

THE ALABAMA MUNICIPAL JOURNAL

August 2002

Volume 60, Number 2

Successfully Applying for CDBG Funding

Addressing Community Needs Through CDBG Grants



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THE ALABAMA MUNICIPAL JOURNAL

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Cathy Larrimore Selected as Clerk of the Year

Cathy Larrimore, City Clerk for the City of Orange Beach, AL, was recently selected as “Clerk of the Year – 2002” by the Alabama Association of Municipal Clerks and Administrators. This award was presented to Cathy at their recent summer conference that was held in Orange Beach, AL, June 28-29, 2002.

The Clerk of the Year award is based on experience and varied duties as Municipal Clerk; contributions made by the Clerk to his or her community; as well as service to the Alabama Association of Municipal Clerks and Administrators and the International Institute of Municipal Clerks.

Alabama consists of approximately 430 municipalities. The Alabama Municipal Clerks Association has a total of



14 districts that encompass the state. Each district nominates a candidate for this very prestigious award. Cathy Larrimore was honored by being selected as representative for **District VIII**, as well as being selected as **Clerk of the Year - 2002**.

Cathy served as City Clerk for the City of Jackson, AL prior to her moving to Orange Beach. She has been a Municipal Clerk for 14 years. She is currently President of the clerk's State Association after having served as President Elect, Secretary, Treasurer, as well as serving on various committees. In addition, Cathy

served as the Chairperson of the 2002 Summer Conference Committee.

Congratulations, Cathy Larrimore!

Job Listings

FIRE CHIEF, City of Foley

Foley is a fast growing community five miles above the Gulf of Mexico with excellent schools and quality of life. The combination (full time fire fighters and volunteers) Fire Department is growing rapidly to meet the service demands of a growing local economy and population. It operates two fully equipped stations and one substation and has a complete training facility. The City of Foley is seeking a highly motivated, progressive and innovative leader that can work with a team to build a growing department delivering a high level of service in fire suppression, fire prevention and inspection, training and hazardous materials. Candidates for this position should have a proven record in the field of fire service to include the administrative skills associated with the operation of a fire department. The maintenance of various certifications related to senior leadership in fire service may be required. Management experience in fire service and a college degree are a plus. Salary will be commensurate with qualifications and experience of the successful candidate and complemented by an excellent benefit package. This position is open until filled. Send letter of interest and resume to: **Fire Chief Search, City of Foley, PO Drawer 400, Foley, Alabama 36536**. The City of Foley is an equal opportunity employer.

GIS COORDINATOR, City of Auburn

The City of Auburn is currently seeking candidates for the position of GIS Coordinator. An employee in this position is responsible for developing, implementing and managing the Citywide Geographic Information System, which includes the coordination of both the Aerial Photography project City-Wide and the use of the GIS database with other City departments. Qualifications include graduation from an accredited college or university with a Bachelor's degree in Geography or Cartography, including AutoCAD and GIS management training and some experience in GIS system development and implementation, or any equivalent combination of experience and training that would provide the knowledge, skills and abilities necessary to perform the work. The starting salary range for this position is \$3,283-3,754/month, DOQ. Individuals interested in this position must complete a City of Auburn application. To obtain an application, please e-mail webhrm@auburnalabama.org. To view the complete job description for this position, please visit our website at www.auburnalabama.org. The City of Auburn is an Equal Opportunity Employer and a drug-free workplace.

Successfully Applying for CDBG Funding

By: Laura Anne Whatley

Legal/Communications Assistant, Alabama League of Municipalities

Editor's note: This is Part II of a two-part series on Community Development Block Grants and how to apply for funding. Part I appeared in the July issue of "The Alabama Municipal Journal."

Last month's issue illustrated the many ways in which the CDBG, Community Development Block Grant, can be used. The objective of this article is to explain the application process so municipalities will know what information to gather to successfully apply for a CDBG grant.

Review of the CDBG Program

The CDBG State level program is run through the Alabama Department of Economic and Community Affairs, or ADECA, and has seven funds within the program to meet the needs of individual cities. The grant is divided into many funds to better meet the needs of individual communities by providing specific categories in which they can submit an application and in turn, apply the grant to their community needs.

The **Community Enhancement Fund** was created to assist the state in providing enhancements to the quality of life through projects that will improve services offered through the community. Improvements that are applicable to the Community Enhancement Fund include:

- fire/emergency 911 telephone service
- recreational facilities
- community centers
- senior centers
- fire protection
- historic preservation
- housing rehabilitation
- sewer services
- street improvements
- water services

A maximum of \$250,000 is awarded for each Enhancement Grant. The Community Enhancement Fund is open for applications and awards until September, which means a community does not have to wait until a certain time of the year to either apply for or receive the funding – as long as their application is submitted by September.

The **Competitive Fund** is the largest source of available money to Alabama that is distributed annually through the CDBG program. Awarding up to \$500,000 to an individual community, the Competitive Fund is typically used for housing rehabilitation, water or sewage improvements, roadway repairs, as well as many other community needs. Under this program, communities compete in three categories: small cities, large

cities and county – depending on the size of the municipality. Within each category, communities compete for grant awards through a point system consisting of a needs evaluation of the municipality.

• The first point considered is Jurisdictional Need/Distress, which factors the percentage of households in the affected area with an income of less than 80 percent of the state average income. The need/distress is worth 60 points.

• The second point considered is the Cost/Benefit Ratio. The Cost/Benefit Ratio is determined by a comparison of the project the municipality wishes to conduct to the base ratios. A Cost/Benefit Ratio is allotted up to 30 points.

• The third point examined is the Nature of Benefits. The Nature of Benefits will weigh the importance of the project and how it will assist the community. The Nature of Benefits is worth 60 points.

• The fourth point considered is called Match, and takes into account local or private funds that will be used in conjunction with the grant requested. A Match can bring up to 10 points.

• The fifth and final point taken into consideration is the Percent Benefit to LMI (Low Moderate-Income Persons). The Percent Benefit to LMI determines the proportion of Low and Moderate-Income persons that will benefit from the project. The Percent Benefit to LMI can award as many as 40 points.

The total number of points a city can have is 200 points. The Competitive Fund is only open during a two-month period, which begins in April and closes May 31. Competitive awards are announced in August/September.

The **Special Fund** is the division of the CDBG grant that is provided to aid communities in solving situations that create a serious hazard to public health safety – such as a sewage spill – when there appears to be no local resources available. A community can receive as much as \$350,000 from the Special Fund.

Economic Development is the fund that is created in large part to aid in the growth and development of new businesses, particularly when new jobs are created. The fund also serves to help save endangered jobs through improvements of an existing business. This is the only fund in which a municipality can apply for more than one grant at a time. Although this fund allots a maximum of \$200,000, if the project exceeds this maximum, the community may apply for more grant money under the Economic Development Fund.

continued next page

Another fund of the CDBG program is **The Planning Fund**. This fund is provided for communities in the event that planning or research for future projects is needed. A maximum of \$50,000 can be requested through this fund.

Also, another important factor to remember is that the CDBG is created in large part to benefit low/moderate income persons. In order to qualify for a CDBG grant, a community must verify that *51 percent* of those benefiting from the grant are in fact low/moderate income persons.

Application Process

The CDBG application process need not be a daunting experience. By using available resources and collecting the necessary information, completing the application process should be fairly straightforward. For example, city XYZ is in need of sewer lines that connect to low/moderate-income housing. The city has analyzed the situation and has determined that the public is not in an immediate health danger, therefore eliminating the need for CDBG Special Fund.

City XYZ can apply for more than one CDBG grant if the money awarded from one is not enough to cover the project; however, City XYZ has determined the approximate cost for the project through estimations provided by engineers and city planners and has concluded that the total project cost should be \$200,000. Based on this estimation, the city decides that the Community Enhancement Fund will be the best program to meet its needs. By applying for this program, the city will not have an application deadline before September and can receive the grant award as soon as ADECA can process the application.

When applying, XYZ will be asked to provide several certifications in order to be considered for the grant. These certifications are the same for *all* CDBG applications and consist of:

- A resolution that must be passed by the City Council/County Commission to authorize the CDBG application and the person (most likely the Mayor) whose signature will appear on the application.

- The public must be informed about the Community Development Program and the proposed project through a public hearing, via a regular council meeting or special meeting. The date and time must be documented and the project discussed with the citizens.

- A Citizen Participation Plan that outlines when the city will meet with the public on various occasions to inform the public on the project and the grant application process must be developed providing ample opportunities for the project to be discussed and questions to be answered.

- The problems that are proposed must be assessed and percentages of low-moderate-income persons affected must be listed.

- Project need and importance must be documented to the

community. The documentation should include a detailed description of the problem and what is projected to improve it; a map of the project area; and pictures to give visual affirmation to the project.

- A description of community dedication to the long-term function and preservation of the finished project must be provided. The community dedication description should include a plan detailing how the project will be maintained and who will be responsible for maintaining it.

City XYZ will be asked to document the usage of funds as well as present a Match. According to the ADECA website, "The Community Enhancement Fund will require a project specific, local match equal to or exceeding 10 percent of the CDBG request." However, "the matching requirement is waived for communities of 1,000 or less in population."

Application Deadlines

The only fund that has a definite deadline for application is the Competitive Fund. The Competitive Fund is awarded annually, the deadline being in May and the award announcements of up to \$500,000 in August or September. Applications and awards are continuous year round for the Economic Development Fund, which allots a maximum of \$200,000. However, if the project exceeds this amount a municipality may apply for additional grant money.

The Special Fund can be both applied for and awarded through October 31. A community may receive as much as \$350,000 from the Special Fund. The Community Enhancement Fund and the Planning Fund are open until September 30 for both application and awards. Through the Community Enhancement Fund, a maximum of \$250,000 is available to communities. The Planning Fund designates \$50,000 for individual municipalities.

Although the application process may seem complicated, the staff at ADECA and the benefits of the CDBG by far outweigh any application obstacles. Every spring, ADECA holds a workshop on Application Procedures to help municipalities through the application process and to answer questions regarding the uses of the grants. Also, after the applications are awarded, a workshop is held to ensure that all Federal laws and mandates are being met. In addition, ADECA has an informative website that can also help in understanding the CDBG program and its application process: www.adeca.state.al.us/cdbg2002.

For more information on CDBG, the application process and/or upcoming workshops, contact Shabbir Olia, Manager of the Community Development Block Grant with ADECA at **334-242-5468**. A manual with grant descriptions and application guides will be provided to interested municipalities upon request. ■



The President's Report

George W. Roy
Mayor of Calera

NLC's 79th Congress of Cities Slated for Salt Lake City December 3-7, 2002

Salt Lake City will be the site of NLC's rendezvous for more than 7,000 local officials and guests during the 2002 Congress of Cities and Exposition December 3-7, 2002 at the Salt Palace Convention Center. The conference will feature a special gala closing event after attendees experience a strong program focusing on economic development, hometown security, revenue opportunities and challenges; transportation, land use, regional collaboration and diversity and race equality.

Online registration – a quick process that also allows for real-time hotel reservations – is now available at www.nlc.org. Be sure to visit the website often for updates, changes and conference details.

The history and development of Salt Lake City help make it the right place for the 2002 Congress of Cities. In July 1847, Brigham Young arrived in Salt Lake City with more than 140 Mormons who had left Illinois to seek a new home. To him, Salt Lake City was "the right place where my people shall pitch their tents." The spot is now marked by the "This is the Place Monument."

In February 2002, Salt Lake City was the right place for thousands of athletes from around the world to compete in the 2002 Winter Olympic Games. In December 2002, Salt Lake City will be the right place for thousands of city officials to come together to share ideas; participate in educational programs; examine best practices; adopt new national policy positions; and connect with successful programs in Salt Lake City.

The conference will offer six unique learning opportunities for city officials over a five-day period. General sessions and conference workshops will feature nationally recognized speakers; seasoned subject matter experts; and experienced city officials who will share successful programs and new approaches to local governance. These activities will begin on Thursday morning, December 5, and continue through Saturday, December 7.

There will be four general sessions and more than 40

conference workshops focusing on a wide range of critical issues facing today's local leaders including:

- Municipal Finance
- Homeland and Hometown Security
- Economic Development Strategies
- Approaches to Building Quality Communities
- Leadership Challenges in Today's World
- Ensuring Race Equality
- Successful Early Childhood Development
- Emerging Public Policy Issues

Stephen R. Covey, author of *The 7 Habits of Highly Effective People*, has been announced as the general session speaker on Friday morning December 6, 2002. Covey is co-founder/vice-chairman of Franklin Covey, a leading global professional services firm. He is an internationally respected leadership authority, family expert, teacher and organizational consultant. Covey has made teaching principle-centered living and principle-centered leadership his life's work.

General sessions and workshops are open to all registered delegates and their guests. Host city mobile workshops will allow conference participants the chance to learn more about municipal projects in and around Salt Lake City. Mobile workshops include downtown redevelopment; Park City Main Street tour; pedestrian safety; youth recreation; local "green" initiatives; local and regional transportation including the light rail system "TRAX"; and the "Olympic Legacy," which will focus on both local learning experiences from the Olympics and how venues built for the Olympics are benefiting Salt Lake City and the surrounding communities.

Mobile workshops will begin on Tuesday, December 3, and continue through Friday, December 6. Delegates will have the opportunity to participate in these workshops by signing up during the conference at the Host City Desk in the Registration area. There is no pre-registration but space is limited to maintain a productive educational and learning experience. Registration will be on a first-come first-served basis.

Leadership Training Institute seminars provide in-depth skill building, learning experiences for a separate fee and credit toward the Certificate of Achievement in Leadership. These special seminars will be offered on Tuesday, December 3, and Wednesday, December 4. Pre-registration and prepayment are required to reserve your place.

Networking sessions and resources offer delegates the opportunity to share ideas, compare notes and learn from each other. There will be both structured networking sessions during the conference as well as opportunities to exchange ideas informally between workshop sessions and during lunches and various meetings.

In addition, the City Showcase will provide a special opportunity to learn about successful programs and to talk with city staff who have been directly involved in implementing

continued next page

the programs. Networking sessions and the City Showcase will be open to all registered conference delegates and their guests on Thursday, December 5 and Friday, December 6.

NLC's 2002 Exposition will feature more than 300 booths providing delegates the chance to make connections with the leading vendors serving municipal government. The exposition will be open to all conference delegates and their guests starting Wednesday evening December 4 for the Welcome Reception and will be open during the day Thursday, December 5, and Friday, December 6. To ensure plenty of time to visit the many vendors, there will be special events in the exhibit hall including two conference-wide lunches, prize drawings and vendor-sponsored workshops.

Also during the conference, special programs that respond to special interests and needs will include sessions exclusively for newcomers to the Congress of Cities; programs for youth delegates who are interested in learning more about local government; opportunities for city officials from small communities to deal with their unique challenges; and programs offered by NLC's six constituency groups on key local issues. ■

NEMO-Alabama Training of Trainer Workshops

NEMO-Alabama is an educational program that addresses water quality. Although MENO is an acronym for Nonpoint Source for Municipal Officials, it really is nonpoint education for everyone. The educational program began in Connecticut and was designed to help elected officials understand more about the nonpoint source water pollution and its causes.

NEMO uses a three tier strategy of natural resource based planning, site design and the use of stormwater best management practices that communities can use to address nonpoint source pollution in their watersheds. NEMO can assist communities in addressing Phase II Storm Water requirements, TMDLs and development of watershed protection plans. This two-day workshop will train individuals to be able to present the NEMO-Alabama program in their own watershed. In addition, attendees will become aware of a large source of available informational materials on watersheds and water quality. Information about possible funding will also be included.

Workshops are scheduled for **August 20-21** at Troy Stated University, Dothan; **September 19-20** in Tuscaloosa; and **October 24-25** in Mobile. Each workshop is limited to 30 participants.

Contact **Sue Robertson**, NEMO Advisory Committee at **334-567-5313** or **567-0484**, srr2000@mindspring.com; **Patti Hurley**, ADEM Office of Education, at **334-393-4350**; or **Toby Bennington**, BRPC, at **205-251-8139**, ext. 128 if you are interested in attending one of the workshops.

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Municipal Overview

By
PERRY C. ROQUEMORE, JR.
Executive Director

Organizational Meeting of the Executive Committee

The Organizational Meeting of the Executive Committee of the Alabama League of Municipalities was called to order at 10:00 a.m. on Thursday, July 25, 2002, by Mayor George Roy of Calera, League President. He called on Mayor Bobby Payne of Tallassee for the invocation. President Roy thanked Mayor Payne for his words of inspiration.

President Roy welcomed those present and thanked members for coming to the meeting. He stated that we had a full agenda of items to discuss. He called upon Vice President Dan Williams for his remarks. Mayor Williams stated that he appreciated the confidence placed in him and that he was honored to be a part of the group.

President Roy called upon Mayor Rebecca Beasley of Clayton to introduce her special guests, Boyd and Blanche Whigham. Mr. Whigham, the Democratic candidate for Attorney General, addressed the meeting briefly. Following his remarks, President Roy thanked Mr. Whigham and his wife for coming to the meeting.

The President called for the League Director's report. Committee members were asked to welcome new members of the committee – Mayor G. Richard Long, Jackson; Mayor Frank Houston, Coosada; Mayor Charles Fagan, Piedmont; Council Member Marshall Shaddix, Oxford; Mayor Charles O'Rear, Attalla; Council Member Jimmie B. Slay, Littleville; Council Member Jo Ann S. Thomas, Florence; Mayor Bobby Hayes, Pelham; Mayor Charles Penhale, Helena and Council Member Roberta Jordan, Pine Hill.

Members were notified that the cities of Auburn, Bessemer, Gadsden, Huntsville and Scottsboro will be holding elections in August. League dues notices for the September 1, 2002 – August 31, 2003 League Fiscal Year will be mailed in early August. The League has 434 member cities and towns. There are 20 non-member municipalities. Officials from member municipalities are urged to contact any non-members in their area and recommend that they join the League.

The NLC-Congressional City Conference was held in Washington, DC, in March. Both NLC and the League had a

lower number of attendees due to the September 11th attacks and the economy. Alabama's attendance was approximately 225 delegates and spouses.

The 2002 Annual Convention in Mobile was highly successful. Approximately 1,800 persons attended some portion of the convention. The League has received many positive comments from attendees on how much they enjoyed the convention. Special thanks are extended to Mayor Mike Dow, the City Council, City Clerk Glenda Morgan, and the Mobile employees for their help in putting on this convention. Several League staff members will be traveling to Huntsville in the near future to make preliminary plans for the 2003 Convention. The hotels holding room blocks for League delegates in Huntsville are the: HUNTSVILLE HILTON; HUNTSVILLE MARRIOTT; HOLIDAY INN RESEARCH PARK; HOLIDAY INN EXPRESS; GUEST HOUSE SUITES PLUS; and the COUNTRY INN & SUITES. Further information is available on the League's web site at www.alalm.org.

The League Convention has grown into one of the largest in the state needing approximately 750 hotel rooms to accommodate our attendees at the convention. At the Business Session in Mobile, attendees received the list of hotels that are holding room blocks for the League Convention in Huntsville. A letter with this information was also mailed to all mayors and clerks following the convention. The hotels began taking reservations on June 1, 2002. A registration packet will be sent to all delegates in December or early January. Any suggestions on how to improve the Convention are welcome.

The Southern Municipal Conference held its annual membership meeting in New Orleans immediately after the League Convention in April. In addition to Mayor Bobby Payne and the League Director, the SMC meeting was attended by Mayor George Roy of Calera, Mayor Billy Joe Driver of Clanton, Mayor Ted Jennings of Brewton, and Councilmember Jerry Groce of Russellville. The meeting was very informative on issues of interest to the southern states.

The League continues to offer two computer programs. The MunicipalLaw on Disc program contains summaries of Attorney General Opinions, Court Decisions and Ethics Opinions published in the League Newsletters over the past 40+ years. Currently, there are 52 subscribers. A subscription lasts for one year and the program is updated quarterly.

The second program is the ALM Library. This program contains the complete text, searchable by word, of the *Selected Readings for the Municipal Official; Handbook for Mayors and Councilmembers; Municipal Clerk's Manual, Municipal Public Improvement Cost Assessments; Methods of Extending Municipal Corporate Limits; Labor Laws Affecting Municipalities; and Incorporating a Community*. The League has sold 132 copies of this program – 38 this year.

continued next page

The League continues to add new features to our League website. We welcome suggestions on how to improve the content and usefulness of the site. If you have any suggestions, please let us know. If you have not checked out our League web page, I encourage you to check the site daily for news events, important notices and general information. It is especially useful during the legislative sessions. The web address is www.alalm.org.

On June 26th, the League held its annual CMO Graduation Ceremony at the Embassy Suites Hotel in Montgomery. Rep. Bill Dukes, former Decatur mayor, gave the commencement address. As of that date, 2027 elected municipal officials have enrolled in the program and have attended one or more courses. Further, 486 officials have received their Basic CMO Certification and 145 have received their Advanced CMO Certification. The League is planning to offer both advanced and basic CMO courses this fall.

The John G. Burton Endowment for the Support of Municipal Programs was established in 1988 from gifts donated by the Alabama League of Municipalities to honor Mr. John G. Burton, the first President of the Alabama League of Municipalities. As of December 31, 2001, the book value of the Endowment was \$79,922.28. The fair market value of the Endowment was \$154,796.35. The fund is invested in The University of Alabama System Endowment Pool. During the 2000-01 fiscal year, \$18,375.20 was expended to provide speaker fees, travel expenses and scholarships.

The 2002 League Committee Day will be held on September 5th at the Montgomery Civic Center. Committee Day will begin at 9:00 am with a Washington briefing from an NLC staff member. Committees will meet at 10:00 am to hear presentations from various federal and state resource advisors. Following lunch with a speaker on a topic of municipal interest, the committees will reconvene to adopt their new policy statements.

Committee members received a handout containing the names for all candidates for state, congressional and legislative races for the November general election.

The NLC Congress of Cities will be held in Salt Lake City, Utah on December 3-7, 2002. There will be a reception for Alabama delegates for Friday evening, December 6, from 5:30-6:30 pm at a site to be announced. The reception will be sponsored by the Alabama Municipal Electric Authority, TVA, and Alabama Electric Cooperatives, Inc. The League President and Director will host a hospitality room at the Grand America Hotel. Members were encouraged to attend this important conference. The closing night event has been reestablished after last year's sudden cancellation.

The Director stated that Mayor Ted Jennings of Brewton and Council Member Cynthia McCollum of Madison have expressed an interest in running for a seat on the NLC Board of Directors. Mayor Leon Smith of Oxford moved that the Executive Committee endorse both candidates. The motion,

which was seconded by Mayor Ed Daniels of Marion, was approved unanimously.

The League's two *Salary Survey for Cities* publications are prepared by the Center for Governmental Services at Auburn University. The survey for municipalities of 2,000 or more is done annually. The survey for municipalities of less than 2,000 is done less frequently. Both surveys are available through the League's website.

The League is currently taking orders for advertisements in the upcoming *2003 Products and Services Guide*. Special advertising packages are also available. Members knowing of potential advertisers should contact Greg Cochran of the League staff at 334-262-2566.

The League's *Computer Survey* has recently been completed. Results are available through the League's website. Twanna King is currently tabulating the results of a *Utilities Survey*. This survey should be ready for publication in the near future.

Recent workshops in Alabama and Georgia kicked off a new round of NLC's technical assistance program called Strengthening Partnerships for Housing Opportunities Program. The workshop conducted by NLC staff and consultants provided technical information to city teams of elected and appointed officials and community members to address their affordable housing issues. The Alabama workshop was hosted at the league's offices. The cities of Anniston, Brewton and Selma participated in the workshop.

City team members cited overlapping challenges encountered in the development of affordable housing. For example, they identified lack of available land, environmental issues and a preponderance of substandard houses with absentee landlords as major challenges. Another concern expressed was the difficulty faced by city officials to attract developers to build low-cost housing since it is not generally profitable.

Individuals and families experienced other barriers to obtaining quality shelter. Budgeting, money management and establishing and maintaining good credit were named as the areas where they need more skills and assistance. Also, there is resistance to create affordable housing for low-income residents. This can usually be attributed to the community backlash issue referred to as "Not In My Back Yard" (NIMBY). NIMBY syndrome has evolved around the perception that low-income people do not properly care for their property. However, many situations can often be addressed through policy changes, consumer education, code enforcement and campaigns to keep communities clean and safe.

During the two-day workshops, each city developed a process of next steps for affordable housing initiatives. There was agreement among the participants that any assistance to one segment of the community should have the endorsement from a broad base of supporters. Each city team identified

other leaders that needed to be involved in the planning and implementation of projects. Another outcome was the assignment of an NLC consultant to follow up with each of the cities in the implementation of their action plans. The teams will reconvene in six to nine months for another workshop to share successes and challenges. Continued technical assistance will be provided for one year to 18 months by NLC staff and consultants if desired.

The Strengthening Partnerships for Housing Opportunities Program is a part of NLC's Affordable Housing Program. NLC is one of eight public interest groups that comprise the National Affordable Housing Training Institute (NAHTI), www.nahti.org. NAHTI is funded and disburses funds to its members, including NLC, through a cooperative agreement from the U.S. Department of Housing and Urban Development. For more information contact Bonnie Mann at (202) 626-3125 or email: mann@nlc.org.

Each year the National League of Cities holds a workshop for state league staff members to come together, compare notes and learn from each other better ways to serve their municipal members. This year, the Alabama League of Municipalities served as host League for this event that drew approximately 100 League staff members from 33 states. Also in attendance were several NLC staff members including NLC Executive Director Don Borut. Not only were the workshops very valuable, but it gave the League an opportunity to showcase the assets of Montgomery and Alabama. Special thanks are due our League staff for the extra hard work in putting this together—especially Carrie Banks, Communications Director, who was in charge of the event.

The following municipalities have signed agreements with Gov Deals, our program which allows municipalities to auction surplus property via the internet: Brewton; Madison; Calera; Gadsden; Red Level; Opelika; Lincoln; Weaver; Geneva; Birmingham; Huntsville; Mountain Brook; and Scottsboro (pending). Committee members who have used the Gov Deals service commented on the program very favorably.

The League is doing some minor renovation work on the League Headquarters building. The project will result in the law library being remodeled for use as an office for a new attorney; transforming the library into a conference room and museum; making another office into a combination law library and office; and converting a smaller conference room to the library. The work is expected to be completed by early fall.

The League's Director of Membership Services, Barbara McCord, will retire on August 30th. Barbara has served the League for over 25 years. I know I join with municipal officials and employees from across Alabama in commending Barbara for her work over the past 25 years and wish her a great retirement. Another longtime League employee, Edye Goertz, will assume Barbara's duties upon her retirement. I am confident that Edye will continue her long tradition of quality service to the League.

The League recently received a request from the ADECA LETS Division that the League concur with the Division's request of a waiver of the 75 percent rule regarding juvenile justice funding. Council Member Robert Avery moved that the League authorize the Director to sign the consent letter. The motion, which was seconded by Mayor Melvin Duran, passed unanimously.

Important dates of future League events were announced:

- **Committee Day** – 9/5/2002 - Montgomery Civic Center
- **AAMA Fall Meeting** – 9/6-7/2002 – Tuscaloosa, AL
- **Year-End Executive Committee Meeting** - 10/17/2002
- **Committee on State & Federal Legislation** – 11/7/2002
- **NLC Congress of Cities** – 12/4-7/2002, Salt Lake City, UT
- **First Day Organizational Session of Legislature** – 1/14/2003
- **Legislative Reception** – 1/15/2003
- **Mid-Winter Executive Committee** – 1/16/2003
- **First Day of Regular Session** – 3/4/2003
- **NLC Congressional-City Conference** – 3/7-11/2003 – Washington, D.C.
- **SMC Leadership Conference** – 4/9-12/2003 – Richmond, VA
- **ALM Convention** – 4/26-29/2003 – Huntsville
- **Last Day of Regular Session** – 6/16/2003

Following presentation of the FY2002-2003 League Budget, Mayor Jim Byard, Jr. of Prattville moved adoption of the budget. Council Member Robert Avery of Gadsden seconded the motion. The motion carried unanimously.

Mayor Sue Glidewell, Chair of the Alabama Municipal Insurance Corporation, and Mayor Leon Smith, President of the Municipal Workers' Compensation Fund, presented the reports on the activity of their respective programs that were distributed in each packet.

I was happy to report that the 2002 Regular Session was a successful one for municipalities. A summary of the session was provided to committee members. League Legislative Liaison Hal Bloom briefly discussed the November general elections.

League Director of State and Federal Relations Greg Cochran gave an update on several items on the national agenda including the Streamlined Sales and Use Tax Project; proposed solid waste regulations; and federally mandated collective bargaining.

League Deputy Director and Counsel Ken Smith discussed several recent legal opinions relating collection of sales tax in the police jurisdiction, cell tower locations, telephone reseller business licenses, solicitation permits and the applicability of the sunshine law to separately incorporated utilities.

There being no further business, the meeting was adjourned at 12:15 p.m. ■

2002 Annual Directory & Vendor Yellow Pages Available

The *Annual Directory & Vendor Yellow Pages* is a 130 page, 8" x 11 publication with a coil binding that also offers information about the League and our staff and provides contact information for the Alabama House of Representatives, the Alabama Senate, Constitutional officers and important state agencies. Municipal listings for Alabama's more than 400 incorporated cities and towns include the following information:

- | | | | |
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Vendors included in the 2002 Directory are listed below:

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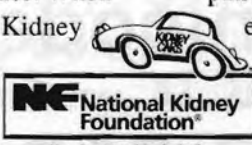
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ENVIRONMENTAL OUTLOOK

By Gregory D. Cochran
Director, State and Federal Relations

Clean Air Ruling Could Mean Tougher Standards for Birmingham

Last month, a federal judge gave the U.S. Environmental Protection Agency 120 days to act on Jefferson and Shelby county's ozone air pollution problems. The order could mean additional air pollution controls on businesses and residents.

In a suit brought by Earthjustice, the court ruled that EPA must decide within four months whether to reclassify Birmingham to a more stringent air pollution category under the Clean Air Act. The Birmingham area currently violates federal health standards for ozone. Reclassifying the region could bring about additional pollution controls including vehicle emissions inspections, vapor recovery systems at gas stations and requirements on industries emitting volatile organic compounds – such as painting companies – to implement the latest technologies to reduce emissions.

According to *The Birmingham News*, despite seven years of ozone violations, state and federal officials are leaning toward declaring the Birmingham area clear of the ozone problem because the region met the ozone standard in 1991, 1992 and 1993. The area could have been declared in "attainment" of the standard in 1994, but because the EPA did not make a formal declaration at the time, the region remained in non-attainment. State officials also claim the region will reach attainment for ozone in 2003, as a result of additional pollution control measures on Alabama Power's power plants and the use of cleaner gasoline.

Group Removes "Beach Bum" Title From Alabama

Prior to implementing Alabama's beach monitoring program in 2000, the Natural Resources Defense Council (NRDC) had listed the state a "Beach Bum" in one of its national reports. That dubious honor has now been lifted as a result of the Alabama Department of Environmental Management's (ADEM) comprehensive beach monitoring program.

Two years ago, the agency began phasing in the beach

monitoring program. Data collected since 2000 indicates that levels of indicator bacteria, such as enterococcus bacteria, are uniformly low all year at Alabama's beaches. Periodically, high concentrations of enterococcus bacteria are found around towns on the coast. This occurs primarily after heavy rains, but according to ADEM's monitoring data, the bacterial counts usually recede to acceptable levels a day or two after the rainfalls.

Presently, Alabama seems to be ahead of neighboring states in this area of environmental protection. Louisiana continues to be on NRDC's "Beach Bum" list. Mississippi recently started a coastal monitoring program, which has revealed high levels of bacteria in the Biloxi and Gulfport areas resulting in closed beaches.

To learn more about Alabama's coastal monitoring program and to follow it throughout the year, visit the following ADEM website: www.adem.state.al.us/FieldOps/Monitoring/monitoring.htm.

Mobile Tackles Smart Growth

In an effort to increase downtown redevelopment and halt kudzu-like sprawl, the city of Mobile has recently organized a Smart Growth in Mobile Committee. Supported by Mobile Mayor Mike Dow, the committee of two dozen elected officials, planners, developers and environmentalists will conduct a series of meetings to establish a smart growth policy in Mobile. Potential smart growth initiatives that will be considered include: providing a network of trails and greenways for walking, jogging and biking to neighborhood stores and schools; improving and expanding public mass transportation to reduce traffic congestion; and amending regulations to allow higher concentrations of development on smaller parcels of land to save open space.

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ADEM Creates Brownfield Revolving Loan Program

As a result of a \$ 1 million Brownfield grant from the U.S. Environmental Protection Agency, the Alabama Department of Environmental Management (ADEM) will be able to provide low interest loans to remediate and redevelop brownfield sites throughout Alabama.

The new Alabama Brownfields Cleanup Revolving Loan Fund will help identify and leverage public, private and municipal funding sources in an effort to cleanup and redevelop abandoned industrial sites. ADEM anticipates advertising and announcing the application process for the Alabama Brownfields Cleanup Revolving Loan Fund from September to December of this year. Priority will be given to areas demonstrating the most significant environmental impact and the greatest socioeconomic need. In 2003, legislation creating the Brownfield Revolving Loan Program is expected to be introduced in the Alabama legislature.

Senator Shelby Secures Conservation Funding

As a member of the Interior Appropriations Committee, U.S. Senator Richard Shelby of Alabama recently secured funding in subcommittee for several important state

conservation projects. These projects include:

Perdido River Protection Plan - \$2 million. This major conservation effort will protect both Alabama and Florida sides of this South Alabama river from development, through the use of private, county, state and federal funds.

Cahaba River National Wildlife Refuge - \$3 million . The Refuge was established in the 106th Congress and is home to 32 animals and plants protected under the Endangered Species Act. The monies will help purchase the land for the refuge. Congressman Spencer Bachus has also been instrumental in securing funding on the House side.

Talladega National Forest - \$700,000. This funding will assist in the acquisition of a portion of land in the Choccolocco connector parcel between Fort McClellan and Talladega National Forest in Calhoun, Talladega, Cleburne and Clay counties.

Pinhoti Trail Construction - \$360,000. This funding is for construction of 31 miles of the Pinhoti trail through the southern portion of the Talladega National Forest. The Alabama portion of the trail has reached the Alabama-Georgia state line on the north, thus completing the northern portion of the trail. This proposal intends to construct the southern portion of the Pinhoti Trail. ■



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By Ken Smith
Director, Legal Services & Computer Programs

THE LEGAL VIEWPOINT

The Family and Medical Leave Act

The purposes of the Family and Medical Leave Act (FMLA), as outlined by Congress, include balancing the demands of the workplace with the needs of families; promotion of family stability and economic security; and preservation of family integrity. To accomplish these goals, the FMLA requires all public employers to provide up to 12 weeks of leave during any 12-month period. (Only private employers must employ 50 or more employees to be covered by the FMLA.)

The FMLA allows eligible employees to take up to 12 weeks of unpaid, job-protected leave during a 12-month period for:

- The birth of a child and to care for the newborn;
- For placement of a child for adoption or foster care;
- For care of a spouse, child or parent with a serious health condition; or
- For an employee's own serious health condition.

The employer may elect to use the calendar year; a fixed 12-month leave or fiscal year; or a 12-month period prior to or after the commencement of leave as the 12-month period.

The United States Supreme Court has held that a federal regulation providing that leave taken by an employee does not count against the employee's Family and Medical Leave Act entitlement if the employer does not designate leave as FMLA leave, was contrary to FMLA and beyond authority of Secretary of Labor. *Ragdale v. Wolverine World Wide, Inc.*, – U.S. – (2002); 70 L.W. 36 (Mar. 26, 2002). This means that employers no longer have to warn an employee before leave is taken that it will count against the employee's 12-week FMLA leave total. This case provides an excellent opportunity to review the requirements of the FMLA.

Employer Coverage

The Family and Medical Leave Act applies to all public agencies, including state, local and federal employers and

local education agencies (schools) as well as the private sector.

Employee Eligibility

To be eligible for FMLA benefits, an employee must:

- Work for a covered employer;
- Have worked for the employer for a total of 12 months;
- Have worked at least 1,250 hours over the previous

12 months; and

- Work at a location in the United States or in any territory or possession of the United States where at least 50 employees are employed by the employer within 75 miles. (NOTE: This last requirement may not apply to public employers.)

Leave Entitlement

A covered employer must grant an eligible employee up to a total of 12 work weeks of unpaid leave during any 12-month period for one or more of the following reasons:

- For the birth and care of the newborn child of the employee;
- For placement with the employee of a son or daughter for adoption or foster care;
- To care for an immediate family member – spouse, child or parent – with a serious health condition; or
- To take medical leave when the employee is unable to work because of a serious health condition.

Spouses employed by the same employer are jointly entitled to a combined total of 12 work weeks of family leave for the birth and care of a newborn child; for placement of a child for adoption or foster care; and to care for a parent who has a serious health condition. Interestingly, if the parents are unmarried, each parent may be entitled to 12 weeks of leave.

Leave for birth and care, or for placement for adoption
continued next page

or foster care, must conclude within 12 months of the birth or placement. Under some circumstances, employees may take FMLA leave intermittently which means taking leave in blocks of time or by reducing their normal weekly or daily work schedule.

If FMLA leave is for birth and care or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.

FMLA leave may be taken intermittently whenever medically necessary to care for a seriously ill family member or because the employee is seriously ill and unable to work. Also, subject to certain conditions, employees or employers may choose to use accrued paid leave such as sick or vacation leave to cover some or all of the FMLA leave. The employer is responsible for designating if an employee's use of paid leave counts as FMLA leave, based on information from the employee.

"Serious health condition" means an illness, injury, impairment or physical or mental condition that involves either:

- Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; or

- Continuing treatment of any health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:

1. A health condition (including treatment therefor or recovery therefrom) lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that also includes;

- a. Treatment two or more times by or under the supervision of a health care provider;

- b. One treatment by a health care provider with a continuing regimen of treatment;

2. Pregnancy or prenatal care – a visit to the health care provider is not necessary for each absence;

3. A chronic serious health condition which continues over an extended period of time; requires periodic visits to a health care provider; and may involve occasional episodes of incapacity (e.g., asthma, diabetes) – a visit to a health care provider is not necessary for each absence;

4. A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer); only supervision by a health care provider is required, rather than active treatment; or

5. Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).

"Health care provider" means:

- Doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice;

- Podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law;

- Nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law;

- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; or

- Any health care provider recognized by the employer or employer's group health plan benefits manager.

Maintenance of Health Benefits

A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave.

In some instances, the employer may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

Job Restoration

Upon return from FMLA leave, an employee must be restored to the employee's original job or to an equivalent job and equivalent pay, benefits and other terms and conditions of employment.

In addition, an employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave, nor be counted against the employee under a no-fault attendance policy.

Under specified and limited circumstances where restoration to employment will cause substantial and grievous economic injury to its operations, an employer may refuse to reinstate certain highly-paid key employees after using FMLA leave during which health coverage was maintained. In order to do so, the employer must:

- Notify the employee of his or her status as a key employee in response to the employee's notice of intent to take FMLA leave;

- Notify the employee as soon as the employer decides it will deny job restoration and explain the reasons for this decision;

- Offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice; and

- Make a final determination as to whether reinstatement will be denied at the end of the leave period if the employee then requests restoration.

A "key employee" is a salaried eligible employee who is among the highest paid 10 percent of employees within 75 miles of the work site.

The Eleventh Circuit Court of Appeals has held that an employer that terminates as a reduction in force an employee who is on Family Medical Leave Act leave does not violate the FMLA if the termination would have happened even if the employee was not on leave. *O'Connor v. PCA Family Health Plan, Inc.*, 68 LW 1442 (11th Cir. 2000).

Notice and Certification

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable.

Employers may also require employees to provide:

- Medical certification supporting the need for leave due to a serious health condition affecting the employee or an immediate family member;

- Second or third medical opinions at the employer's expense and periodic recertification; and

- Periodic reports during FMLA leave regarding the employee's status and intent to return to work.

When intermittent leave is needed to care for an immediate family member or the employee's own illness, and is for planned medical treatment, the employee must try to schedule treatment so as not to unduly disrupt the employer's operation.

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. An employer that willfully violates this posting requirement may be subject to a fine of up to \$100 for each separate offense. Each day the notice is not posted constitutes a separate offense.

Also, covered employers must inform employees of their rights and responsibilities under FMLA, including giving specific written information on what is required of the employee and what might happen in certain circumstances, such as if the employee fails to return to work after FMLA leave.

Employers must also notify employees when leave taken will be counted against annual FMLA time. (**NOTE:** This provision has been invalidated by the United States Supreme Court. *Ragdale v. Wolverine World Wide, Inc.*, – U.S. – (2002); 70 L.W. 36 (Mar. 26, 2002)).

Enforcement

The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S.

Department of Labor may bring action in court to compel compliance. Individuals may also bring a private civil action against any employer for violations.

What happens if an employer fails to comply with the leave law? It is unlawful for an employer to interfere, restrain or deny the exercise of rights given under the FMLA. Moreover, it is against the law for an employer to fire, or in any other manner, discriminate against employees for taking advantage of their rights to family and medical leave or opposing the employer's denial of those rights.

There are a number of possible sanctions if an employer violates the FMLA. An employee claiming a violation of the law may bring civil suit in any state or federal court against an employer on the employee's own behalf and on behalf of all similarly-situated employees.

Any employer found to have violated the FMLA will be liable to any eligible employee affected by the violation for damages equal to any wages, salary, employment benefits or other compensation denied or lost by reason of the violation. Where no compensation or benefits have been lost, employers will be liable for damages equal to any actual monetary losses suffered by the employee due to the violation plus interest on the above damages.

In addition, a court may impose liquidated damages equal to the actual damages and interest described above. If a judgment is awarded to the employee, the employer will also be required to pay a reasonable attorney's fee, reasonable expert witness fees and the other court costs incurred by the employee. Finally, if appropriate, the court may order equitable relief such as employment, reinstatement and promotion of the employee.

The employee may also complain to the Department of Labor (DOL), which shall investigate and attempt to resolve the complaint. If the complaint cannot be resolved, the DOL may bring a court action to recover the damages or other relief available to the employee in a civil action. The employee's right to bring an action will terminate on the filing of an action by the DOL. The DOL may also seek an injunction restraining violations of the law by the employer.

Any lawsuits by the employee or the government must be commenced within two years of the last event constituting a violation for which relief is sought. If the violation is willful, the statute of limitations is extended to three years.

The 11th Circuit Court of Appeals has held that an FMLA provision granting a private right of action against an employer to "employees" is ambiguous, and the Department of Labor regulation interpreting it to include former employees is reasonable and therefore entitled to deference. *Smith v. BellSouth Telecommunications Inc.*, 70 LW 1344 (11th Cir. 2001).

continued next page

Other Provisions

Special rules apply to employees of local education agencies. Generally, these rules provide for FMLA leave to be taken in blocks of time when intermittent leave is needed or the leave is required near the end of a school term.

Salaried executive, administrative and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the salary basis requirements for FLSA's exemption extends only to eligible employees' use of leave required by FMLA.

The FMLA does not affect any other federal or state law which prohibits discrimination, nor supersede any state or local law which provides greater family or medical leave protection. The FMLA also encourages employers to provide more general leave rights.

Further Information

For more information, please contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration. ■

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Reminder!!

Midyear Municipal Law Conference

**September 6-7, 2002
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The Alabama Association of Municipal Attorneys and the Alabama League of Municipalities will sponsor the 2002 Midyear Municipal Law Conference September 6 and 7, 2002, at the Sheraton Four Points hotel in Tuscaloosa, Alabama.

Keeping up with the daily legal changes affecting municipalities becomes harder every year. Don't miss this opportunity to learn about and discuss recent developments in the field of municipal law with other municipal attorneys and prosecutors from around Alabama.

This year breakout sessions have been planned to specifically address issues that will be beneficial to Prosecutors in addition to the traditional Municipal Attorneys topics.

CONFERENCE REGISTRATION

Sessions will begin on Friday morning and will end at lunchtime on Saturday. The cost of this conference is \$125 before August 16 and \$150 any time after August 16, 2002. For more information about the 2002 Midyear Municipal Conference, contact Ken Smith or Laura Anne Whatley at 334-262-2566. To register for the 2002 Midyear Municipal Law conference, please call the League and request a registration form or check out the conference information on the League website at www.alalm.org.



Legal Notes

By Lori Lein
Staff Attorney

COURT DECISIONS

Ordinances: The definition of the term “weed” in a municipal ordinance making it a public nuisance to have weeds over 12 inches in height on private property was not unconstitutionally vague nor did the ordinance violate due process. Further, the defendant’s garden did not have sufficient communicative elements to bring it within the protections afforded by the First Amendment. Finally, enforcement of the ordinance did not constitute an unlawful taking. *City of Montgomery v. Norman*, 816 So.2d 72 (Ala.Crim.App. 1999).

United States Supreme Court and Eleventh Circuit Court of Appeals Decisions

Business Regulation: The federal motor carrier statute that preempts laws of the “State [or] political subdivision[s] of the State ... related to a price, route, or service of any motor carrier ... with respect to the transportation of property,” but excepts from preemption the “safety regulatory authority of a State with respect to motor vehicles,” does not prevent states from delegating to municipalities the authority to exercise safety regulatory authority over local tow truck operations. *Columbus, Ohio v. Ours Garage and Wrecker Service, Inc.*, – U.S. – (2002); 70 L.W. 49 (June 25, 2002).

Civil Rights: A municipality cannot be held liable under 42 U.S.C. § 1983 for governmental action if fewer than a majority of the members of the governing body that voted for such action had an unconstitutional motive. *Mathews v. Columbia County, Ga.*, – F.3d. – (11th Cir., No. 01-10863); 71 L.W. 2 (July 9, 2002).

Court Decisions from Other Jurisdictions

Building Codes: Publication on a noncommercial Web site of a local government’s enactment of a model building code does not infringe on the code-writing organization’s copyright in the code itself. *Veeck v. Southern Building Code Congress Int’l, Inc.* – F.3d. – (5th Cir., No. 99-40632); 70 L.W. 49 (June 25, 2002).

ADA: A disabled person with actual knowledge of an illegal barrier at a place of public accommodation need not engage in a futile gesture of attempting to gain access in order to show actual injury and thus is not barred by statute of limitations or lack of standing to sue from seeking relief against an ongoing violation of Title III of the Americans with Disabilities Act. *Doran v. Holiday Quality Foods, Inc.*, – F.3d – (9th Cir., No. 00-17203); 71 L.W. 3 (July 16, 2002).

ATTORNEY GENERAL OPINIONS

Volunteer Fire Departments: Section 40-9-13(a) of the Code of Alabama does not require that property or services offered by a county or municipal government for sale or rent to the public be provided free of charge to a volunteer fire department and other organizations described in that statute. 2002-261.

Solid Waste: An individual who received a lump sum retirement benefit in 1992, but whose sole source of income at the present time is social security, may currently receive the exemption from the payment of garbage fees under Section 22-27-3(3) of the Code of Alabama 1975 upon making a proper claim. 2002-225.

continued next page

Sunshine Law: Meetings of a Personnel Board must be open to the public except where the character or good name of an individual is discussed. 2002-267.

Tax Abatement: A local power company with only one customer, Alabama Power, that will not serve the public directly and is not subject to the Public Service Commission, does not qualify for tax abatements under Section 40-9B-1, *et seq* of the Code of Alabama 1975 because it does not fall within an acceptable Standard Industrial Classification Code. 2002-268.

Military Leave: Military pay, as defined in Section 5 of Act No. 2002-430, means basic pay as set forth in Chapter 3 of Title 37 of the United States Code and does not, therefore, include the special and incentive pays set forth in Chapter 5 nor the allowances set forth in Chapter 7 of Title 37 of the United States Code. Section 8 of Act No. 2002-430 requires the State of Alabama to reinstate annual leave that a reservist/public employee felt compelled or was required to take under the circumstances and in the exercise of his or her independent judgment as a result of being called to active duty in the war against terrorism. **NOTE:** The provisions of Act 2002-430 are mandatory for State employees but are voluntary for municipal and county employees as determined by the local governing body. 2002-270.

Appropriations: A city may appropriate funds to a library foundation for the support of the library if the city council determines that the appropriation is for a public purpose. The council may wish to contract with the library foundation for the services to be provided. 2002-273.

Attorneys Fees: A municipality may, but is not required to, reimburse the municipal clerk for legal fees incurred by the clerk when he or she is suspended without pay from his or her position, but is later restored and reimbursed for lost pay by the council. 2002-274.

Employees: Municipal employees may not be required by a municipality to acquire or maintain an account at a particular financial institution for the purposes of direct deposit or electronic funds transfers. 2002-276.

Streets and Roads: Pursuant to the procedures set out in Sections 11-49-80 and 81 of the Code of Alabama 1975, a municipality may pass a resolution accepting responsibility for the county roads that lie within the corporate limits of the municipality. If a municipality does not pass such a resolution, the county has the authority and responsibility for maintaining the county roads. 2002-277. **NOTE:** Municipalities should check Sections 11-49-80 and 81

carefully regarding roads annexed after July 7, 1995.

Incorporation: Because the statute is silent on the time a petition for the incorporation of a community must be filed or re-filed after the signatures have been obtained, a probate judge, in determining the validity of the petition, decides on a case-by-case basis regarding the passage of time between the execution of the petition and the submission of the petition to the probate court for the requested election. A probate judge, in his or her judicial capacity, may conduct a hearing to determine the validity of a petition for the incorporation of a community. The election for incorporation must be held within thirty days after the filing of a valid petition. 2002-278.

Ad Valorem Taxes: A taxpayer has the responsibility to make a claim for an exemption to paying ad valorem taxes. A taxpayer, who is entitled to an exemption, but paid ad valorem taxes by mistake because the taxpayer failed to claim the exemption, is entitled to a refund pursuant to Section 40-10-160 of the Code of Alabama 1975. 2002-280.

Ad Valorem Taxes: Subsection (i) of Amendment No. 373 to the Constitution of Alabama, which limits ad valorem taxes payable with respect to an item of property, applies to all taxing authorities in the state. Any taxing authority may, by amendment of the Constitution of Alabama, authorize the collection of ad valorem taxes in excess of the limits in subsection (i) of Amendment No. 373. 2002-288.

ETHICS COMMISSION ADVISORY OPINIONS

AO NO. 2002-27: The chair of a city utility board that functions separately from the city, who is the President/CEO of an ambulance service provider, may purchase or lease ambulances from the city.

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Speaking of Retirement

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

Preretirement Education Seminars

The Retirement Systems of Alabama will launch its latest member service program in September. **Ret Prep Seminars** (Retirement Preparation) for active members of the TRS and ERS are scheduled for various sites across Alabama. These seminars are for members who are at least within two years of retirement eligibility: A member who has at least 23 years of service at any age or a member who is age 58 with at least 8 years of service.

Ret Prep Seminars are free, daylong seminars. Detailed information concerning Social Security and Medicare, health insurance, retirement adjustments and retirement options will be presented. Seminar participants will receive a valuable retirement planning book to assist them in their retirement

preparation.

Members and their spouses wishing to attend must be preregistered. There are limited seating capacities for all seminars so registration is on a first come basis. All registration forms must be submitted by **mail**. No faxes or phone call registrations will be accepted.

Schedules and registration forms will be mailed to the Human Resources Office at each TRS and ERS Agency. Any interested member should request a schedule and a registration form from his or her **employer**. Specific locations and times will be mailed to members in a confirmation letter once they have been officially registered.

TRS Ret Prep Schedule

September	
24 th	Huntsville
October	
2 nd	Tuscaloosa
8 th	Montgomery
16 th	Bay Minette
30 th	Andalusia
November	
5 th	Muscle Shoals
14 th	Gadsden
21 st	Tuscaloosa
January 2003	
16 th	Hanceville
22 nd	Montgomery
28 th	Gadsden
February 2003	
6 th	Bay Minette

ERS Ret Prep Schedule

September	
25 th	Madison
October	
17 th	Bay Minette
31 st	Andalusia
November	
6 th	Muscle Shoals
January 2003	
9 th	Dothan
30 th	Montgomery
February 2003	
20 th	Pelham
26 th	Phenix City

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

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Obituaries

Richard E. Autry

Richard E. Autry, former councilmember of Hueytown, died May 28, 2002. He was 66.

Autry was appointed to an unexpired term on the Council in 1981. He was subsequently re-elected to two full terms, serving as president from 1988 to 1992.

He was an active member of the First United Methodist Church of Hueytown and was a Mason and Shriner. ■

Tommy Penland

Tommy Penland, councilmember of Crossville, died June 1, 2002. He was 68.

Penland was serving his first term on the Council, but had been active in the community for many years. He was a member of Lathamville Baptist Church. ■

Robert J. Hulgan

Robert Bob J. Hulgan, former councilmember of Fort Payne, died June 16, 2002. He was 79.

Hulgan was a member for the Council from 1960 to 1968, mayor pro tem and served on the boards of the Gas District and Fort Payne Improvement Authority. He was a member of the Fort Payne Lions Club, Masonic Lodge 902 and a founding member and deacon of Southeast Baptist Church. ■

George Neal, Sr.

George Marion (Jack) Neal, Sr., former city councilmember of Hoover, died July 5, 2002. He was 83.

Neal was first appointed to the Council and then won a full term in 1976. In addition, he represented Hoover for 16 years on the Metropolitan Planning Organization, including six years as chair. ■

L.P. Maness

L.P. Maness, former city councilmember of Albertville, died July 19, 2002. He was 73.

Maness served on the Council from 1968 to 1976 and from 1988 to 2000. He was active in the United Way and served a six-year term on the Marshall County Health Care Authority. He was a member of Mount Calvary Baptist Church in Albertville. ■

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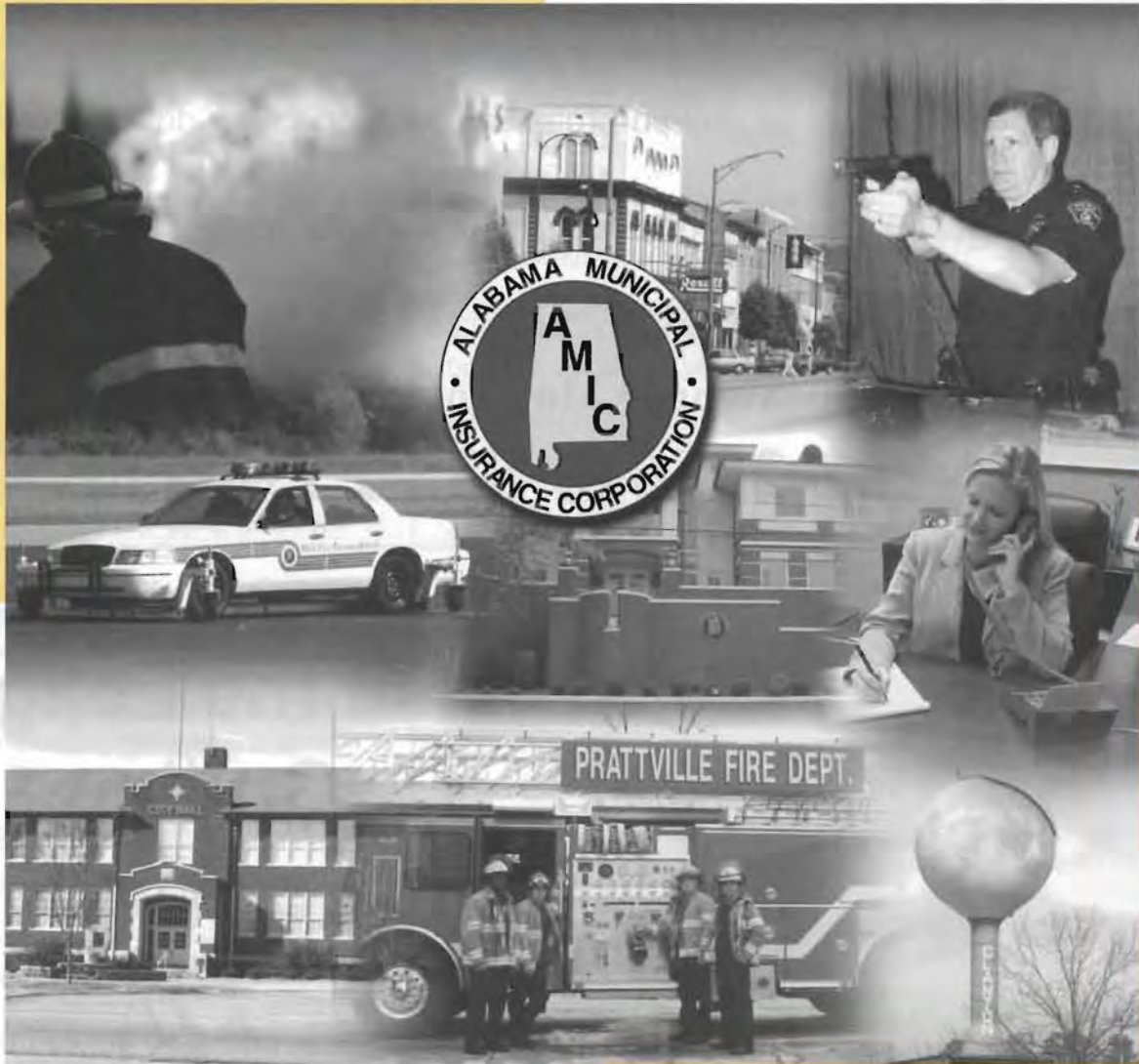
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