Alabama air quality regulations for Ozone and Fine Particles. He said the three-hour standard of 75ppb was being met in all counties except, Madison, Jefferson, Shelby, Russell and Baldwin. Two counties are on the cusp of receiving non-attainment: Montgomery and Tuscaloosa. Mr. Howard said ADEM will produce a report to the Environmental Protection Agency (EPA) outlining how these areas will reach attainment within three years and that as many as 18 counties could be declared non-attainment if EPA begins using the MSA coverage guidelines for measuring contributing factors in non-attainment areas.

Mr. Howard said EPA has two fine particles standards – annual and daily. Two counties, Jefferson and Shelby, have been designated non-attainment of the annual standard. The geographical make-up of Jefferson and Shelby counties causes much of their non-attainment challenges. Mr. Howard said EPA has made notice they wish to lower the fine particle daily standards of 15 ug/m³ to 12 ug/m³ by 2012, which would affect several other MSA areas in Alabama.

Lee Warren from the Alabama Department of Environmental Management Water Permit Division discussed the NPDES Permits for Total Daily Maximum Loads (TMDL). Ms. Warren said ADEM issued 127 municipal and 511 minor/private NPDES permits in Alabama in 2009. She reported that TMDL waste load allocations (WLA) were

revised by EPA in December 2008 and standards must be achieved immediately. These permits are evaluated annually at renewal. ADEM will hold Phase I & Phase II compliance workshops in Montgomery, Tuscaloosa, Mobile and Auburn this fall to assist affected municipalities with understanding and reaching compliance.

Ms. Warren said the most common problem with water system non attainment is septic sewer overflow (SSF). Municipalities must notify ADEM within 24 hours of a SSF event along with, submits Form 415 within 5 days as well as notify their county Public Health Department. She said the most common compliance issues were: failure to monitor properly, failure to respond to SSF and failure to comply with ADEM and EPA Orders.

Dennis Harrison from the Alabama Department of Environmental Management Drinking Water Division reported that ADEM's drinking water hot issues are: the economy, additional EPA rules and regulations, drought, hurricanes, vandalism and pharmaceuticals in the water-stream. He said the Federal Courts ruling on the interstate water wars will help Alabama and Florida posturing for the continued negotiations with Georgia. The Federal Courts have said Georgia must relinquish withdrawing water from the Chattahoochee River Basin within three years.

Mr. Phillip Davis from the Alabama Department of Environmental Management Land Division reported that the Solid Waste & Recycling Materials Management Act (SWRMMA) passed by the Alabama Legislature last year does several things: provides stable funding for ADEM's solid waste program; established grant funding to encourage local recycling program; provides grant funding for eradicating illegal dumps; and established the statewide

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STEP 1: CLEAN

Agent

Household Detergents:

Dishwashing liquid, laundry detergent, or hand soap.

Recommended Use

Wipe surfaces, like work desks, phones, food preparation areas, door knobs, faucets, and other frequently used items.

Precautions

Follow label warnings.



STEP 2: STERILIZE

Agent

Household Bleach:

Dilute 3/4 cup of bleach (Clorox) into one gallon of water.

Rubbing Alcohol:

(70% isopropyl alcohol or 60% ethyl alcohol)
Do not dilute; use straight from bottle.
Products with lower alcohol concentrations will **not** work.

Recommended Use

Disinfect material and areas contaminated by flu virus. Apply on smooth surfaces and other surfaces where bleach can not be used.

Precautions

Follow label warnings. Remember: Use in a well-ventilated area and wear gloves while using bleach. Do not inhale, because bleach and alcohol are flammable and toxic. Keep bleach and alcohol away from heat sources, electrical equipment, and flames. Allow surface to dry completely.

Keep bleach and rubbing alcohol away from children and pets. If swallowed, do not encourage vomiting. Call Alabama Poison Center at 1-800-462-0800.

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waste reduction plan. The breakdown of the tipping fee is: 45% to ADEM for program management; 25% to local grant recycling program; 25% to illegal dump remediation program and 5% to landfill operators' administration fees.

Mr. Davis said 26 counties and only 82 municipalities have recycling programs which may use funding for the recycling grant program to purchase equipment, offset facility costs, personnel and educational materials. Currently ADEM has awarded grants to Albertville, Auburn, Opelika, Lee County, Auburn University as well as the Cities of Tuscaloosa, Northport, Tuscaloosa County; City of Florence, Lauderdale County, City of Vernon and the Elba City School System. Thirty-seven grant applications were received this year.

Mr. Davis said counties must submit solid waste management plans to ADEM every 10 years. Municipalities may partner with the county or other municipalities and have a separate plan. ADEM encourages development of regional plans to best contain costs and maximize the economy of scales.

Mr. Davis further reported that ADEM has collected \$4,000,000 for the illegal scrap tire dump remediation program and has identified 23 UAD sites for clean-up. ADEM will work with municipal applicants to determine the innocence of the landowner; execute site access agreement with landowner; publish public notice of remediation; conduct bid for remediation; oversee remediation activities by contractor; and issue payment to contractor after project completion. ADEM also has \$80,000 for grant funding for scrap tire recycling program which may include: transportation resurfacing application; landscape and mulch groundcover; sporting surfacing and recreation; on-site wastewater application; and civil engineering applications.

Mr. James Dailey from the Alabama Department of Environmental Management SRF Program reported that the State Revolving Loan (SRF) programs have been tremendously successful with assisting municipalities with financing water projects in Alabama. The Clean Water SRF has granted 195 loans equaling \$905,694,700 since it was established in 1989. The Drinking Water SRF has granted 106 loans equaling \$297,600,000 since it was established in 1999. Mr. Dailey said the SRF program is offering interest rates at 1-1 ½% below AAA rates, allowing the applicants to realize approximately 20% in cost savings.

Mr. Dailey further reported that the American Recovery & Reinvestment Act (ARRA) has allotted \$43,821,600 for the Clean Water SRF and \$19,500,000 for the Drinking Water SRF. This will provide blended (ARRA & annual capitalization) funding of \$62,700,000 in CWSRF and

\$30,600,000 in DWSRF for 2009 applicants. ADEM also has funds for environmentally friendly or green infrastructure projects, CWSRF \$9,000,000 and DWSRF \$4,000,000 available for municipal applicants.

At 12:10pm the resource advisors were thanked for their presentations. The Committee, having discussed and adopted new and amended policies and goals by unanimous vote, adjourned at 1:45pm.

Changes to existing policies and goals

E-4.7 at the end of the paragraph strike “-” and add “and the League of Municipalities encourages the Governor, Alabama Legislature and Congress to protect our hydroelectric industry and avoid any legislation that would hinder, burden or endanger this industry. (August 2009)”

New policies and goals

E-1.8 The League urges our Congressional Delegation to oppose any “Cap and Trade” legislation that would unfairly impact utility costs in Alabama thereby making it more difficult to attract new business and industry to the state. (August 2009)

E-2.4 (h) The League of Municipalities encourages local governments to conduct all environmental investigations and needs assessments in support of the stipulations of the Code of Alabama before issuing any landfill permits. (August 2009)

E-10.3 The League of Municipalities encourages the Governor, Alabama Legislature and Congress to aggressively protect our waterways from outside entities, public and private, which may threaten this valuable natural resource. (August 2009) ■

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Legal Viewpoint *continued from page 15*

to “Internet Applicants” went into effect in February 2006; these regulations have serious ramifications related to government contractors and the use of any electronic form of recruiting. Online recruiting:

- Could result in a “gigapool” of applicants; and
- Could result in highly burdensome record keeping.

Proceed cautiously with using an electronic device (to include fax machines) in order to find candidates if you are a government contractor. Don’t dabble in this arena without consulting counsel. Be mindful of the difference between open access to posted positions and a throwback to the “good ol’ boy” system of recruitment. Monster.com is the ultimate open access service. You never lay eyes on the applicant, you are exposed to a great range of employees, etc. You post the job, they come to you. “Good ol’ boy” candidates could now come via Tweet (or ReTweet) or Facebook or LinkedIn. They only have access because of *connections*. This can be some cause for disparate impact concern if you don’t have a diverse workforce already.

We also shouldn’t lose sight of the fact that social media sites are a great way to further legitimate business interests. Social media is not the enemy and employers should not view it that way. Consider the industry-related message board or group on LinkedIn; there may be a message board where engineers and computer programmers can troubleshoot certain issues or seek advice from other professionals, and sites where lawyers can ask other member lawyers “have you faced this situation?” These can be very efficient, cost-effective ways to increase employees’ knowledge and access to information.

Posters to such sites must still be mindful of some legal concerns, however:

1. Posts must maintain the confidentiality of the customer or client.
2. Posts must not attack competitors or seek to interfere with another company’s business relations with any customer.
3. Posts must not confess a lack of knowledge, care or competence that could support a negligence claim later if defending a legal challenge. Remember: every post is potential evidence.

What Should I Cover in My Social Media Policy?

There are some basics a “social media” policy should cover:

1. Can employees utilize employer equipment, including computers and electronic systems, for blogging and/or updating personal sites?
2. Can employees spend any amount of their work time posting to blogs and social media sites?
3. Remind employees that they must at all times abide by

your policies regarding non-harassment, non-discrimination and non-retaliation.

4. What are the company’s expectations with regard to privacy?

5. On the other hand, what are the company’s expectations with regard to full disclosure? If you have a technology-savvy workforce and you sell products on the web, at what level of seniority should employees/officers be required to disclose their affiliation when they speak about the product or its competitors via blog, blog comment, or product review? You may avoid embarrassment by addressing these issues head on. (See <http://pogue.blogs.nytimes.com/2009/01/27/carbonite-stacks-the-deck-on-amazon/> to see how a company was outed after favorable Amazon.com product reviews were shown to be from a VP or Marketing and Senior Software Engineer who did not disclose their affiliations with the company).

Additionally, it may be wise to consider implementing a required “cool off period” so that no electronic discussion of work-related events can take place until the following day to prevent electronic postings that are made in the “heat of the moment.”

Clearly, industries where confidentiality is a paramount issue – such as hospitals, mental health agencies, physician’s offices, insurance companies and high-tech development industries – must address confidentiality issues head on. Ensure that privacy policies and employee training/orientation materials have been updated to address the use of social networking sites.

Other high-tech, high-communication companies will likely want to foster productive blogging and constructive use of social networking. Because of the municipality’s relationship with the public, many municipalities may want to encourage the use of electronic communication to further dialogue between the employees and the public. If so, it is probably wise to consider how you want the employee to present you or the municipality to the public. Consider Intel’s Social Media Guidelines (http://www.intel.com/sites/sitewide/en_US/social-media.htm) which actually encourage employees to bring their own interesting perspective to their social media posts. Here’s an excerpt:

The choice to participate in social media is yours. If you do, please follow these guiding principles:

- *Provide unique, individual perspectives on what’s going on at Intel and in the world.*
- *Post meaningful, respectful comments – in other words, no spam and no remarks that are off-topic or offensive.*
- *Reply to comments quickly, when a response is appropriate.*
- *Respect proprietary information and confidentiality.*

- *When disagreeing with others' opinions, keep it cool.*
- *Know and follow the Intel Code of Conduct and the Intel Privacy Policy.*

Most employers will fall somewhere in between these two extremes, seeking to find a balance between the out-right prohibition of communication with the public and actively encouraging it.

What Does the Law Say About Social Media?

While it may take the courts a little while to address blogging issues on a widespread basis, we can predict some things at this early point. For public employers, even the First Amendment's impact on the employer-employee relationship has been diminished. The U.S. Supreme Court decided the case of *City of San Diego et al. v. Roe*, 543 U.S. 77 (2004), in December 2004. In this case, a policeman, identified in court papers only as "John Roe," contended his free speech rights were violated when his bosses learned of his "outside activities," gave him a warning, then fired him. The court found his activities were not protected free speech.

Those activities included selling home-made sex videos on eBay that showed the seven-year police veteran removing his police uniform and engaging in sexual acts. The high court seemed particularly disturbed by his use of a uniform, although it was not his official San Diego uniform, and said "the debased parody of an officer performing indecent acts while in the course of official duties brought the mission

of the employer and the professionalism of its officers into serious disrepute."

Roe claimed in his lawsuit that his activity was a "public concern" because the sex videos were made while he was off-duty and away from the workplace, were marketed to a public audience and did not identify him as a San Diego officer – and he won at the lower court level. The Supreme Court didn't buy his argument, however.

For public employers, the key issue is often whether there is a "nexus" between the conduct and the employer's workplace or the employee's position. Completely unrelated conduct may be more likely to be protected, as the government employer has little interest in controlling such activity.

Remember also that, under the Stored Communications Act (18 U.S.C. Sections 2701 to 2712), if an employer uses illicit or coercive means to get into (or get a view at) an employee's social media accounts, it may put itself at risk of violating the Act, a broadly worded statute meant to protect private e-mail. The theory has met some success where an employee was impermissibly coerced into giving up a co-worker's password for a MySpace account. ■

¹The OFCCP is responsible for ensuring that employers doing business with the Federal government comply with the laws and regulations requiring non-discrimination. It is unlikely that municipalities would be considered "government contractors" under federal law if the only funds they receive from the federal government are in the form of federal grants.

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SAMPLE “STARTER” SOCIAL NETWORKING POLICY

by Donna Eich Brooks, Attorney at Law, Lehr Middlebrooks & Vreeland, P.C.

We understand that some employees, on their personal time and their own personal computers, may maintain Web logs (or “blogs”), or post to social networking sites such as MySpace, Facebook or Twitter. While Company respects its employees’ interests in personal expression, employees must understand that these postings have nearly unlimited communication potential and, unless the creator restricts access, they may be accessed by anyone around the world with access to the Internet. Even efforts to restrict access can fail.

To protect Company’s interests, we expect that employees who maintain personal blogs or contribute postings on the internet abide by the following guidelines:

- Company equipment, including computers and electronic systems, are not to be used for these purposes.
- Employees may not spend any amount of their work time posting to such blogs or websites. This conduct is appropriate only when employees are off duty.
- When blogging about your work at home on your own time, you must abide at all times with all legal and ethical requirements, as well as Company’s policies regarding non-harassment and other matters including those governing the confidentiality of Company information.
- You may not disclose confidential information about Company, its customers or its employees that you learn in the course of your employment.
- You may not use any materials belonging to Company, including our promotional and marketing materials, without the written permission of [insert title of responsible individual].
- Be respectful. You may not make discriminatory, harassing, defamatory, libelous or slanderous comments when discussing Company, its officers, your supervisors or co-workers or our competitors. You should not use a blog or such posts as a vehicle for personal attacks. Another recommended way to safeguard against making inappropriate posts is to take a one-day “cooling off” period before posting about your work, a co-worker or a patient.
- You should assume that people, including co-workers, supervisors and customers are reading your postings.
- Recognize that the Company may address as a disciplinary issue any language that you post in a blog or a social media site that reflects negatively on your work ethic or your level of commitment to and compassion for our customers.
- Nothing in this policy is intended to prohibit, nor should it be interpreted as prohibiting, employees from engaging in protected concerted activities or making protected statements and reports to the proper internal and external authorities.
- Company strives to provide the best service possible. One way we fulfill that mission is by having an open door policy. If you see room for improvement, whether for an individual case or company-wide, please share your insight with us through our open door policy.

Given these factors, remember that, in general, blogs are not an appropriate forum for you to vent frustration about customers, coworkers, supervisors or your job in general. There simply is too much risk that the information can be communicated in an unlimited fashion. Violations of this policy can result in discipline up to and including termination from employment.

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Social Media: A Few More Considerations

A recent *New York Times* article, www.nytimes.com/2009/09/13/us/13lawyers.html?_r=1&emc=eta1 lists several circumstances where on-line postings have caused problems for the posters:

- A lawyer so angry at a judge that he called her an “Evil, Unfair Witch” in his blog received a reprimand from the Florida State Bar and paid a \$1,200 fine for his comment
- An Illinois lawyer who referred to another judge as “Judge Clueless” and provided thinly-veiled details about representing her clients in her blog lost her job as a public defender and faces disciplinary action for her comments
- A juror who blogged about an on-going case caused a conviction to be set aside and sent back for a retrial
- And, a lawyer who requested a continuance for a family funeral found future requests denied because the judge followed her activities during the week of the “funeral” on her Facebook page – the judge was subsequently removed as a “friend”

This brave, new world we’re facing does not come without questions and consequences. Municipalities and those who serve and represent them are no different. Anytime you make a post on-line, at a minimum you should ask yourself:

- Is my posting a public record? Electronic documents are no less public than “hard-copies” of documents. Under Alabama law, documents that involve “the transactions of public business” are considered public. The Alabama Supreme Court has said that public records are those records which are reasonably necessary to record the business and activities of public officers “so that the status and condition of such business and activities can be known by our citizens.” *Stone v. Consolidated Publishing Co.*, 404 So.2d 678 (Ala. 1981). If a post is public, you may have to retain the record and make it available to members of the public.
- If the records are public, do they have to be retained? And for how long? The Alabama Records Retention Schedule specifically applies to “electronic records.” Generally speaking, electronic records must be retained for the same period as their “hard-copy” counterparts.
- If the record has to be retained, how can I retain an “off-site” record? That is, if the electronic posting is not stored on an in-office computer or server, how can I control the retention? If you don’t have control of the record storage, this may require printing or downloading the record to a local site you do control.
- Would my post be considered “campaigning” rather than “informing” the public? If so, are there issues related to the Fair Campaign Practices Act I should be concerned with? Section 17-5-13 prohibits the publication, distribution or display of any “printed material relating to or concerning any election” without including the notice required by Section 17-5-2(a)(5). Would a blog post encouraging citizens to vote for you require including this notice? Arguably, it could.
- Does the Open Meetings Act (OMA) apply to my posting? This issue becomes more acute when considering the nature of on-line “gatherings” such as those that take place on Facebook, where only those identified as “friends” can observe or take part in the discussion. The OMA prohibits municipal officials from participating in any gathering with a quorum of members where municipal business is discussed, without adequate notice to the public of the meeting and allowing the public to attend. Municipal officials, committee members and others must take extra care to avoid any discussion of municipal business in any closed on-line environment. If you invite constituents to join your Facebook page, this may mean refusing to answer a legitimate question in that forum if a quorum of other members of the entity are also “friends.”

Remember, the evolution of the law and the evolution of technology are not in step with each other. Even laws that were intended to specifically apply to electronic documents can’t keep up with developments in technology, but may still require you to restrict your actions on-line.

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