

THE ALABAMA MUNICIPAL **JOURNAL**

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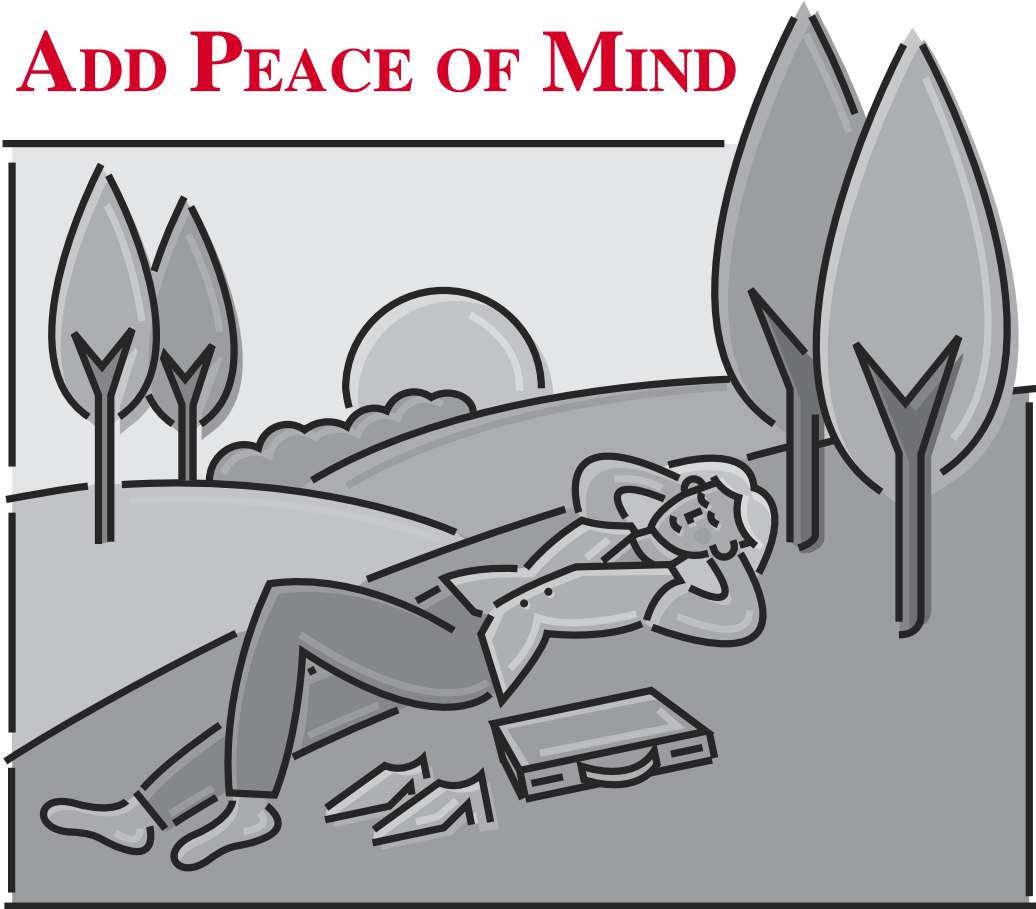
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THE ALABAMA MUNICIPAL JOURNAL

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Mayor Steve Means Receives Prestigious American Planning Association Award

Gadsden, Alabama – Mayor Steve Means was recently awarded the Friend of Planning Award by the Alabama Chapter of the American Planning Association. The criteria used were:

Contributions to Planning Profession: The level of positive influence and contributions this person had on the planning profession and/or quality of life in the community. What values or objectives the person has demonstrated.

Risks: The degree of personal and/or financial risks that were taken by this person in order to support sound planning principles.

In his 24-plus years as Mayor, there were many accomplishments listed under each category. Over the last decade, a few of the most noteworthy that involved foresight and often risk taking, being progressive and standing firm in the face of controversy were:

- Support and organization of the Center for Cultural Arts.
- Support and organization of Downtown Gadsden, Inc.
- B-4 Zoning and Design Review for the Downtown Core District
- Parking Management Plan

- Support for revitalization of the Pitman Theatre
- Riverfront Development Plan
- Broad Street Improvement Project
- Senior Activity Center Development
- Challenges of closure of Gulf States Steel
- Development of Fixed Route Transportation System
- Support and organization of Family Success Center
- Twin Bridges Golf Course Development
- Support for the Convention Center Plan

The list goes on, and even as the APA awards committee was meeting, the Mayor kept forging ahead with a sales tax increase proposal. He has taken risks with his political career by standing up for what he believed to be a good plan, a good project, a worthwhile investment – when it would have been much easier in the short run and more politically expedient to do the opposite.

Mayor Means would be the first to say these accomplishments were a result of team effort; however, it is due to his leadership and vision that many tasks will be completed and have a positive impact on the city and the surrounding area. ■

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The President's Report

Dan Williams
Mayor of Athens

Riley's Tax Package

Governor Bob Riley's tax plan has already received a tremendous amount of press, and by the time of the September 9 vote, it will be one of the most reported subjects in the history of the State of Alabama.

There is a lot of irony at work at this point in our history. Gov. Riley, as a conservative Republican member of the U.S. Congress, opposed any and all proposed tax increases. As a conservative Republican Governor, he is proposing the greatest tax increase in the history of our State. The Republicans, who elected him, are turning en masse against his proposal. The Democrats, who supported Don Siegelman, seem to be lining up in favor of the tax proposal. Dick Armey, Riley's congressional cohort, is coming to Alabama to campaign against his friend's tax proposal, saying the Governor really doesn't know what he is doing.

Groups that sometimes fight at the Alabama Legislature joined forces to campaign for the tax proposal. The new Alabama Partnership for Progress consists of 47 groups, including the Business Council of Alabama, AEA, the Alabama Arise lobbying group for the State's poor, the Alabama Watch consumer group, Voices for Alabama's Children and the League of Women Voters of Alabama.

Citizens for a Sound Economy Inc., and its affiliates, historically receive millions from companies that benefit from the "grass roots" political efforts. Their latest aim is to defeat Gov. Riley's tax proposal. They will emphasize the enormity of the special interest supporting the tax increase. "We need to use their power against them. Nobody likes special interests," said Martin Reiser, strategist for CSE. "We are the underdogs in this fight. We're up against the most powerful special interests in Montgomery, particularly the AEA and the Business Council. If we work together, efficiently, we can beat their money every time." CSE, however, will not disclose the names of those who contribute millions to their organization.

Some Republican politicians are strong on some popular Republican issues but quickly shy away from others. According to the *Decatur Daily*, Wednesday, July 9, Republican State Auditor, Beth Chapman, who in a speech given to a rally of 1200 people in Shelby County, supported

the U.S. troops and criticized movie stars, liberals, pro-choice and pacifists. "We should ... tell the liberal, tree hugging, Birkenstock wearing hippie, tie-dyed liberals to go make their movies and music and wine somewhere else."

Her speech was read on the Rush Limbaugh show and distributed to U.S. troops just before hostilities with Iraq began. The Republican Party asked her for permission to reprint the speech as a fundraising tool, but she declined. She was asked to endorse Gov. Riley's tax proposal, but refused to do so. "I have just one vote like you have one vote. I think I'm making it clear when I say I refused to endorse it."

Some public officials are being accused of using scare tactics to help pass the tax plan. The Superintendent of Education, Dr. Ed Richardson, is telling us that the sky is falling, and he will be shutting down our schools if the tax proposal does not pass. Most people think this is a scare tactic and will probably hurt the chances for passage. Others feel, however, if football, band and extracurricular activities are threatened, then parents of school-age children will tend to vote for the increase.

What about the Alabama Legislature? It seems the Democrats are supporting Riley and the Republicans are against him on this issue. It seems most of them are being quiet about it. They probably hope everything will not come back for them to decide if the plan fails.

If you're like me, all the rhetoric, advertising, arm-twisting, deal makings and the switching of historical positions toward taxes are very confusing, to say the least.

The Governor has a short time to educate voters and convince them to vote for the increase. He has done an excellent job explaining to the public the terrible fiscal condition of our state and the need for change that will insure the continuation of state government services to the citizens. Massive amounts of money will have to be spent in his attempt to convince us to approve the increase. All of us will wonder where these amounts of money are coming from, and what are the motives of those giving the money for this purpose. Are they really giving this money for the future of our state, or will their interest group directly benefit monetarily? Likewise the opposition will spend massive amounts and we will wonder the same things. Why are they opposed to this? Will the defeat of the tax proposal continue to keep more money in their pockets?

The parties funding both sides of this campaign know the answers. We, as elected leaders of Alabama's Municipalities, need to determine how the passage or defeat of this tax proposal will affect future generations in our cities and towns relating to infrastructure, services and quality of life. At the same time, we will need to determine how this will affect our families personally – and the future of our children and grandchildren relating to their education; their opportunity to have good jobs to support their families; and their ability for a good quality of life.

Be sure to vote on September 9, 2003. ■

2003 Annual Directory & Vendor Yellow Pages Available

The *Annual Directory & Vendor Yellow Pages* is a 132 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:

- Name of City/Town
- Population
- Mailing Address
- County
- Phone Number
- FAX Number
- City E-mail
- Web Address
- Mayor
- Clerk
- Council Members
- Class of City
- Senate District
- House District
- Congressional District

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- Alabama Manufactured Housing Institute
- Alabama Municipal Electric Authority
- Alabama Municipal Insurance Corporation
- Alabama One Call
- Alabama Road Builders Association, Inc.
- Alabama Power Company
- AlaTax Local Government Solutions
- ANB Leasing
- BellSouth
- Benefits for America
- CDG Engineering and Associates, Inc.
- Carr, Riggs & Ingram, LLP
- Durham Auctions
- Hendon Engineering Associates, Inc.
- Highway Maintenance Equipment
- Local Government Data Processing Corp.
- Lucky Hydraulics
- Municipal Code Corporation
- Municipal Revenue Service
- Municipal Workers Compensation Fund, Inc.
- NAFECO
- Onyx North America
- Polyengineering, Inc.
- Regions Bank
- Sentell Engineering Associates, Inc.
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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 17, 2003, by Mayor Dan Williams of Athens, League President. Mayor Bobby Payne of Tallassee gave the invocation. President Williams thanked Mayor Payne for his words of inspiration.

The following persons were present: Mayor Dan Williams of Athens, President, Mayor Jim Byard of Prattville, Vice President, Mayor Tim Russell of Foley, Mayor E. Harry Brown of Daphne, Council Member Michael A. Ford of Fairhope, Council Member Pep Pilgreen of Montgomery, Mayor Frank Houston of Coosada, Mayor Rebecca Beasley of Clayton, Mayor Fred McNab of Pinckard, Council Member Charles Woods of Childersburg, Mayor Charles Fagan of Piedmont, Mayor Betty Ziglar of Roanoke, Council Member Robert Earnest of Winfield, Mayor Charles O’Rear of Attalla, Council Member Jerry Groce of Russellville, Mayor Wally Burns of Southside, Mayor Roy Dobbs of Berry, Mayor Melvin Duran of Priceville, Council Member Jimmie B. Slay of Littleville, Council Member JoAnn S. Thomas of Florence, Mayor Wayne Tuggle of Graysville, Mayor Bobby Hayes of Pelham, Mayor Harvey Fretwell of Northport, Mayor Charles Penhale of Helena, Mayor Austin Caldwell of Demopolis, Council Member Rita Franklin of Selma, Council Member Roberta Jordan of Pine Hill, Mayor Edward Daniel of Marion, Council Member Jesse Matthews of Bessemer, Mayor Steve Means of Gadsden, Mayor Alvin P. DuPont of Tuscaloosa, Mayor Sue L. Glidewell of Rainbow City, Mayor Bobby Payne of Tallassee, Mayor Leon Smith of Oxford, Mayor Ted Jennings of Brewton, Mayor Billy Joe Driver of Clanton, Council President Alice Reynolds of Montgomery, and Mayor George Roy of Calera. Guests present were: Mike Miles, Kris McGuire and Keith Bedsole of Hometown Security Network and State Finance Director Drayton Nabers. Also present were League staff members Perry C. Roquemore, Jr., Steve Martin, Ken Smith, Lori Lein, Mary Ellen Harrison,

Greg Cochran, Steve Wells, Carrie Banks, Hal Bloom, Theresa Rogers, and Bobby Black.

President Williams welcomed those present and thanked members for coming to the meeting. Vice President Byard also thanked members for their attendance.

State Finance Director Drayton Nabers made a presentation on the Governor’s Tax and Accountability Package. The package, subject to a September 9th referendum, was explained in detail by the Finance Director. He also answered a number of questions raised by committee members.

Mike Miles and Keith Bedsole made a presentation on the new Hometown Security Network. They pointed out that a lot of Federal dollars will be coming to Alabama for Homeland Security purposes. Their organization is interested in providing symposiums and grant-writing assistance related to these Homeland Security funds.

It was my pleasure to welcome the new members of the committee who were elected at the State Convention in Huntsville – Council Member Pep Pilgreen of Montgomery, Mayor Curtis Jackson of Autaugaville, Mayor Roy Dobbs of Berry, Mayor Harvey Fretwell of Northport, and Council Member Jesse Matthews of Bessemer.

Four cities are scheduled to hold elections in 2003. Dothan held a general election in early July for three city commission seats. There will be a runoff for two of the seats. Talladega will hold an election in August and September for Mayor and city council. Birmingham will hold an election in October for Mayor, and Montgomery will elect a mayor and nine councilmembers in October.

League dues notices for our September 1, 2003 - August 31, 2004 League Fiscal Year will be mailed in early August. League dues are adjusted annually pursuant to the Consumer Price Index. Dues will increase by four percent (4%) this year. The League currently has 443 member cities and towns out of the 461 municipalities in the state. Committee members were 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 and was attended by 285 Alabama delegates and spouses. This was an increase of 60 over the previous year. Next year’s meeting will be on March 5-9, 2004.

The 2003 League Convention in Huntsville was very successful. Approximately 1900 persons attended the meeting – 1476 delegates and spouses, 325 sponsors and exhibitors, 50 speakers, and 32 staff members and spouses. The League thanks Mayor Loretta Spencer and Terry Hatfield of the City of Huntsville and to all of the other officers and employees of the city for making the 2003 Convention one of the best ever. The League staff has

continued next page

already begun making preliminary plans for the 2004 Convention. Committee members were encouraged to make suggestions for improving the League Convention.

The Southern Municipal Conference Membership Meeting was held in Richmond, Virginia, on April 10-12, 2003. This meeting was attended by Mayor George Roy of Calera, Mayor Charles Penhale of Helena, Mayor Bobby Payne of Tallassee, the League Director, and Ken Smith, the League's Deputy Director/League Counsel. The meeting was a very informative session.

A report was given on various League Programs. The Municipal Law on Disc computer program has 44 current subscribers. The program is available by annual subscription and is updated quarterly. The program allows users to search summaries of court decisions and attorney general opinions affecting cities. Another program available for purchase is the *ALM Library*. This program contains the complete text of seven League publications searchable by word or phrase.

Other League programs were also discussed:

Gov Deals – allows municipalities to sell surplus property via internet auction

City Net – group rates for long distance telephone service through Delta Com

Benefits for America – provides catastrophic illness insurance for municipal employees

AIG-VALIC – provides a deferred compensation program for municipal employees

Link2Gov – provides assistance to municipals that desire to collect moneys through debit or credit cards

Local Government Services – provides technical assistance to municipalities relating to the negotiation of cable television franchises.

On June 26th, the League held its CMO Graduation ceremony at the Montgomery Civic Center. Rep. Bill Dukes, former Decatur mayor and League President, gave the commencement address. As of that date, 2087 elected municipal officials have enrolled in the program and have attended one or more courses. Of these, 1250 are still in office. To date, 558 officials have received their Basic CMO Certification and 181 have received their Advanced CMO Certification.

The League is currently preparing addition correspondence courses on CD. Also, a set of CMO regional training courses covering Ethics and Conflicts of Interests laws, liability laws, Sunshine and Public Records laws, and the 1st Amendment will be offered this fall at four sites. Each session will begin at 10:00 a.m. and conclude at 3:30 pm. They will be offered on September 15, 2003 (Mobile); September 22, 2003 (Birmingham); September 23, 2003 (Huntsville); and September 30, 2003 (Montgomery).

The League's 2003 Committee Day will be held on September 4th at the Montgomery Civic Center. Committee

Day will begin at 9 am with a Washington briefing from an NLC staff member. Committees will meet at 10 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. Municipal officials should contact the League if they desire to serve on one of the League's five policy committees. These appointments will be made shortly.

The League is continually trying to improve the content and usefulness of its web page. 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 page daily for news events, important notices and general information. The web page is on the internet at www.alalm.org.

The NLC Congress of Cities will be held in Nashville, TN, on December 9-13, 2003. There will be a reception for Alabama delegates on a night to be announced. Many of the delegates will be staying at the Opryland Hotel. All municipal officials are encouraged to attend this important meeting. Mayor Leon Smith of Oxford moved that the League endorse Mayor Ted Jennings of Brewton for a seat on the NLC Board. The motion, which was seconded by Mayor Al DuPont of Tuscaloosa, passed unanimously.

The latest salary and fringe benefits survey results will be posted to the League web site in the near future. It was also pointed out that the 2004 League Directory and Vendor Yellow Pages is currently being prepared for January publication. Vendors interested in advertising in the publication should contact Greg Cochran of the League Staff.

A list of upcoming dates for the next year was provided. Those dates are:

AAMA Mid-Year Meeting – August 15-16, Opelika
Committee Day – September 4, 2003 - Montgomery Civic Center

CMO Training Sessions – Basic & Advanced – September 15, 2003 (Mobile); September 22, 2003 (Birmingham); September 23, 2003 (Huntsville); September 30, 2003 (Montgomery)

Year-End Executive Committee Meeting - October 16, 2003

Committee on State & Federal Legislation – November 4, 2003

NLC Congress of Cities – December 9-13, 2003 – Nashville, TN

Mid-Winter Executive Committee – January 29, 2004 (suggested)

First Day of Regular Session – February 3, 2004

NLC Congressional-City Conference – March 6-9, 2004 – Washington, D.C.

SMC Leadership Conference – April 15-17, 2004 – Lexington, KY

Last Day of Regular Session – May 17, 2004

ALM Convention – May 22-25, 2004 – Birmingham

The League has had a very good year financially. Following discussion of the proposed League Budget for 2003-2004, Mayor Leon Smith moved adoption of the budget. Mayor George Roy seconded the motion. The proposed budget was approved 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.

A report was presented on the 2003 Regular Session and 1st Special Session. Two bills in the League's legislative package received final passage – our municipal elections bill and a bill to curtail certain environmental lawsuits. League

Legislative Liaison Hal Bloom reported on the proposed special session in September and Greg Cochran discussed the latest news regarding the Streamlined Sales Tax Project.

Ken Smith presented the legal update by discussing two recent favorable court decisions relating to the open meetings law and the right of a city to eliminate sewer services in its police jurisdiction.

Following discussion on the Governor's Tax and Accountability Package and the pending September 9th referendum, Mayor Leon Smith of Oxford moved that the League take no official position on the issue and leave that decision to individual member municipalities and officials. The motion, which was seconded by Mayor Wayne Tuggle of Graysville, passed. ■

Job Listings

GIS COORDINATOR; CITY PLANNER I; and DEPUTY FINANCE DIRECTOR 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 \$3,335-3,866/month, DOQ. Individuals interested in this position must complete a City of Auburn application.

The City of Auburn is currently seeking candidates for the position of City Planner I. An employee in this position is responsible for developing planning programs, performing tasks related to developmental land use and zoning, regulatory enforcement, and data management and research. Qualifications include graduation from an accredited college or university with a Bachelor's degree in Urban Planning or a closely related field and some related experience in land use law and general municipal planning 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 \$2,756-3,195/month, DOQ. Individuals interested in this position must complete a City of Auburn application.

The City of Auburn is currently seeking candidates for the

position of Deputy Finance Director/Treasurer. An employee in this position is responsible for accounting, budgeting and treasury management functions to ensure the the City's financial records are accurate and comply with established rules and procedures, the City's budget is accurately prepared and actively used as a management tool and the City's liquid assets are managed in accordance with State law and appropriate internal controls, and in a manner to maximize the investment return thereon. Qualifications include graduation from an accredited college or university with a Bachelor's Degree in Accounting and considerable progressively responsible experience in accounting and experience supervising accounting professionals or any equivalent combination of experience and training that provides the knowledge, skills and abilities necessary to perform the work. The minimum starting salary for this position is \$55,000, with the maximum starting salary depending on qualifications. Individuals interested in this position must complete a City of Auburn application.

To obtain an application for any of the above positions, please e-mail webhrm@auburnalabama.org or download a copy of the application materials at www.auburnalabama.org. The complete job description for this position may also be viewed on the City of Auburn website. The City of Auburn is an Equal Opportunity Employer and a drug-free workplace.

POLICE OFFICER Town of Lexington

The Town of Lexington will be accepting applications for Police Officer. Please call 256/229-5564 or 256/229-5221 or send resume to P.O. Box 457, Lexington, AL 35648 Attn: Chief Hendershot.



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ENVIRONMENTAL OUTLOOK



By Gregory D. Cochran
Director, State and Federal Relations

Four New Environmental Laws Enacted in Alabama

Four environmental issues were addressed by the Alabama legislature during the 2003 Regular Session which ended in mid-June. In one of the most successful environmental sessions in a decade, the Alabama legislature passed the following pieces of legislation.

Scrap Tires – Combating Alabama’s scrap tire epidemic, this new law sets aside monies to clean up illegal tire dumps (according to the Scrap Tire Commission, 20 million tires litter Alabama’s landscape) and help companies properly dispose of scrap tires. A \$1.00 a tire fee, will enable the state to raise more than \$4 million a year to enact the program.

Brownfields – Last year, the Alabama Department of Environmental Management secured a \$1 million grant from the federal government to start a Brownfields State Revolving Loan Program. The legislature passed a bill to authorize such a program, which will help industries and local governments cleanup and redevelop old abandoned industrial sites.

Clean Water – Earlier this year, in the case *McAbee v. Fort Payne*, several problems were identified concerning Alabama’s Clean Water Act. In an effort to update Alabama’s Clean Water Act, the legislature passed House Bill 434, a new law that will increase public participation, greatly improve the enforcement of Alabama’s environmental laws and make the present, weaker Alabama Clean Water law on par with the Federal Clean Water Act.

Indoor Air – After more than six years, the state of Alabama has become the last state in the country to pass a clean indoor air act. This new law will require nonsmoking areas to be designated in public places.

Alabama’s Newest National Wildlife Refuge Dedicated

On June 30, 2003, in Anniston, Alabama, Senator Jeff Sessions, the Department of the Interior, the Department of the Army and about 150 dignitaries from local and state governments and organizations gathered to dedicate the Mountain Longleaf National Wildlife Refuge.

The 9,016 acre tract of land in northeast Alabama is home to the largest remaining stands of old growth mountain longleaf

pine forests. “Creating this refuge has been one of my highest priorities since coming to the Senate,” said Senator Sessions.

Sessions included an amendment in the 2003 Defense Authorization Bill to establish the refuge at the Fort McClellan Army reservation. President Bush signed the legislation into law late last year, and the refuge was formally created on June 1st, becoming the 542nd refuge in the nation.

The Nature Conservancy of Alabama has identified 11 species of flora and 21 species of fauna they consider rare within the refuge. One of the leading proponents for the refuge was the Jacksonville State University Environmental Policy and Information Center (EPIC). You can learn more about the new refuge at EPIC’s website www.jsu.edu/depart/epic.

Expansion of Cahaba Refuge Boundaries

Rep. Spencer Bachus from Birmingham has introduced Congressional legislation that would expand the Cahaba National Wildlife Refuge. Looking to build upon the current 3500 acre Cahaba Wildlife Refuge, Rep. Bachus has introduced a bill to give the Secretary of Interior authority to acquire up to 30,000 acres of lands and waters from willing property owners along the Cahaba River. The original 3500 acre Bibb County refuge was created by legislation introduced by Congressman Bachus in October 2000.

The Cahaba River is home to the largest population of the shoals lily in the world and hosts more than 131 species of fish, more than any other river its size in North America. Sixty-four (64) rare and imperiled species of aquatic plants and animals live in the waters of the Cahaba.

Alabama’s 2001 Toxic Release Inventory Data Released

Last month the Environmental Protection Agency released its 2001 Toxic Release Inventory (TRI) data. As part of the 1986 Emergency Planning and Community Right to Know Act, industries that meet certain requirements must report to the states and EPA specific information about certain reportable chemicals that they release, treat, transfer or recycle.

continued next page

In 2001, Alabama's TRI data was derived from 566 facilities. According to the most recent report, Alabama realized a 10 percent reduction from 2000 TRI data in the total pounds of chemicals reported in "Total On and Off site Releases" category. Also, the 2001 data documented a 10 percent reduction in total pounds of chemicals reported in the "Total Releases within State" category. A 50 percent reduction was also noted in the total pounds of chemicals reported in the "Production-related Waste Managed" category.

The TRI report does not reflect the compliance status of the facilities that are required to report TRI data. The public can access the TRI report by visiting the EPA website at: www.epa.gov/triexplorer. To learn more about TRI you can also go to Environmental Defense website at: www.scorecard.org or contact ADEM at 334-271-2700.

Proposed Water Compact Denounced At Gadsden Rally

Several environmental groups along with public officials held a rally this past June in Gadsden urging Governor Bob Riley not to sign the proposed water sharing agreement for the Alabama-Coosa-Tallapoosa (ACT) river basin.

The proposed settlement announced in April outlines the use of water resources that run through Alabama and Georgia for the next 30 years. Several public officials, including Gadsden Mayor Steve Means, whose city takes its drinking water from the Coosa River and Centre, Alabama Mayor Phil

Powell, whose city is depends on Weiss Lake as an important economic resource, joined the rally.

In a published Associated Press story, Jack Rutlege, general manager of the Gadsden Water Works and Sewer Board said he was concerned that the proposed agreement would make it more difficult and more expensive to provide clean drinking water. "I've been in water long enough to know that water quantity and quality go hand in hand," Rutlege told the *Gadsden Times*. To learn more about the ACT Compact visit www.actcompact.alabama.gov or check out the Alabama River Alliance's site at www.alabamarivers.org . ■

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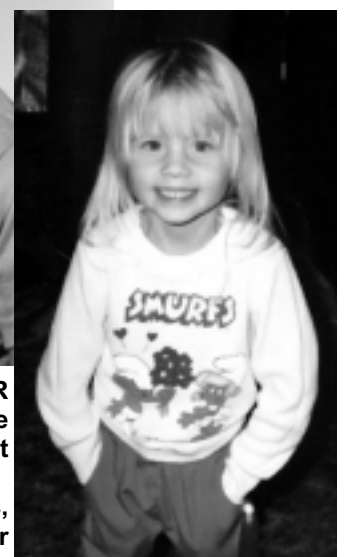
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LEGAL

VIEWPOINT

Tobacco Tax Information

One of the bills enacted during the 2003 First Special Session of the State Legislature, House Bill 2 (HB2), was introduced for the purpose of increasing the **state** tax on tobacco products. A late amendment to the bill freezes local municipal tobacco taxes at their current rates, but provides many municipalities a window of time in which to enact new tobacco taxes or increases in tobacco taxes before the freeze takes place. If the Tax Package is approved by the voters in September, cities and towns will no longer have authority to levy new tobacco taxes or to levy increased tobacco taxes.

If your municipality is interested in passing a first-time tobacco tax or increasing your municipal tobacco tax, the council must have an ordinance of general and permanent operation in effect prior to the effective date of HB2. Although the bill appears to give municipalities until September 30, 2003, to enact and implement these ordinances, the League recommends that these ordinances be enacted and published or posted as required by law prior to September 1, 2003.

The League has received a number of inquiries concerning municipalities which plan to either increase their cigarette or tobacco taxes as a result of this freeze. We ran an electronic survey concerning how municipal officials were proceeding. The results of the survey are included below. Additionally, this article includes suggested language municipalities can use to adopt their own cigarette and tobacco ordinances.

Survey Results

Thanks to all the municipal clerks and revenue officers who participated in the League's on-line survey concerning the tobacco tax legislation recently passed. I think the survey was successful in providing a representative selection regarding how municipalities are responding to the recent tobacco tax legislation that is part of the vote on Alabama's tax structure that will take place on September 9, 2003.

We learned a lot about conducting surveys – such as it is helpful to provide an area for extra comments – but perhaps this information will help League members determine whether they need to increase their tobacco taxes now, or perhaps enact a tobacco tax for the first time. The questions asked were:

1. What is your current tax on cigarettes?
2. What is your current tax on other tobacco products?
3. Does your municipality plan to adopt a new cigarette or tobacco tax ordinance or increase the tax rates in your current ordinance by the deadline?
4. If yes, do you plan to tax all tobacco products?
5. What rate do you plan to set for cigarettes?
6. What rate do you plan to set for other tobacco products?

We also requested the name of the person who completed the survey, as well as the municipality for which they were responding. We rejected any response that did not contain information that allowed us to verify that the reply came from a League member, and there were, unfortunately, quite a few that fell into this category. After removing those, to date we have had 45 municipalities respond. Not every respondent answered every question. The significant results of the survey are discussed below.

Almost all respondents presently levy some tax on cigarettes. Of those that do, the rates range from a low of .01 cent per pack, to a high of .10 cents per pack. No particular rate dominated the results. There were almost as many who charge .10 cents as those that charged .02 cents. Interestingly, a number of municipalities levy a gross receipts tax on the sale of cigarettes. The highest percentage levied was five (5) percent on both cigarettes and other tobacco products.

The question concerning rates on tobacco products was, perhaps, somewhat confusing because some cities and towns levy different rates on different types of products. This information is, therefore, more difficult to compile and

continued next page

report. Again, though, there was a wide range of rates. Most rates match the cigarette rate with, thus the same range of between .01 cent and .10 cents. Some rates were per cigar or item sold. And, again some municipalities elected to charge on gross receipts, with the highest percentage being five (5) percent. Several respondents listed a wholesale rate here, which may indicate that they do not charge on retail sales of tobacco products other than cigarettes.

Nineteen (19) municipalities reported that they plan to either adopt a new tobacco tax or increase their current tax. Twenty-three (23) municipalities have no intention of raising rates or establishing a new tax.

The responses reflect a need among municipalities who do plan some new tobacco tax activity for guidance as to rates. Several municipalities with rates of .04 cents indicated that they would at least double their tax. One with a rate of .05 cents planned to triple its cigarette tax to .15 cents, but intends to leave its tobacco tax rate of .02 cents per cigar and .05 cents for other tobacco products the same. A couple indicated that they would move to a gross receipts rate, although they were uncertain as to the rate.

Suggested Ordinances

The two ordinances published at the end of this article contain language municipalities may consider including in their own cigarette and tobacco tax ordinances. These ordinances require the issuance of tobacco stamps as a collection and enforcement method because this seems to be the most common method used. Some municipalities, though, collect by monthly reports rather than by use of stamps. Either of these methods can work. If interested in adopting a tobacco ordinance that does not require the use of stamps, copies are available by contacting the League.

The usual disclaimers apply to the use of all or any portion of these ordinances¹. Additionally, municipalities should follow standard ordinance requirements and suggestions, including the addition of items like severability clauses and repealer clauses. Finally, these are considered general and permanent ordinances and must be adopted pursuant to the requirements of Alabama law. Again, due to ambiguous language in HB2, the League encourages all municipalities to have tobacco tax amendments or ordinances properly adopted and implemented (which includes either publishing or posting) by September 1, 2003.

(Footnotes)

¹ These ordinances are intended solely as examples, and not as a substitute for obtaining individual legal advice. These ordinances must be adapted to local needs and circumstances. Use of all or any portion of the language included is at the sole risk of the user and the League and its staff disclaim any responsibility or liability which may arise from any use, implementation or reliance on this material.

Article V. Tobacco Tax

Section 5-5-1. Definitions.

Unless the context clearly indicates a different meaning, the following words and phrases, wherever used in this article, shall have the meanings respectively ascribed to them in this section:

Generally. Any words or phrases used in this article and not herein defined which are defined in Code of Ala. 1975, § 40-25-2, shall have the meanings ascribed to them by such section of the Code of Alabama.

Tobacco Products means cigars, cheroots, stogies, cigarettes, smoking tobacco, chewing tobacco, snuff, or any substitute therefor.

Dealer means any wholesale or retail dealer as defined in this section.

Package means individual containers from which or in which retail sales of tobacco are normally made or intended to be made.

Retail dealer means any person, other than a wholesale dealer, who sells or delivers tobacco products within the city or its police jurisdiction, and any person operating under a retail dealer's license.

Retail price means the retail selling price of the tobacco products before adding the amount of the tax assessed herein or any tobacco tax assessed by the state.

Sold and *sale* mean any transfer of title or possession, or both, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever for a consideration or any agreement therefor, including rewards, prizes or premiums of tobacco products given as a result of operations on punch boards, shooting galleries or other activities.

Stamps means the stamp or stamps by the use of which the taxes levied under this article are paid.

Store and *stored* mean the storage or warehousing of tobacco products in any manner, or the withdrawal or use of the same for any purpose, other than for resale or reshipment outside the city or its police jurisdiction.

Wholesale dealer means a person who sells or delivers within the city or its police jurisdiction, at wholesale only, tobacco products to retail dealers for the purpose of resale only.

Section 5-5-2. Construction.

(a) This article shall not be construed to tax interstate commerce or any business of the United States government or any branch or agency thereof.

(b) This article shall not be construed to apply to tobacco products stored for the purpose of resale or

reshipment outside the city and its police jurisdiction and which are actually so resold or reshipped.

(c) This article shall not be construed to repeal any of the provisions of the general license provisions of the city, but shall be held to be cumulative.

(d) Whenever the requisite amount of stamps has been affixed to the tobacco products or the package containing the same as required in this article, this article shall not be construed to require additional stamps to be affixed thereto in case of subsequent sales, deliveries or storage; provided, that where such tobacco products have been properly stamped for sale, delivery or storage within the police jurisdiction, then before the same can be sold, delivered or stored in the corporate limits of the city there must be properly affixed to such tobacco products and properly canceled an equal amount of stamps to those already affixed.

Section 5-5-3. Tax Levied — In City.

In addition to all other taxes now imposed by law, every person who sells, stores or delivers tobacco products shall pay a license tax to the city, and a license tax is hereby fixed and levied, for the sale, storage or delivery of tobacco products in the corporate limits of the city, which license tax shall be in an amount equal to _____ for each package of tobacco products so sold, stored or delivered.

*The figure underlined is within the discretion of the governing body and may be adjusted as deemed appropriate. The rate or amount of tax which may be levied on tobacco products by a city is not specified or limited. Ala. Code (1975) § 40-25-29.

Section 5-5-4. Same — In Police Jurisdiction.

In addition to all other taxes now imposed by law, every person who sells, stores or delivers tobacco products in the police jurisdiction of the city shall pay a license tax to the city, and a license tax is hereby fixed and levied, for the sale, storage or delivery of tobacco products in the police jurisdiction of the city, which license tax shall be in an amount equal to _____ for each package of tobacco products so sold, stored or delivered.

*The figure underlined in within the discretion of the governing body and may be adjusted as deemed appropriate. However, because this tax is levied by authority of Ala. Code (1975) §11-51-90, the limitation of §11-51-91 applies and the rate or amount of this section cannot exceed ° of the rate or amount imposed in section 5-5-3.

Section 5-5-5. Stamps — Sold by City Clerk: Inscription: Sale to Wholesalers and Others.

The city clerk shall keep on hand for sale an adequate quantity of stamps to be affixed to each package of tobacco products in denominations as required under this article. Each such stamp shall have inscribed thereon the words “City of _____— Tobacco Tax” but such words need not be arranged in the foregoing order and may be abbreviated. Such stamps may be sold to wholesale dealers only by the city clerk at a price equal to ninety (90) percent of the full amount thereof, the remaining ten (10) percent of such full amount representing compensation to the wholesale dealer for the labor of affixing such stamps to the packages in which the tobacco products are contained. All other persons, except such wholesale dealers, must pay the full face amount of the stamps, but no person shall be entitled to purchase any such number of stamps as shall cause the purchase price to include a fraction of a cent.

*The figures underlined are discretionary and not limited by statute.

Section 5-5-6. Same — Affixing; Canceling.

Before any tobacco products shall be sold, stored or delivered within the corporate limits of the city or its police jurisdiction by any dealer, such dealer shall affix to each package of tobacco products a stamp or stamps obtained from the city clerk in the amounts set out in this article in payment of the license taxes imposed by this article. Every dealer shall, within one hour after receipt of any tobacco product within the city or its police jurisdiction, unless sooner offered for sale, cause stamps to the requisite amount of the tax to be affixed as herein provided and shall cause the same to be canceled by writing or stamping with waterproof ink across the face of each stamp such registered number as shall be furnished to such dealer by the city clerk. After such stamping has been begun it shall be continued with reasonable diligence by such dealer until all unstamped tobacco products shall have been stamped and the stamps canceled as herein provided, but not stamp required to be affixed to any package of tobacco products shall, after the same has been affixed as herein provided, be again used in payment of any part of the tax levied under this article. Such stamps shall be affixed in such manner that their removal will require continued application of water or steam. In the case of tobacco products sold by retail in packages, the stamps shall be affixed to each individual package in such a way that such stamps

continued next page

shall be torn in two (2) or mutilated when such package is opened.

Section 5-5-7. Records; Report of Sale of Unstamped Tobacco Products.

Every wholesale dealer shall, at the time of selling or delivering tobacco products into the city or its police jurisdiction, make a true duplicate invoice of the same, which shall show full and complete details of the sale or delivery of such tobacco products and the prices thereof. Every wholesale dealer and every retail dealer shall keep a record of the purchase, sale, exchange or receipt of tobacco products. All such invoices and records and all canceled checks and other memoranda pertaining to any such purchase, sale, exchange or receipt shall be retained for a period of three (3) years and shall be subject to inspection of the city clerk or his duly authorized deputy, who shall have the power and authority to enter upon the premises of any dealer at all reasonable times for the purpose of examining such invoices, records, canceled checks and other memoranda. Any person who purchases or receives in any manner whatsoever tobacco products which do not have stamps affixed in the manner required by this article shall, within three (3) days after receipt of such tobacco products, report the receipt and purchase thereof to the city clerk, giving the date of purchase or receipt, the name of the person from whom purchased or received and a list describing the tobacco products so purchased or received and the purchase price thereof. Such report must be made by registered mail or in person.

*Those figures underlined are discretionary and may be adjusted as deemed appropriate.

Section 5-5-8. Illegal Acts.

Among others, the following acts and omissions shall be unlawful:

(1) It shall be unlawful for any person who is required by this article to affix stamps to tobacco products to fail to affix such stamps or to cancel such stamps in the manner or within the time required by this article.

(2) It shall be unlawful for any person to sell, offer for sale, store or deliver within the city or its police jurisdiction any tobacco products where stamps have not been affixed and canceled as provided in this article.

(3) It shall be unlawful for any person to have in his possession or under his control any tobacco products where stamps have not been affixed in the manner required by this article for more than six (6) hours after receipt of such tobacco products on the

premises of such person. The possession of each package of tobacco products not having proper stamps affixed as required by this article shall be deemed a separate offense.

(4) It shall be unlawful for any person to manufacture, buy, sell, offer for sale or possess, or attempt so to do, any reproduction or counterfeit of the stamps provided for in this article or to possess tools, implements, instruments or materials of any kind necessary or appropriate to reproduce or counterfeit such stamps, or to alter or cause to be altered any stamps herein provided for.

(5) It shall be unlawful for any person to remove from a package or otherwise prepare any stamp with intent to use or cause the same to be used, after it has already been used, or to buy, sell, offer for sale or give away any washed, removed, altered or restored stamp to any person, or to have in possession any such washed or removed or restored or altered stamp, or, for the purpose of indicating payment of any tax under this article, to reuse any stamp which has theretofore been used for the payment of any tax provided in this article or to sell any stamp provided for herein except as to sales made by the city clerk.

(6) It shall be unlawful for any person to reuse or refill with tobacco products any package from which tobacco products have been removed and with respect to which the tax has theretofore been paid.

(7) It shall be unlawful for any person, who is in this article required to keep records, to fail or omit to keep the same in the manner herein provided, or to refuse to permit the city clerk or his duly authorized deputy to inspect the same at any reasonable hour, or to interfere with or obstruct the city clerk or his duly authorized deputy in the making of any such inspection.

(8) It shall be unlawful for any person who is in this article required to file statements with the city clerk to fail or omit to make or file any statement herein provided within the time herein specified, or to make any false statement therein, and such offense shall be a continuing offense against the city and each day during which such person shall sell; store or deliver tobacco products in the city or its police jurisdiction during such default shall constitute a separate offense.

Article V. Cigarette Tax

Section 5-5-1. Definitions.

Unless the context clearly indicates a different meaning, the following words and phrases, wherever used in this article, shall have the meanings respectively ascribed to them in this section:

Generally. Any words or phrases used in this article and not herein defined which are defined in Code of Ala. 1975, § 40-25-2, shall have the meanings ascribed to them by such section of the Code of Alabama.

Cigarettes means a roll of finely cut tobacco or any substitutes therefor enclosed in paper prepared for smoking by individuals.

Dealer means any wholesale or retail dealer as defined in this section.

Package means individual containers from which or in which retail sales of cigarettes are normally made or intended to be made.

Retail dealer means any person, other than a wholesale dealer, who sells or delivers cigarettes within the city or its police jurisdiction, and any person operating under a retail dealer's license.

Retail price means the retail selling price of the cigarettes before adding the amount of the tax assessed herein or any tobacco tax assessed by the state.

Sold and *sale* mean any transfer of title or possession, or both, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever for a consideration or any agreement therefor, including rewards, prizes or premiums of cigarettes given as a result of operations on punch boards, shooting galleries or other activities.

Stamps means the stamp or stamps by the use of which the taxes levied under this article are paid.

Store and *stored* mean the storage or warehousing of cigarettes in any manner, or the withdrawal or use of the same for any purpose, other than for resale or reshipment outside the city or its police jurisdiction.

Wholesale dealer means a person who sells or delivers within the city or its police jurisdiction, at wholesale only, cigarettes to retail dealers for the purpose of resale only.

Section 5-5-2. Construction.

(a) This article shall not be construed to tax interstate commerce or any business of the United States government or any branch or agency thereof.

(b) This article shall not be construed to apply to cigarettes stored for the purpose of resale or reshipment outside the city and its police jurisdiction and which are actually so resold or reshipped.

(c) This article shall not be construed to repeal any of the provisions of the general license provisions of the city, but shall be held to be cumulative.

(d) Whenever the requisite amount of stamps has been affixed to the cigarettes or the package containing the same as required in this article, this article shall not be construed to require additional stamps to be affixed thereto in case of subsequent sales, deliveries or storage; provided, that where such cigarettes have been properly stamped for sale, delivery or storage within the police jurisdiction, then before the same can be sold, delivered or stored in the corporate limits of the city there must be properly affixed to such cigarettes and properly canceled an equal amount of stamps to those already affixed.

Section 5-5-3. Tax Levied — In City.

In addition to all other taxes now imposed by law, every person who sells, stores or delivers cigarettes shall pay a license tax to the city, and a license tax is hereby fixed and levied, for the sale, storage or delivery of cigarettes in the corporate limits of the city, which license tax shall be in an amount equal to four cents (\$0.04) for each package of cigarettes so sold, stored or delivered.

*The figure underlined is within the discretion of the governing body and may be adjusted as deemed appropriate. The rate or amount of tax which may be levied on cigarettes by a city is not specified or limited. Ala. Code (1975) § 40-25-29.

Section 5-5-4. Same — In Police Jurisdiction.

In addition to all other taxes now imposed by law, every person who sells, stores or delivers cigarettes in the police jurisdiction of the city shall pay a license tax to the city, and a license tax is hereby fixed and levied, for the sale, storage or delivery of cigarettes in the police jurisdiction of the city, which license tax shall be in an amount equal to two cents (\$0.02) for each package of cigarettes so sold, stored or delivered.

*The figure underlined in within the discretion of the governing body and may be adjusted as deemed appropriate. However, because this tax is levied by authority of Ala. Code (1975) §11-51-90, the limitation of §11-51-91 applies and the rate or amount of this section cannot exceed ° of the rate or amount imposed in section 5-5-3.

Section 5-5-5. Stamps — Sold by City Clerk: Inscription: Sale to Wholesalers and Others.

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COURT DECISIONS

Courts: Unlike circuit courts and district courts, municipal courts are not courts of record and no rule or statutory law requires a municipal court to appoint an official court reporter upon a defendant's request. *Ex parte Burnsed v. City of Evergreen*, 844 So.2d 526 (Ala. 2001).

Tort Liability: Former police officer who sued city and its police department for libel, tort of outrage, and negligent supervision, did not substantially comply with statutory requirement of filing notice of claim with the city by simply filing a charge of discrimination against the city with the EEOC although many of the factual allegations in the EEOC claim were the same or similar to claims made in former officer's complaint. *Stabler v. City of Mobile*, 844 So.2d 555 (Ala. 2002).

Courts: A city employee may intervene as a matter of right when his ability to protect his interest is impaired and his interests are not adequately represented in litigation between the city and parties opposed to a settlement agreement between the city and the employee. *Long v. City of Hoover*, 844 So.2d 1273 (Ala.Civ.App. 2002).

Licenses and Business Regulation: Property owners who signed leases, approved tenants, set rental rates, and transferred interests in leased property were engaged in the business of leasing under city's business license ordinance and were thus subject to payment of a business license even though they hired agents to assist in the management and leasing of property. Further, the imposition of the business license did not result in double taxation even though the city taxed gross receipts earned by landlords and taxed the gross receipts of the agents who managed their properties because the tax was borne by separate taxpayers. *Scott & Scott v. City of Mtn. Brook*, 844 So.2d 577 (Ala. 2002).

First Amendment: City's policy of not allowing pawnshops and other types of business to advertise on city bus benches was reasonable, and therefore, did not violate pawnshop's First Amendment rights; city feared that allowing "less desirable" businesses to advertise on bus benches might inhibit "more desirable" business from buying advertising on the benches, thus negatively affecting revenue, and pawnshop had numerous other avenues in which to advertise. *Uptown Pawn and Jewelry v. City of Hollywood, FL.*, – F.3d –, 2003 WL 21659467 (11th Cir. 2003).

First Amendment: Zoning ordinance, which imposed requirements on the physical layout of adult dancing establishments and allowed county sheriff to search such premises without a warrant, violated the First Amendment; even if ordinance was a valid time, place, and manner regulation that was properly subject to intermediate scrutiny, county, when enacting ordinance, failed to rely on any evidence whatsoever that might support the conclusion that the ordinance was narrowly tailored to serve the county's interest in combating secondary effects. *Peek-a-boo Lounge of Bradenton v. Manatee County, FL.*, – F.3d –, 2003 WL 21649675 (11th Cir. 2003).

Decisions from Other Jurisdictions:

First Amendment: City's lifetime ban of past sex offender from city parks based on his visit to one park and his admitted, but unrealized, thoughts about having sexual contact with children playing at the park violates the offender's freedom of thought protected by the First Amendment. *Doe v. Lafayette, Ind.*, – F.3d –, 2003 WL 21480355 (7th Cir. 2003).

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LifeStyle Protector *the Living Benefits Policy*

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First Amendment: City's conversion of several downtown blocks into a publicly owned pedestrian mall that maintains historic use and physical characteristics of a pedestrian thoroughfare, is compatible with expressive activity, and is within a class of property traditionally treated as a public forum and thus does not render the area a nonpublic forum for First Amendment purposes. *ACLU of Nevada v. Las Vegas*, – F.3d –, 2003 WL 21508202 (9th Cir. 2003).

First Amendment: City ordinance making it unlawful to distribute or otherwise make available graphically violent video games to minors without parental consent violates the First Amendment because it restricts protected speech on the basis of content but is not supported by substantial evidence showing that the psychological harm to minors is real and is not justified by the city's interest in assisting parents to be guardians of their children's wellbeing. *Interactive Digital Software Assoc. v. St. Louis County, Mo.*, 329 F.3d 954 (8th Cir. 2003).

Curfew Ordinance: City juvenile curfew ordinance that was enacted to protect minors from harm at night, protect the general population from nighttime juvenile crime, and promote responsible parenting, but was not supported by evidence showing that minors commit or undergo street crimes during the curfew hours, is not substantially related to the important governmental interest and thus violates juveniles' rights under the 14th Amendment's equal protection clause to move freely with parental consent. *Ramos v. Vernon, Conn.*, 331 F.3d 315 (2nd Cir. 2003).

ATTORNEY GENERAL'S OPINIONS

Annexation: In the case of separate and independent petitions for annexation, each parcel of land seeking to be annexed must be independently contiguous to the then existing city limits to permit the independent annexation of the parcel pursuant to Section 11-42-21 of the Code of Alabama 1975. However, separate parcels may join and file a single petition for annexation. Further, a city cannot annex separate parcels of property by adopting one ordinance if separate petitions for annexation have been filed unless the parcels are joined together by a single petition. 2003-147. **NOTE:** The League disagrees with this opinion and knows of one circuit court that also disagrees with the conclusion in this opinion. See *City of Clay v. City of Trussville*, In the Circuit Court of Jefferson County, CV 02-0718ER.

Boards: A member of the planning commission may also serve as a member of a separately incorporated water, sewer and fire protection authority established pursuant to Section

11-88-1, et seq., of the Code of Alabama 1975. A planning commission member does not hold an office of profit or a public office and is therefore not an officer of the municipality. 2003-163.

Arrests: Where a private citizen is swearing out a complaint to a violation of Section 32-10-1 of the Code of Alabama 1975 – which requires drivers of vehicles involved in accidents to remain at the scene – the driver must be charged on a Uniform Traffic Ticket and Complaint (“UTTC”) where no physical injury occurs because the violation is a misdemeanor traffic violation that does not require custodial arrest. Where a law enforcement officer did not observe the commission of the offense, the complainant must have witnessed the violation. 2003-166.

Courts: The authority to appoint the municipal court clerk in a Class 5 municipality operating pursuant to Section 11-43C-1 et seq., of the Code of Alabama 1975 rests with the mayor. 2003-169. **NOTE:** This opinion only applies to the City of Pritchard.

Jails: Funds placed on deposit with the custodian for a municipal jail by an inmate therein must be returned to the inmate when he or she is released from the jail. If the money deposited remains unclaimed by the prisoner for more than five years, the jail may consider the money abandoned property. 2003-175.

Property: Section 11-96A-3 of the Code of Alabama 1975 relating to the establishment of shelters and halfway houses allows a municipality to donate a parcel of land to a private, nonprofit Alabama corporation on the condition that the corporation construct and maintain affordable dwelling accommodations for persons of moderate and low income. The donation does not have to be approved by a vote of the duly qualified electors of the municipality. 2003-177.

Firearms: A municipal police department has the authority to exchange condemned firearms given to the police department pursuant to Section 20-2-93 of the Code of Alabama 1975 if the firearms would be exchanged with a licensed firearms dealer that the police department could use. The exchange for credit would not be subject to the bid law. Further, the police department must obtain a court order allowing the sale or trade of any component parts remaining after firearms are destroyed or dismantled under Section 13A-11-84(b) of the Code of Alabama 1975. 2003-182. **NOTE:** The League recommends contacting Alcohol, Tobacco and Firearms (ATF) before exchanging any weapons.

continued next page

ETHICS COMMISSION OPINIONS

AO NO. 2003-28: A municipal water and sewer board may purchase property to locate a storage tank from a member of the board, provided, the transaction is an arms-length transaction, and the following conditions are met: the sale of the property is at or less than the fair market value of the property; the price of the property is established through an independent appraiser and the site is chosen by an independent party; the member of the board has not participated in any discussions regarding the transaction; and, the member of the board does not vote, attempt to influence or otherwise participate in any official action by the board in connection with the purchase of the property.

AO NO. 2003-31: An attorney, volunteering his or her time to review and comment on a draft business license ordinance proposed by a municipality is not required to register as a lobbyist with the Alabama Ethics Commission if the activities undertaken do not rise to the level of promoting, opposing, influencing or attempting to influence the introduction, defeat, or enactment of legislation or a regulation.



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Tax Information cont. from page 19

The city clerk shall keep on hand for sale an adequate quantity of stamps to be affixed to each package of cigarettes in denominations as required under this article. Each such stamps shall have inscribed thereon the words "City of _____—Tobacco Tax" but such words need not be arranged in the foregoing order and may be abbreviated. Such stamps may be sold to wholesale dealers only by the city clerk at a price equal to ninety (90) percent of the full amount thereof, the remaining ten (10) percent of such full amount representing compensation to the wholesale dealer for the labor of affixing such stamps to the packages in which the cigarettes are contained. All other persons, except such wholesale dealers, must pay the full face amount of the stamps, but no person shall be entitled to purchase any such number of stamps as shall cause the purchase price to include a fraction of a cent.

*The figures underlined are discretionary and not limited by statute.

Section 5-5-6. Same — Affixing; Canceling.

Before any cigarettes shall be sold, stored or delivered within the corporate limits of the city or its police jurisdiction by any dealer, such dealer shall affix to each package of cigarettes a stamp or stamps obtained from the city clerk in the amounts set out in this article in payment of the license taxes imposed by this article. Every dealer shall, within one hour after receipt of any cigarettes within the city or its police jurisdiction, unless sooner offered for sale, cause stamps to the requisite amount of the tax to be affixed as herein provided and shall cause the same to be canceled by writing or stamping with waterproof ink across the face of each stamp such registered number as shall be furnished to such dealer by the city clerk. After such stamping has been begun it shall be continued with reasonable diligence by such dealer until all unstamped cigarettes shall have been stamped and the stamps canceled as herein provided, but not stamp required to be affixed to any package of cigarettes shall, after the same has been affixed as herein provided, be again used in payment of any part of the tax levied under this article. Such stamps shall be affixed in such manner that their removal will require continued application of water or steam. In the case of cigarettes sold by retail in packages, the stamps shall

be affixed to each individual package in such a way that such stamps shall be torn in two (2) or mutilated when such package is opened.

Section 5-5-7. Records; Report of Sale of Unstamped Cigarettes.

Every wholesale dealer shall, at the time of selling or delivering cigarettes into the city or its police jurisdiction, make a true duplicate invoice of the same, which shall show full and complete details of the sale or delivery of such cigarettes and the prices thereof. Every wholesale dealer and every retail dealer shall keep a record of the purchase, sale, exchange or receipt of cigarettes. All such invoices and records and all canceled checks and other memoranda pertaining to any such purchase, sale, exchange or receipt shall be retained for a period of three (3) years and shall be subject to inspection of the city clerk or his duly authorized deputy, who shall have the power and authority to enter upon the premises of any dealer at all reasonable times for the purpose of examining such invoices, records, canceled checks and other memoranda. Any person who purchases or receives in any manner whatsoever cigarettes which do not have stamps affixed in the manner required by this article shall, within three (3) days after receipt of such cigarettes, report the receipt and purchase thereof to the city clerk, giving the date of purchase or receipt, the name of the person from whom purchased or received and a list describing the cigarettes so purchased or received and the purchase price thereof. Such report must be made by registered mail or in person.

*Those figures underlined are discretionary and may be adjusted as deemed appropriate.

Section 5-5-8. Illegal Acts.

Among others, the following acts and omissions shall be unlawful:

(1) It shall be unlawful for any person who is required by this article to affix stamps to cigarettes to fail to affix such stamps or to cancel such stamps in the manner or within the time required by this article.

(2) It shall be unlawful for any person to sell, offer for sale, store or deliver within the city or its police jurisdiction any cigarettes where stamps have not been affixed and canceled as provided in this article.

continued next page

(3) It shall be unlawful for any person to have in his possession or under his control any cigarettes where stamps have not been affixed in the manner required by this article for more than six (6) hours after receipt of such cigarettes on the premises of such person. The possession of each package of cigarettes not having proper stamps affixed as required by this article shall be deemed a separate offense.

(4) It shall be unlawful for any person to manufacture, buy, sell, offer for sale or possess, or attempt so to do, any reproduction or counterfeit of the stamps provided for in this article or to possess tools, implements, instruments or materials of any kind necessary or appropriate to reproduce or counterfeit such stamps, or to alter or cause to be altered any stamps herein provided for.

(5) It shall be unlawful for any person to remove from a package or otherwise prepare any stamp with intent to use or cause the same to be used, after it has already been used, or to buy, sell, offer for sale or give away any washed, removed, altered or restored stamp to any person, or to have in possession any such washed or removed or restored or altered stamp, or, for the purpose of indicating payment of any tax

under this article, to reuse any stamp which has theretofore been used for the payment of any tax provided in this article or to sell any stamp provided for herein except as to sales made by the city clerk.

(6) It shall be unlawful for any person to reuse or refill with cigarettes any package from which cigarettes have been removed and with respect to which the tax has theretofore been paid.

(7) It shall be unlawful for any person, who is in this article required to keep records, to fail or omit to keep the same in the manner herein provided, or to refuse to permit the city clerk or his duly authorized deputy to inspect the same at any reasonable hour, or to interfere with or obstruct the city clerk or his duly authorized deputy in the making of any such inspection.

(8) It shall be unlawful for any person who is in this article required to file statements with the city clerk to fail or omit to make or file any statement herein provided within the time herein specified, or to make any false statement therein, and such offense shall be a continuing offense against the city and each day during which such person shall sell; store or deliver cigarettes in the city or its police jurisdiction during such default shall constitute a separate offense. ■



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Federal Legislative and Regulatory Issues

Mary Ellen Wyatt Harrison
Staff Attorney

House Subcommittee Approves Fiscal Year 2004 Budget for Commerce, Justice and State Departments

On July 16, 2003, the House Appropriations Committee reported the Fiscal Year Commerce, Justice and State \$37.9 billion appropriations bill, which includes a \$500 million increase in discretionary funding from the 2003 fiscal year.

The bill provides \$3.49 billion for assistance to state and local law enforcement for crime fighting initiatives. Specifically, the bill provides \$500 million for the Byrne formula program and \$400 million for the Local Law Enforcement Block Grant program, however the Administration has proposed to eliminate both of the programs

For information on the Byrne Formula Program, please visit: www.ojp.usdoj.gov/BJA/html/ByrneFormula.htm, and for information on the Local Law Enforcement Block Grant Program, please visit: www.adeca.alabama.gov/content/lts/lts_local_law_grant.aspx.

Additionally, the bill provides \$462 million for juvenile delinquency prevention and accountability programs; \$388 million for violence against women prevention and prosecution; \$174 million to eliminate DNA analysis backlogs; and \$400 million to reimburse States for criminal alien detention costs. However, it is speculated that the funding levels for the COPS program will be cut significantly.

Federal Communications Commission Preempts Local Public Safety Communications Ordinance

The FCC's Wireless Bureau recently concluded that federal law preempted parts of a Maryland County's zoning ordinance that involved radio frequency interference. The county enacted the ordinance after conducting tests that ultimately showed that commercial towers were responsible for 61 "dead spots" in its public safety radio system. These "dead spots" effectively block public safety communications.

The preemptive law required wireless tower owners to demonstrate that requested towers did not interfere with the county's public safety operations before the county would issue a zoning certificate. If interference was later shown,

under the zoning ordinance, the county would have been able to revoke the certificate.

The FCC addressed concerns of interference with public safety communications by requiring the county, Cingular and Nextel to report to the FCC between 30 and 90 days on progress of efforts at mitigating interference with public safety systems.

Homeland Security Advisory Council and the State and Local Senior Advisory Committee Meets

The Homeland Security Advisory Council and the State and Local Senior Advisory Committee met the second week of July. Both committees were established last year under the Office of Homeland Security.

At the meeting, Homeland Security director, Tom Ridge, stressed the importance of committees working together to ensure that every hometown is secure. He also said that he would like to create a Homeland Security award to recognize quality, ingenuity and best practices in state and local government and the private sector. Ridge said, "...the homeland is secure when the hometown is secure. This is why working with the states and local elected officials is so critically important."

The committee will meet several times this year to provide advice and guidance to the Department on a range of issues, which include the department's work with the private sector and how to integrate people and resources into a functioning new agency.

Promotion of Drug Free Schools

Grants are now available to organizations to develop or enhance, implement and evaluate school-based drug testing programs for students. The Department of Education is starting the program through its Office of Safe and Drug-Free Schools. In the 2003 fiscal year, the Demonstration Grants for Student Drug Testing Program will award approximately \$2 million to applicants.

Local education agencies are eligible for the grants. Money from the grant can be used to test for controlled

continued next page

substances, the illegal use of alcohol and tobacco, and the harmful, abusive or addictive use of substances such as inhalants and anabolic steroids.

Tests from these grants can only be conducted on the following students: student athletes; students involved in competitive, extracurricular school-sponsored activities; and students who, along with their parents, have consented to participate in a random drug test.

Approximately seven applicants will be awarded an average of \$300,000.00, and the applicants are required to specify: (1) the target population; (2) why this population needs to be tested; (3) how the proposed program would fit into a school's comprehensive drug prevention program; (4) the kinds of referral services that will be provided for the students who test positive; and (5) how confidentiality will be handled. The quality of the project involved will have an affect on whether or not it is chosen.

The deadline for applying is August 20, 2003. To apply electronically, go to <http://e-grants.ed.gov>. Paper applications are available online at www.ed.gov/GrantApps/#84.184D, or from Heather Carkuff at the U.S. Department of Education, Office of Safe and Drug-Free Schools, 400 Maryland Avenue, S.W., Room 3E250, Washington, D.C. 20202-6450.

Fire Department Equipment Grants

The First Responder Institute Inc. will be providing needy fire departments with funds to purchase life-saving equipment. Grants of up to \$10,000 each are available to nonprofit U.S. fire departments that cannot afford to buy protective gear and other special safety devices for their personnel.

GlaxoSmithKline, the maker of Tums, is providing funding for the program as a part of its "Tums Helps Put Out More Fires Than You Think" campaign. Tums donate \$.01 per bottle purchased throughout stores nationwide.

Applicants are also required to match the request. Awardees will be selected on the basis of their need, as compared to the remainder of the pool, and their ability to secure matching funds.

The First Responder Institute has advised that each application should contain as much information as possible about the individual departments.

Applications can be found at www.firstresponder.org/apply.htm. The applications are reviewed quarterly, and the next decision round commences September 30, 2003. Winners for the upcoming quarter will be selected by the end of October. Other submission dates are December 31, March 31 and June 30. ■

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John Lester Coker

John Lester Coker, former councilmember of New Site, died March 25, 2003. He was 73.

Coker served on the council from 1981 until he retired in 1996. He is survived by his wife, two sons, five grandchildren and one great-grandchild. ■

Larry Henderson

Larry Henderson, mayor of Banks, died June 9, 2003.

Henderson was the director of plant operations at Edge Regional Medical Center for more than 20 years and was very committed to the annual fundraiser for the American Cancer Society. ■

Jack Moore Brown

Jack Moore Brown, former Mayor of Jasper, died June 14, 2003, at the age of 72.

Brown was mayor of Jasper from 1970 to 1979. He was an Auburn graduate, served in the U.S. Air Force, was involved with the Shriners organization and was a Lions Club member. In addition, Brown served as president of the Brown Pipe Company and vice president of City Hardware. He was on the board of directors for Security Federal, and was a partner in the Brown Company.

He is survived by his wife, two daughters and six grandchildren. ■

Charles Osborne

Charles Osborne, former Mayor of Talladega, died June 17, 2003, at the age of 63.

Osborne, who recently resigned as Talladega's longest-serving, full-time mayor was four months short of completing his third term when he resigned June 10th because of medical complications with cancer. An Elmore County native, Osborne came to Talladega as a radio announcer at WNUZ and became highly regarded as a newscaster, winning numerous state news reporting awards from United Press International in the late 1960s and 1970s. He became circulation manager of the Talladega Daily Home from 1979 until 1993, when he returned to WNUZ as general manager. He is survived by his wife and one grandchild. ■

Murray P. McCluskey

Murray P. McCluskey, former Sylacauga councilmember and state legislator, died June 18, 2003, at the age of 87.

McCluskey served on the council from 1956 to 1968 and in the Legislature from 1970 to 1978, receiving legislative honors; distinguished service awards from Talladega College, The Alabama Institute for Deaf and Blind; and special achievement awards from the Alabama Recreation and Parks Society and the Association of County Commissioners.

A graduate of Cumberland Law School, he opened a general law practice in Sylacauga in 1971. He also served as public defender for the City of Sylacauga in the 1980s. An active member of First United Methodist Church, McCluskey also served on numerous committees throughout his life, including the Board of Directors for the Sylacauga Chamber of Commerce.

He is survived by his wife, two sons, six grandchildren and 2 great-granddaughters. ■

Frederick Collins

Frederick Collins, former longtime Mobile city attorney, died July 2, 2003, at the age of 79.

A graduate of the University of Alabama School of Law, Collins began practicing law in Mobile in 1950 and was a founding partner of Collins, Galloway and Murphy. In 1953, Collins began his career as Mobile city attorney. With the exception of a few brief periods, he held the position for most of the time until his retirement in 1989.

Collins was a founding member of St. Dominic Catholic Church and the Friendly Sons of St. Patrick. He was a member of the Mobile and Alabama State Bar Associations and a past president of the Skyline Country Club.

He is survived by his wife, eight children and 13 grandchildren. ■

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