

THE ALABAMA MUNICIPAL **JOURNAL**

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Congratulations CMO Graduates!



2004 Advanced CMO Graduates



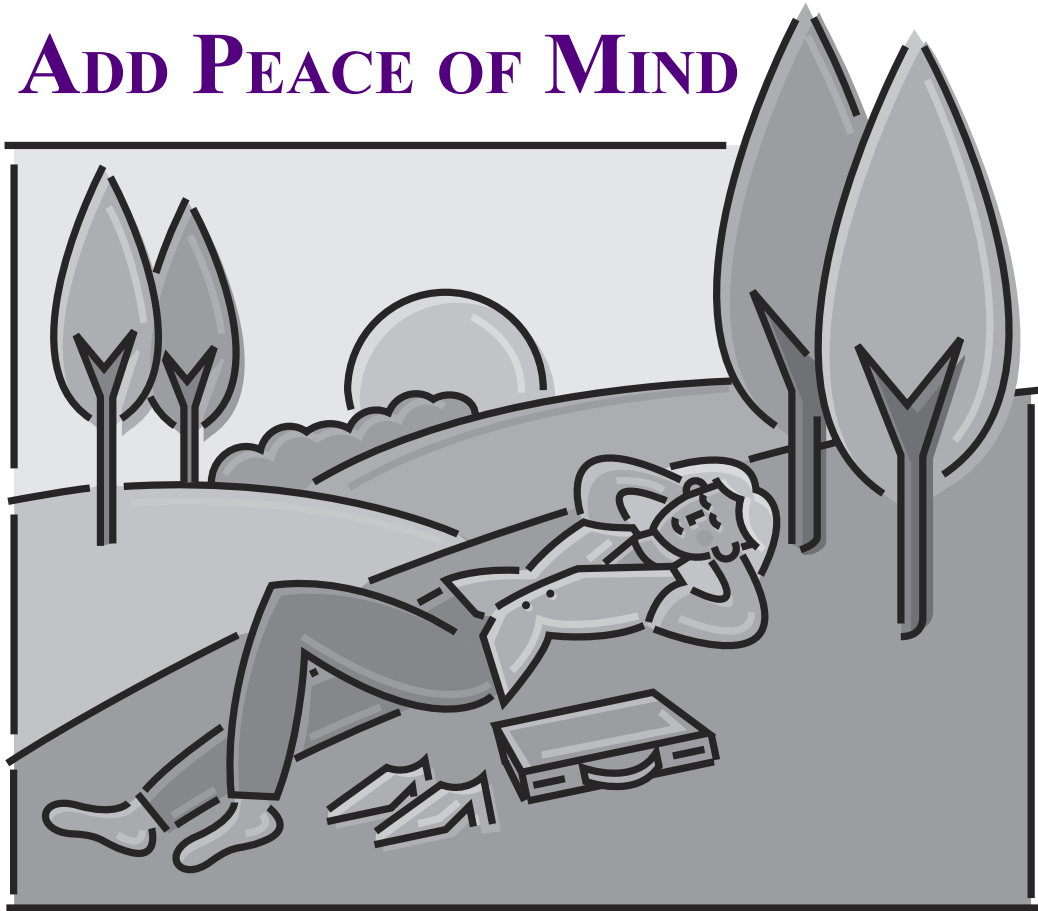
2004 Basic CMO Graduates

Full story, page 5

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Municipal Clerks Receive Certification

The following Municipal Clerks received the prestigious designation of **Certified Municipal Clerk, CMC**, for the months of March, April and May:

- Terry Collum, City Clerk/Treasurer/Revenue Officer for Columbiana
- Lisa Gidley, Assistant Clerk for Hokes Bluff

Upon receiving the designation of CMC, clerks may continue professional education and strive to obtain the designation of Master Municipal Clerk. The first step toward becoming MMC is to become accepted as a member of the Master Municipal Clerk Academy, which requires a minimum of 36 hours of graduate courses at an IIMC recognized municipal clerks academy or complete similar education programs relating to the responsibilities of the municipal clerk's office. Specific professional participation must be achieved, such as leadership in national and state associations, attendance at seminars and conferences and professional writings and accomplishments.

IIMC proudly announces the following clerk's acceptance into the Master Municipal Clerk Academy:

- Glenda Cox, City Clerk/ Treasurer for Irondale
- Cathy Dickerson, City Clerk/ Treasurer for Union Springs
- Mary Ellison, City Clerk for Jemison
- Judy Flippo, City Clerk/ Treasurer for Graysville
- Charles Hagood, City Clerk/ Treasurer for Huntsville
- David Cohen, City Clerk/ Treasurer for Daphne
- Marcella Messer, Town Clerk/ Treasurer for Red Level

Toni McKelvey, City Clerk/ Treasurer for Monroeville, has been accepted into the Second Level Membership of the Master Municipal Clerk Academy. Upon completion of three levels in the Master Academy, she will receive the designation of Master Municipal Clerk.

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Utility Service Company, Inc. provides professional services for water storage systems. Services include comprehensive maintenance programs for water tanks, new tank sales and leasing and site management and marketing for commercial telecommunication antenna placement on water tanks. We also provide professional antenna installation services on water tanks.

Vendor Profiles are included in the League's Gold and Platinum advertising packages. For more information on how your company can purchase a package, contact Greg Cochran at 334-262-2566 or gregc@alalm.org.



The President's Report

Jim Byard, Jr.
Mayor of Prattville

2004 CMO Graduation Ceremony Held July 1st

On July 1st, the League held commencement ceremonies in Montgomery for its Elected Officials Training Program. These graduation exercises marked the ninth group of officials to receive their basic CMO (Certified Municipal Official) certification and the sixth group to receive their advanced CMO certification.

The Elected Officials Training Program consists of a series of one-day continuing education programs designed for elected municipal officials – mayors and councilmembers – who voluntarily wish to receive formal training in municipal government.

Officials who complete 40 credit hours of training are awarded the professional designation of Certified Municipal Official. Training sessions are conducted twice each year at four regional sites throughout the state. Additional hours may be earned by attending designated sessions during the annual League Convention and other approved events sponsored by the League and the National League of Cities. A limited amount of credit may be obtained by attending other approved courses. The training program can be completed in as few as two calendar years.

The Elected Officials Training Program is an on-going project of the Alabama League of Municipalities to fulfill the education mandate contained in its constitution.

The first session of the Elected Officials Training Program was held at the Adams Mark Hotel on September 22, 1994. The same program was offered in Birmingham, Montgomery and Huntsville. Nearly 200 officials enrolled in the program during the first sessions. Currently more than 2,000 municipal officials are enrolled and have attended one or more courses.

Subjects that have been taught in these sessions include council meeting procedure, rules of parliamentary procedure, the Alabama Sunshine Law, public records, ordinance drafting, powers of municipalities, ethics laws, conflicts of interests, duties of mayors and councilmembers, tort liability, annexation, zoning, subdivision regulation, municipal revenues

and expenditures, the competitive bid law, personnel issues, insurance issues and regulatory powers of municipalities.

In 1998, the League added an Advanced CMO Program for those officials who have received the CMO designation and desire additional training.

During its January 2000 meeting, the League's Executive Committee approved the addition of a continuing education requirement to the Elected Officials Training Program. The Committee members felt that the new requirement would strengthen the CMO Program.

As of January 1, 2000, each Advanced CMO Graduate is required to earn ten (10) credit hours of approved training within two (2) calendar years to maintain their Advanced CMO active status. Any CMO Advanced Graduate who does not earn at least ten (10) approved credit hours of training within two (2) calendar years will have their Advanced CMO status designated as "inactive" until such time as the required ten (10) hours of approved credit is earned. The continuing education credits started at the 2000 Convention in Birmingham.

This year a total of 64 municipal officials successfully completed the requirements to receive their CMO certification. Fifty-three officials received their Advanced CMO certification.

Representative Bill Dukes of Decatur addressed the 2004 graduates of the Elected Officials Training Program during graduation exercises held in Montgomery.

Representative Dukes was a key player in municipal government for 27 years – 18 of which he served as Mayor of Decatur. A Past President of the League, Representative Dukes was elected to the Alabama Legislature in 1994 and currently serves as Chair of the House Local Government Committee. Following his comments, Representative Dukes handed out plaques to those graduates who were able to attend the commencement ceremonies. The 2004 graduating class of Certified Municipal Officials and Advanced Certified Municipal Officials is listed on the next page. ■



Rep. Bill Dukes addresses graduates at the CMO ceremony.

2004 Advanced and Basic CMO Graduates

ADVANCED CERTIFIED MUNICIPAL OFFICIALS

Council Member Henry P. Scott, Alexander City
Council Member Harry R. Hinson, Andalusia
Mayor Howard Shell, Atmore
Council Member John Garrard, Atmore
Council Member Bernard Gazzier, Bayou La Batre
Council Member Jesse Matthews, Bessemer
Council Member Tommy T. Chambers, Blountsville
Council Member Cary Barton, Brewton
Council Member Ken Cottingham, Centreville
Council Member James D. Payne, Childersburg
Council Member Warren R. Carter, Citronelle
Council Member Stanley E. Herring, Citronelle
Council Member Robert K. Easterling, Clanton
Council Member Mary M. Smith, Clanton
Council Member Kathryn Magwood, Daleville
Council Member Martha I. Gallo, Daleville
Mayor E. Harry Brown, Daphne
Mayor Elmo Robinson, Double Springs
Council Member Roger W. Adkinson, Flomaton
Council Member Ben Reed, Gadsden
Council Member Bill Stewart, Gadsden
Mayor John E. Owens, Jr., Greensboro
Council Member Jeddo D. Bell, Greenville
Council Member James Lewis, Greenville
Council Member Elaine W. Junkin, Guin
Mayor Clifton P. Knight, Hartselle
Mayor Donald E. Smith, Headland
Council Member Thomas Hamner, Jr., Homewood
Mayor Gerald A. McGee, Lexington
Council Member Rodric D. Templeton, Lincoln
Mayor Billy J. Middleton, Loxley
Council Member Freddy J. Watts, Millbrook
Mayor Barbara A. Coffey, Moulton
Mayor Cleon Bolden, Mount Vernon
Council Member Jerry C. Lundy, Mount Vernon
Council Member Robert R. Thomas, Northport
Council Member Gregory N. Thrower, Oxford
Council Member Forest A. Walls, Pell City
Council Member Cecil E. Hanson, Piedmont
Council Member George E. McCall, Jr., Prichard
Mayor Joan D. Ford, Ragland
Council Member Randy D. Kay, Ragland
Council Member Mary Sue Cooper, Robertsdale
Council Member Brent C. Kendrick, Robertsdale
Mayor Harold D. Chandler, Rogersville
Council Member Robbie Richardson, Russellville
Council Member Ron K. Mitchell, Saraland
Council Member Sidney R. Butler, Saraland
Council Member Patricia P. Hicks, Satsuma
Council Member Larry R. Landrum, Satsuma
Council Member Russell L. Chandler, Tallassee
Council Member Gary Moore, Tallassee
Mayor William E. Kimbrough, Weaver

BASIC CERTIFIED MUNICIPAL OFFICIALS

Council Member Lottie L. Wyckoff, Alexander City
Council Member Bridges Anderson, Andalusia
Mayor Charles O'Rear, Attalla
Council Member Bobby J. Griffin, Blountsville
Council Member Ethel Sprouse, Cedar Bluff

BASIC CERTIFIED MUNICIPAL OFFICIALS CONT.

Mayor Thomas E. Henderson, Center Point
Council Member David E. Dunlap, Childersburg
Council Member Bailey Yelding, Jr., Daphne
Council Member Mary E. Thompson, Dauphin Island
Council Member Willard Williams, Demopolis
Council Member Clark S. Cathey, Elberta
Council Member Catherine A. Kane, Elberta
Mayor Kenneth W. Boswell, Enterprise
Former Mayor Tim Alford, Enterprise
Council Member Bert L. Collins, Eva
Council Member Robert Gentle, Fairhope
Mayor Sadie R. Stanford, Faunsdale
Council Member Fred Huff, Gadsden
Mayor Karen S. Simmons, Geneva
Council Member Jerry M. Peak, Georgiana
Mayor Carolyn L. Dennis, Grant
Council Member Mary F. Golthy, Grove Hill
Council Member Leamon C. Jarmon, Guntersville
Council Member James N. Peterson, Guntersville
Council Member Johnny E. Lee, Headland
Council Member Maurice E. Hicks, Hokes Bluff
Council Member Keith Lowe, Hokes Bluff
Council Member Arlene Blackwell, Hueytown
Council Member Jannie Jordan, Hurtsboro
Council Member Owen Drake, Leeds
Mayor Edward Mackey, Leesburg
Council Member Carolyn G. Smith, Lineville
Mayor Elizabeth H. Butler, Lisman
Mayor Kenneth W. Copeland, Littleville
Council Member Jimmie L. Robinson, Midfield
Council Member Cletus McGee, Millbrook
Council Member Willie L. Cook, III, Montgomery
Council Member Brian K. Henderson, Mount Vernon
Council Member Cora A. Walker, Mount Vernon
Council Member Frita R. Keel, New Hope
Mayor Harvey L. Fretwell, Northport
Council Member Ray Allen, Northport
Mayor Joseph Roberson, Ohatchee
Council Member Celesia S. Kilgore, Ohatchee
Mayor Ralph E. Tidwell, Oneonta
Council Member Karyl J. Rice, Pelham
Council Member John C. Oakley, Priceville
Council Member Ralph Slate, Rainbow City
Council Member Jimmy O. Mayfield, Red Bay
Council Member Frank Criswell, Reform
Council Member Charles Ray Crawford, Rehobeth
Council Member Marvin E. Adams, Saraland
Council Member Emanuel L. Phillips, Satsuma
Council Member Jim M. Durry, Selma
Mayor Allen W. Green, Jr., Silverhill
Council Member Henry C. Wright, Springville
Mayor Rayburn L. Phillips, Tarrant
Council Member Jimmie Lynn King, Tarrant
Council Member Murray H. Baker, Jr., Tuskegee
Council Member Terry Bassett, Uniontown
Council Member Theodore C. Hines, Warrior
Council Member James F. Jett, Warrior
Council Member Gerald B. Cobb, Weaver
Council Member David Rowry, York



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 15, 2004, by Mayor Jim Byard, Jr. of Prattville, League President. This month I provide a summary of the matters discussed at the meeting.

The following persons were present: Mayor Jim Byard, Jr. of Prattville, President, Mayor Bobby Hayes of Pelham, Vice President, Mayor G. Richard Long of Jackson, Mayor E. Harry Brown of Daphne, Council Member Michael A. Ford of Fairhope, Mayor Howard Shell of Atmore, Mayor Frank Houston of Coosada, Mayor Curtis Jackson of Autaugaville, Mayor Fred McNab of Pinckard, Council Member Dean Argo of Prattville, Council Member Charles Woods of Childersburg, Mayor Barbara Patton of Opelika, Council Member Marshall Shaddix of Oxford, Mayor Betty Ziglar of Roanoke, Council Member Robert Earnest of Winfield, Mayor Charles O'Rear of Attalla, Mayor Roy Dobbs of Berry, Mayor Melvin Duran of Priceville, Council Member Jimmie B. Slay of Littleville, Council Member Cynthia McCollum of Madison, Mayor Wayne Tuggle of Graysville, Mayor Harvey Fretwell of Northport, Mayor Tom Henderson of Center Point, Council Member Rita Franklin of Selma, Council Member Roberta Jordan of Pine Hill, Mayor John F. Bradshaw of Moundville, Council Member Jesse Matthews of Bessemer, Mayor Sue L. Glidewell of Rainbow City, Mayor Bobby Payne of Tallassee, Mayor Billy Joe Driver of Clanton, Mayor Leon Smith of Oxford, and Mayor George Roy of Calera. Also present were League staff members Perry C. Roquemore, Jr., Steve Martin, Lori Lein, Greg Cochran, Ken Smith, Mary Ellen Harrison, Steve Wells, Carrie Banks, Hal Bloom, Theresa Lloyd, Faith Ann Gunn and Bobby Black. Robert Black, Jr. of Hill, Hill, Carter, Franco, Cole, and Black, PC was also present. Mayor Leon Smith of Oxford gave the invocation at the meeting.

Mayor Byard thanked members for taking time out of their busy schedule to attend the meeting. He stated that

he knew it is harder to make meetings during the election time. He also expressed thanks to the League staff for their hard work during the successful League Convention in Birmingham. League Vice President, Mayor Bobby Hayes of Pelham, wished all officials well in the upcoming municipal elections. He thanked them for their years of service and welcomed new members to the Executive Committee.

League Deputy Director Ken Smith presented the report of the Subcommittee on Pooled Financing. Mr. Smith pointed out that in January the Executive Committee authorized former League President Dan Williams of Athens to appoint a subcommittee to examine the possibility of creating a League pooled financing program to assist municipalities with the financing of local projects through the issuance of bonds. The subcommittee consisted of eight members: Mayor Dan Williams of Athens, Mayor Jim Byard, Jr. of Prattville, Mayor Wally Burns of Southside, Mayor Roy Dobbs of Berry, Mayor Melvin Duran of Priceville, Mayor Steve Means of Gadsden, Mayor George Roy of Calera and Councilmember Charles Woods of Childersburg.

At the first meeting of the subcommittee, three representatives of the Kentucky League of Cities bonding program were present to explain how their program worked and to answer many of the questions raised by subcommittee members. The representatives from the Kentucky League recommended that we contact Mr. Leo Lawrenson of Lawrenson Services, Inc. of Atlanta, Georgia, who had helped them create their program. The Subcommittee later met with Mr. Lawrenson. He spent a morning explaining how these programs work and answering many more questions raised by the subcommittee members. Mr. Lawrenson explained how a bonding program can benefit both local communities by making funds available more quickly and for more projects than through other, more traditional means, and how the program can also benefit the League. Mr. Smith reported that the subcommittee had voted unanimously to recommend to the Executive Committee that they authorize the League to establish the program. Mr. Smith then introduced Mr. Lawrenson for a brief presentation. Following his presentation and discussion by committee members, Mayor Leon Smith of Oxford moved that the League Executive Committee authorize the League staff to establish a League Pooled Financing Program. The motion, which was seconded by Mayor Roy Dobbs of Berry, passed unanimously.

In my report, I was happy to welcome new members to the Executive Committee: Council Member Dean Argo of Prattville, Mayor Barbara Patton of Opelika, Mayor Tom Henderson of Center Point, and Mayor John F. Bradshaw of Moundville.

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ENVIRONMENTAL OUTLOOK



By Gregory D. Cochran
Director, Intergovernmental Relations

Six Alabama Counties Fail New Air Standards

Environmental Protection Agency Reports: Six Alabama Counties Fail New Air Standards

U.S. Environmental Protection Agency declared last month that Alabama failed to meet new standards for air pollution in six counties, including Jefferson, Shelby, Walker, Jackson, Lee and Russell counties. If after appeals the EPA adopts the designations for failing new particle pollution standards, the six counties will face sanctions on businesses locating in those areas.

Alabama's top air official said the state will fight the designations, requesting that only Jefferson and Russell counties be placed in "non-attainment." Those are the only two counties where air monitors fail the standard for small particles based on a three year average. The other counties were included because they contribute to pollution problems or lie in metro areas with particle problems.

Rep. Artur Davis Creates Environmental Justice Panel

Congressman Artur Davis has convened a group of 12 people to serve on an Environmental Justice Policy Working Group that will help define goals for an October summit on sustainable development. Members of the group include: Bill Andreen, University of Alabama Law Professor; Mabel Anderson, director of Village Creek Environmental Justice Society; Conner Bailey, Auburn University, Lynn Battle, director of CLEPP; Phillis Belcher, director of Greene County Industrial Board; Paul Blanchard Samford University; Jonathan Bonner, Sentell Engineering; Karen Boykin, assistant director National Institute for Global Environmental Change; Richard Holland, President of University of West Alabama, Kaye Kiker, Chair, York Industrial Development Board; Deborah Love, environmental consultant; David Roberson, Chair, Business Council of Alabama's environment and energy committee. For more information about this new committee visit: www.house.gov/apps/list/press/al07_davis/EJPWG.html

Critical Habitat Designated For 11 Freshwater Mussels

The U.S. Fish and Wildlife Service has designated portions of rivers and streams totaling 1,093 miles in Alabama, Georgia, Mississippi and Tennessee as critical habitat for 11 federally listed freshwater mussel species. Critical habitat is a term

used in the Endangered Species Act. It identifies geographic areas that contain features essential for the conservation of threatened and endangered species and may require special management considerations. The designation does not affect land ownership or establish a refuge, wilderness, reserve, preserve or other conservation area. It also does not allow government or public access to private lands, according to the Wildlife Service. In Alabama, the watersheds that have been designated as critical habitat include the Tombigbee River, Black Warrior River, Alabama River, Cahaba River, Tallapoosa River and Coosa River. To obtain a copy of the final rule and economic analysis visit: <http://southeast.fws.gov/hotissues/index.html>

Sen. Sessions Requested Mercury Report Released

According to a new report issued by a White House Working Group on Methylmercury, more broad sampling is needed to determine mercury levels in Gulf of Mexico fish and in people throughout the Gulf region. The Interagency working group consisting of EPA, the Department of the Interior, the U.S. Food and Drug Administration and the Department of Commerce was organized in May 2002 at the request of Alabama Senator Jeff Sessions. Sessions said he hoped the task force would allow the government to "move from research to action much more quickly." Visit www.ostp.gov/html/methylmercuryGulfMexicoNSTC04.pdf to read the finding.

State Beaches Score Well According to Watchdog Group

The Natural Resources Defense Council has praised Alabama for surpassing federal standards protecting our beaches – more than 38 days last year. According to the Alabama Department of Environmental Management, there were 23 advisories for bacteria in the water; however, for 99 percent of the time there were no advisories. Fourteen of the 25 Gulf beaches never had an advisory issued. The near perfect record in Alabama goes against a national trend which has seen an increase in beach closings. June 1st through September 30th is Alabama's peak swimming season. Alabama has 50 miles of Gulf beaches and almost 70 miles of bay beaches. ■



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THE LEGAL VIEWPOINT

By Ken Smith
Deputy Director/Chief Counsel

Are Utility Employees Municipal Employees?

NOTE: This issue will be one of the many discussed at the AAMA Midyear Municipal Law Seminar. The speaker will be Charlanna Spencer with Sasser Littleton & Stidham. Ms. Spencer handled the case for the Talladega Water Board. We encourage all municipal attorneys and prosecutors to attend this important seminar September 23-25, 2004, in Destin. For more information and/or to register, see pages 15-17, or visit www.alalm.org/AAMA or call Laura Anne Whatley at 334-262-2566.

In *Water Works and Sewer Bd. of City of Talladega v. Consolidated Pub.*, ___ So.2d ___, 2004 WL 68538 (AL 2004), the Alabama Supreme Court held for the first time that, under some circumstances, employees of a separately incorporated utility board should also be considered as employees of the municipality which authorized the creation of the board.

This case concerned the release of records held by the board. The court concluded that the board should be treated as an agent of the municipality, making its records public. The court concluded that the water board should be considered as an agency of the municipality because it was

“established by the City of Talladega ... and has operated out of the Talladega City Hall for most of its existence. The members of the Water Board are appointed by the Talladega City Council. The Water Board performs a municipal function, namely, supplying water and sewer services to the residents of Talladega. Because public corporations perform municipal functions, they have long been held to be agencies of the municipality they serve, regardless of their organizational structure.

This court stated in an advisory opinion issued in 1938:

“When the city is performing a governmental function, it is none the less so because it is done by the instrumentality of some administrative agency, such

as a board, commission, or even a corporation set up for that purpose, created by or for the city’s use in that connection.

“*The mere fact that it is a corporation does not deprive it of the qualities of a governmental agency ...*”

Opinions of the Justices, No. 45, 235 Ala. 485, 486, 179 So. 535, 536 (1938) (emphasis added by the court; citations omitted).”

Thus, the court stated: “Because the Water Board has the qualities of an agency of the City of Talladega we hold that its employees are public officers and servants of the City of Talladega for purposes of the Open Records Act.”

This conclusion raises a number of very important issues for municipalities. For example, does this mean that municipalities are liable for the actions of utility board employees? What about the debts of these separate boards? Do these debts now count against the municipality’s debt limit? There are many other issues that this decision leaves open to interpretation.

Although the League was of the opinion that the court in *Talladega* intended only to apply this reasoning to board records, the holding raises these and other questions that must be answered. Most recently, and of more immediate importance to municipalities, is whether employees of separately incorporated utility boards should take a leave of absence pursuant to Section 17-1-7, Code of Alabama, 1975. This code section requires “municipal employees” to take an unpaid leave of absence (or use accumulated leave) to qualify and run for municipal office. If employees of a board are also municipal employees, then they would have to take leave as well. This would also include a mayor who serves as superintendent of the utility system.

This question was presented to the attorney general’s office, which released an opinion on July 19, 2004. The attorney general ruled that the *Talladega* case does not

continued page 13



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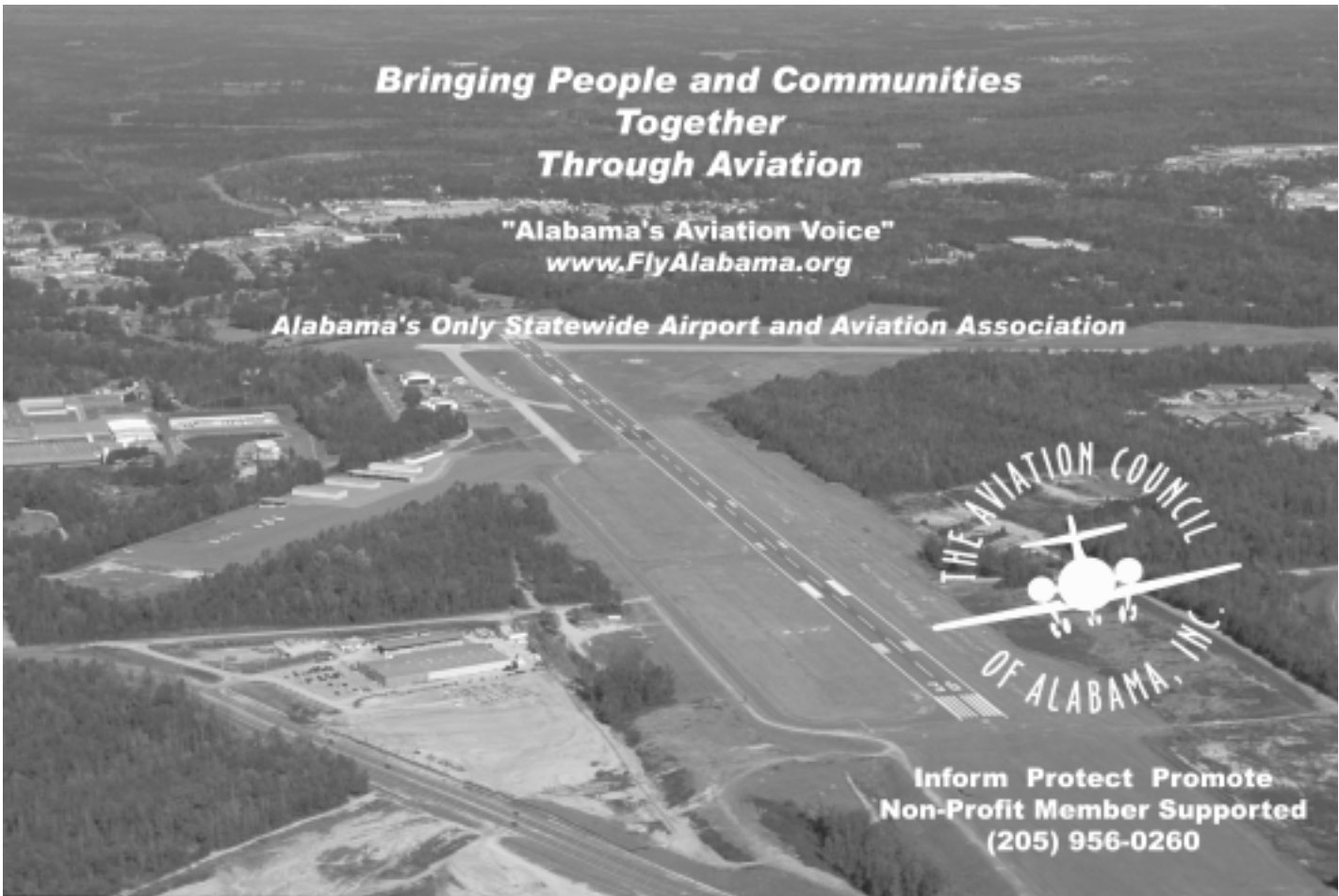
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require employees of these boards to take leave to run, noting that:

“The Court limited its holding, however, continuing, “for purposes of the Open Records Act.” Careful to point out that the holding was not a general proposition, it cited *City of Montgomery v. Water Works Sewer Bd. of Montgomery*, 660 So. 2d 588, 594 (Ala. 1995) for the proposition that “[a] member of the Water and Sewer Board *could* be considered an officer of the City.” 2004 WL 68538, at *3 (emphasis added). A governmental entity can be considered part of another governmental entity for one reason but not for another. *E.g., Bd. of School Comm’rs of Mobile County v. Architects Group, Inc.*, 752 So. 2d 489 (Ala. 1999).”

This opinion comes as very good news to a number of mayors and other employees who were considering running for municipal office and has been released in time for them to qualify. Although the opinion addresses only the question of whether a mayor who serves as superintendent of utilities must take a leave of absence in order to run for reelection, the opinion attempts to make clear that the court limited its ruling strictly to the issue of public records and did not intend to apply this ruling to other issues.

This language appears to agree with the League’s conclusion that this decision should be read to apply only to issues involving public records. These questions, however, may remain unanswered until they are addressed in the future by either the Legislature, the courts or the attorney general. The League will keep its members informed on future developments.

Due to the importance of this issue, the League is printing this opinion in full for review. Note that at the time this article was written, this opinion had not been assigned a number and was not yet available on the attorney general’s web site. It should be available, though, by the time you’re reading this.

July 19, 2004

Honorable Stephen B. Porterfield
Attorney, Graysville City Council
Sirote & Permutt
2311 Highland Avenue South
Post Office Box 55727
Birmingham, Alabama 35255-5727

Municipalities – Candidates – Mayors – Utility Boards –
Political Activities – Jefferson County

Section 17-1-7(d) of the Code of Alabama is not applicable to the Mayor of the City of Graysville in his

positions as Superintendent of the Water and Sewer Board and Superintendent of the Municipal Gas System.

Dear Mr. Porterfield:

This opinion of the Attorney General is issued in response to your request on behalf of the Graysville City Council.

QUESTION

Does section 17-1-7(d) of the Code of Alabama, or any other law, require the Mayor of the City of Graysville to take a leave of absence or use accrued overtime or vacation time from his positions as Superintendent of the Graysville Water and Sewer Board and Superintendent of the Graysville Municipal Gas System during the time that he is seeking reelection?

FACTS AND ANALYSIS

Your request states that the water board is a public corporation and the city council requires the mayor to act as superintendent of the gas system, which is owned by the city.

Section 17-1-7 of the Code of Alabama sets forth the right of city, county, and state employees to participate in political activities. Section 17-1-7(d) states as follows:

(d) . . . [A]ny **employee of** a county or **a city**, whether in the classified or unclassified service, **who qualifies to seek a political office with the governmental entity with which he or she is employed**, shall be required to take an unpaid leave of absence from his or her employment, or use accrued overtime leave, or use accrued vacation time with the county or city from the date he or she qualifies to run for office until the date on which the election results are certified or the employee is no longer a candidate or there are no other candidates on the ballot. For purposes of this subsection, the term “employing authority” means the county commission for county employees or the city council for city employees. Any employee who violates this subsection shall forfeit his or her employment position. ***In no event shall this subsection apply to elected officials.*** ALA. CODE § 17-1-7(d) (1995) (emphasis added).

Section 11-43-80(c) of the Code of Alabama provides in pertinent part:

(c) ***In municipalities which own*** and operate light and power systems, municipal water systems, municipal sewage systems and ***municipal gas systems***, one or any of them, ***may***, by resolution of the governing body duly entered in its minutes, ***require the mayor to act as superintendent*** of such system or systems and to give

continued next page

so much of his time thereof as the governing body may direct. In any municipality in which a municipal board or municipal public corporation owns and operates a municipal light and power system, municipal water system, municipal sewage system and municipal gas system, one or any of them, such board or municipal public corporation may, by resolution duly entered in its minutes, employ the mayor as superintendent of such system or systems and to give so much of his time thereto as such board or corporation may direct. ALA. CODE § 11-43-80(c) (Supp. 2003) (emphasis added).

A public corporation, such as the water board, is an entity separate from the county, city, or state and is not a political subdivision of the county, city, or state. *Ala. Hosp. Ass'n v. Dillard*, 388 So. 2d 903 (1980); *Smith v. Indus. Dev. Bd.*, 455 So. 2d 839 (Ala. 1984). Thus, an employee of the board is not a county, city, or state employee, and not subject to section 17-1-7(d). We note that the Supreme Court of Alabama recently held that “employees [of the water board] are public officers and servants of the City of Talladega” *Water Works and Sewer Bd. of the City of Talladega v. Consolidated Publishing, Inc.*, No. 1020228, 2004 WL 68538, at *3 (Ala. Jan. 16, 2004). The Court limited its holding, however, continuing, “for purposes of the Open Records Act.” *Id.* Careful to point out that the holding was not a general proposition, it cited *City of Montgomery v. Water Works Sewer Bd. of Montgomery*, 660 So. 2d 588, 594 (Ala. 1995) for the proposition that “[a] member of the Water and Sewer Board *could* be considered an officer of the City.” 2004 WL 68538, at *3 (emphasis added). A governmental entity can be considered part of another governmental entity for one reason but not for another. *E.g., Bd. of School Comm'rs of Mobile County v. Architects Group, Inc.*, 752 So. 2d 489 (Ala. 1999) (although a county board of education is not exempt from statutes of limitation like state agencies, it is an agency of the state for immunity purposes). The Supreme Court has never made such a similar distinction with regard to section 17-1-7(d).

Regarding the gas system, this Office addressed the mayor’s role as superintendent of a utilities system in Opinion to Honorable B. T. Gardner, Jr., Attorney, City of Tuscumbia, dated April 10, 2001, A.G. No. 2001-146. That opinion concluded that, rather than being independently hired by the Municipal Utilities Board of Tuscumbia, the mayor could only serve it pursuant to the provisions of section 11-43-80(c). *Id.* This Office characterized such service “as part of the duties of mayor.” *Id.* at 3. The designation of superintendent is essentially a distinction without a difference. The mayor

obtains no more control over the municipal utilities system than he had before. This Office explained in a previous opinion as follows:

Section 11-43-80 is simply a vehicle by which a city council may, if it so desires, require the mayor to act as superintendent of the utilities, a position requiring direct supervision similar to that usually required of a department head. Even without being designated to the position of superintendent of utilities, it is apparent that under the Code of Alabama 1975, the mayor nonetheless has the exclusive authority to direct, supervise and control the administration of the utility department in all matters including, but not limited to personnel matters.

Opinion to Bette Anderson, President, Athens City Council, dated August 6, 1982, A.G. No. 82-00493 at 5. Because the mayor serves as superintendent of the gas system by virtue of his position as mayor, an elected office, section 17-1-7(d) is not applicable to him.

This Office is not aware of any other provisions of state law requiring the mayor to take a leave of absence or use accrued overtime or vacation time while he seeks reelection. Of course, he would not be prohibited from doing so voluntarily.

CONCLUSION

Section 17-1-7(d) of the Code of Alabama is not applicable to the mayor in his positions as superintendent of the water board and superintendent of the gas system. I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING
Attorney General

By:

CAROL JEAN SMITH
Chief, Opinions Division

TK/GWB/nl
156775v1/68634



Midyear Municipal Law Seminar

September 24-25, 2004

Destin, Florida

Be sure to read the information about an opportunity to receive 2 extra CLE Credits on Thursday September 23, 2004 in Destin at the Pre-Conference Litigation Management Seminar sponsored by AMIC.

FRIDAY MORNING Center Court

<p>9:00 Registration</p> <p>9:45 Welcome- Ken Smith Presiding - Mary C. Cates <i>Assistant City Attorney, Huntsville</i> <i>Vice President AAMA</i></p> <p>10:00 Managing Documents in the Modern Law Office <i>John Devine, Laserfiche Corp. (Tentative)</i></p>	<p>11:00 Developing a Comprehensive Animal Control Program <i>Anne Marie Lacey, City Attorney, Madison</i></p> <p>11:30 Attorney General's Opinions Update <i>Brenda Smith, Assistant Attorney General</i></p> <p>Noon Lunch - TBA</p>
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FRIDAY AFTERNOON

ATTORNEY TRACK Center Court

Presiding - Lori Lein
League Counsel, Alabama League of Municipalities

1:00	Reemployment of Military Personnel <i>Bryan Morgan, Judge Advocate General Corps.</i>
1:45	Redevelopment Plans - Planning for Future Growth <i>Heyward Hosch, III, Walton, Wells, Anderson & Bains, LLP</i>
2:15	Street Vacation Procedures <i>Bob McCurley, Director, Alabama Law Institute</i>
2:45	Break - Sponsored by AAMA
3:00	Municipalities and Municipal Utilities <i>Wendell Cauley, Partner; Bradley, Arant, Rose & White</i>
3:45	Water Works & Sewer Board of the City of Talladega v. Consolidated Publishing, Inc. - Public Records and Utilities Employees <i>Charlanna Spencer, Sasser, Littleton & Stidham</i>

PROSECUTOR TRACK Wimbledon

Presiding - Mary Ellen Harrison
Staff Attorney, Alabama League of Municipalities

1:00	Handling Driver's License Issues <i>Neal Conner, Legal Department, Dept. of Public Safety</i>
1:45	Roundtable Discussion <i>Moderator - Alice Pruett, Assistant City Attorney, Gadsden</i>
2:45	Break - Sponsored by AAMA
3:00	Prosecuting the Case on Appeal <i>Denise Baschab, Assistant District Attorney, Baldwin Co.</i>
3:30	Judicial Response to Domestic Violence <i>Judge Peggy Givhan, Montgomery County District Court</i>
4:15	Mental Health Courts - How do they Work?

SATURDAY MORNING Center Court

<p>9:30 Racial Profiling Issues <i>Mark Hayes, General Counsel, Arkansas Municipal League</i></p> <p>10:30 Break</p>	<p>10:45 Dealing with the Media <i>Mac McCarley, City Attorney, Charlotte, NC</i></p> <p>12:15 Adjourn</p>
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This year, for the first time, the Alabama Municipal Insurance Corporation (AMIC) will host a Litigation Management Seminar Thursday afternoon from 4 – 6 p.m. Midyear Municipal Law Seminar attendees may also attend this session at **no extra cost**. AMIC will also host a reception for attendees after the Thursday afternoon seminar.

You must register separately to attend this session. **DON'T OVERLOOK** the information in your packet on this seminar.

Lodging

AAMA has arranged to reserve a block of condominiums at special reduced rates for those attending the meeting. The rates are:

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Tides		
2 Bedroom Limited View	\$164/night	\$146/night
2 Bedroom Coastline	\$183/night	\$168/night
2 Bedroom Beachfront	\$196/night	\$182/night
3 Bedroom Beachfront	\$300/night	\$278/night



Be sure to mention AAMA or the Alabama Association of Municipal Attorneys to take advantage these rates and to be included in our block. Rates are subject to applicable taxes.

Topics and Speakers

Take a look at the agenda for this year's topics and format. We are very proud of the topics selected for this meeting, and speakers that will make presentations. We feel that the substance of this year's meeting ranks among the best we've ever offered.

If you've never spent any time at the beach in the fall, you will find it the perfect time of the year. The weather is usually pleasant and the crowds are down from summer. Bring your family and spend a weekend in Destin.

The education you receive will be well worth it.





Midyear Municipal Law Seminar Registration Form

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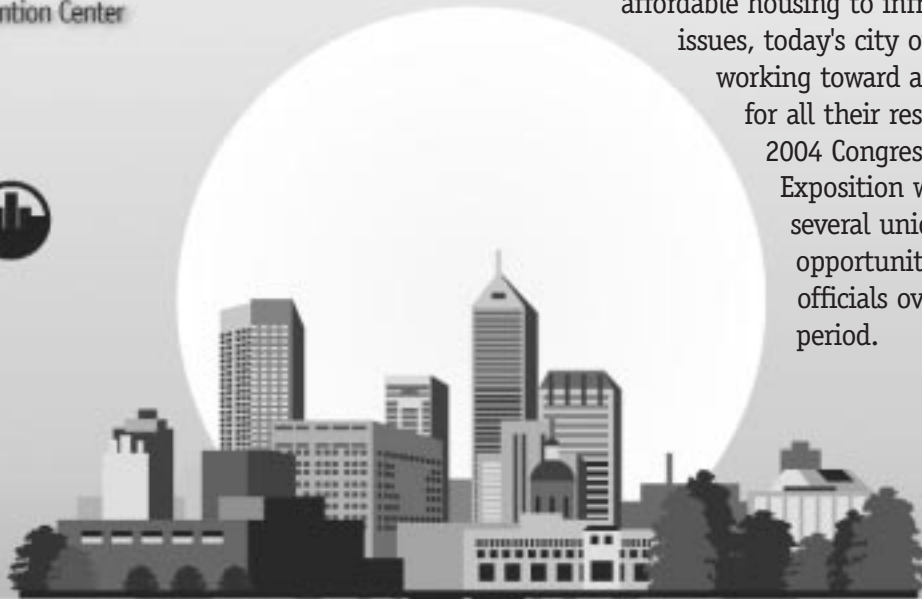
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League dues notices for our September 1, 2004 - August 31, 2005 League Fiscal Year will be mailed in early August. The League has 442 member cities and towns out of the 459 municipalities in the state. Members are encouraged to contact any non-members in their area and recommend that they join the League.

The NLC Congressional-City Conference was held in March in Washington, DC, with between 275 and 300 Alabama officials in attendance. The League received many positive comments on this meeting. Both senators attended our annual breakfast and our Monday evening dinners with our state's house members were also successful. The very informative Southern Municipal Conference Leadership Meeting was held in Lexington, Kentucky, in mid-April. The meeting was attended by Mayor Bobby Payne of Tallassee, Mayor Dan Williams of Athens, Mayor George Roy of Calera, Ken Smith and myself.

The annual League Convention was held in Birmingham on May 22-25, 2004. Special thanks go to Mayor Bernard Kincaid, the Birmingham City Council and their employees for helping to make this year's convention a great success. Plans are currently being made for next year's convention to be held in Huntsville.

Most Alabama municipalities will hold elections in August and September with new officials taking office in early October. Information on the elections process has been provided through various seminars this year. Documents pertaining to the election can be found on the League's website at www.alalm.org. The legal staff is also making preparations for the large number of election inquires that will be fielded this year.

The League's 2004 Committee Day will be held on Monday, August 9, at the Montgomery Civic Center. Numerous resource advisors have been asked to make presentations at this important meeting. Jon Heroux, Senior Legislative Counsel with NLC's Center for Policy and Federal Relations, will be one of the guest speakers.

The League will hold an orientation conference for newly-elected and veteran municipal officials in October. The full-day session will be offered in Montgomery (October 12), Dothan (October 18), Birmingham (October 22) and in Florence (October 26). Registration materials will be sent out in the near future. We encourage all mayors and councilmembers to attend this meeting.

The League continues to offer two Computer Programs. *The Municipal Law on Disc* program contains summaries of attorney general opinions, court decisions and ethics opinions published in the League newsletters over the past 40+ years. Our second program is *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*. A new edition of the *ALM Library* will be available for purchase this fall.

The League web page is becoming very popular with municipal officials. Members of the committee were asked to notify the League staff of any suggested improvements.

The total enrollment in the League's CMO Program since inception is 2124 officials. There are 1258 active officials enrolled. There have been 622 Basic CMO graduates and 236 Advanced CMO graduates to date. A number of these courses are now available on compact disc.

I was happy to give a report on several League-endorsed programs. The Cable Television Franchise Management Program continues to assist member municipalities. Since inception last year, the program has generated \$250,000 in new revenue annually and has recovered over \$380,000 in underpaid franchise fees and pole attachment fees. Nearly 60 cities have used the GovDeals online auction program to sell surplus city property.

The John G. Burton Endowment for the Support of Municipal Programs was established in 1988 from gifts donated by the League and others to honor Mr. Burton, the first League President. Earnings are used to promote the quality of the municipal training programs offered by the College of Continuing Studies at the University of Alabama. During 2003, \$6,900 was expended to provide scholarships to allow municipal employees from 12 cities and towns to attend municipal programs conducted by the University.

I was saddened to learn of the retirement of Assistant Attorney General Carol Jean Smith. Carol Jean has provided assistance to municipal officials and employees for 30 years. She has also been gracious to assist the League legal staff each time we called upon her. The entire League family wishes Carol Jean a very happy and well deserved retirement.

The National League of Cities Congress of Cities will be held on November 30 through December 4, 2004, in Indianapolis, Indiana. The Alabama League always has a large delegation to attend this meeting. Council Member Cynthia McCollum of Madison will be a candidate for 2nd Vice President of NLC at this year's meeting. Cynthia is currently serving her second year on the NLC Board of Directors. I encourage all League members to help Cynthia in her effort

The League had a very good year financially. The
continued page 27

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Legal Notes

By Lorelei A. Lein
Staff Attorney

COURT DECISIONS

Zoning: If a property owner creates a hardship that does not relate to the land, such as purchasing a mobile home because it is more cost effective to live in despite knowing that mobile homes were prohibited on the property owner's land by zoning regulation, that property owner is not entitled to a variance from the zoning regulation precluding mobile homes. *Town of Orrville v. S & H Mobile Homes, Inc.*, 872 So.2d 856 (Ala.Civ.App. 2003).

COURT DECISIONS FROM OTHER JURISDICTIONS

Employees: A municipal ordinance that requires private employers operating businesses pursuant to leases on public trust land to pay their employees a specified minimum wage in excess of state and federal minimum wage does not violate the contract clause, equal protection clause, or due process clause of the United States Constitution. *RUI One Corp. v. Berkeley, Cal.*, 371 F.3d 1137 (9th Cir. 2004).

First Amendment: A state statute requiring groups to obtain a local permit before conducting large outdoor mass events is a content-neutral time, place, and manner restriction that is not subject to extraordinary procedural safeguards required by the First Amendment. *Southern Oregon Barter Fair v. Jackson Co.*, F.3d, 2004 WL 1404317 (9th Cir. 2004).

First Amendment: AmeriCorps Education Awards Program's allowance of participants to be placed as teachers in religious schools resulted in government-sponsored religious indoctrination, and thus violated Establishment Clause because eligibility for government aid was not neutrally determined, program was not one of true private choice, and participants' religious and non-religious activities

were indistinguishable. *American Jewish Congress v. Corporation for National and Community Service*, – F.Supp.2d –, 2004 WL 1490126 (D.C. 2004).

ATTORNEY GENERAL OPINIONS

Sunshine Law: When an executive session is held to discuss the character of an individual by a city, county, or school board, etc., the names of the members present at the meeting should be disclosed. 2004-151 **NOTE:** No minutes are kept for executive sessions. The League recommends that the clerk note in the minutes of the public meeting from which the individuals have gone into executive session, the names of those individuals going into executive session so that there is a record of who was in attendance at an executive session.

Taxation: Absent a specific exemption, the State of Alabama, counties and municipalities of the state, and educational institutions and agencies of the state are not exempt from the state lodging tax nor any local county lodging tax patterned after the state lodging tax. 2004-155. **NOTE:** Section 11-51-180 of the Code of Alabama 1975 requires that municipal lodging taxes parallel the state.

Appropriations: If a municipal governing body determines that the expenditure of municipal funds serves a public purpose, it may expend municipal funds for the activities of the Alabama Silver-Haired Legislature. 2004-157.

Appropriations: A county may maintain a private road for school buses to transport special education students entitled to transportation as a related service under the Individuals with Disabilities Education Act if the County Board of Education pays for the maintenance. 2004-159.

continued page 25

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Federal Legislative and Regulatory Issues

Mary Ellen Wyatt Harrison
Staff Attorney

House Passes Homeland Security Funding Bill

After two days of debate, the House of Representatives passed the FY 2005 Homeland Security spending bill (H.R. 4567) by a vote of 400 to 5. The \$33.1 billion spending bill was approved only after rural and urban House lawmakers debated feverishly over the distribution formula for the homeland security grants. The argument centered around the use of homeland security funds to target high-risk, high-density, urban areas versus guaranteed minimum funding to all states to ensure all localities are prepared for a potential terrorist attack. A huge debate ignited when Rep. John Sweeney (R-N.Y.) offered an amendment to change the grant formula by taking \$450 million from the state homeland security grant program and move it to the Urban Area Security Initiative (USAI) program. The long debate highlighted a split along regional and geographic lines, as opposed to the usual partisan posturing. Representatives from California, Florida, Illinois and New York clashed with members from districts with rural or small cities and townships. Opponents to the Sweeney amendment pointed out that if the amendment were adopted, 23 states would be adversely affected because they do not have cities large enough to qualify for the USAI funds. The Bush Administration has supported a change to the formula to target homeland security funds to high risk areas. On June 17, the Senate Appropriations Committee passed its FY 2005 Homeland Security bill with very little debate or fanfare.

National Homeland Security Operations Center Now Open

On Thursday, July 8, U.S. Department of Homeland Security Secretary Tom Ridge proudly announced that the Homeland Security Operations Center opened five months ahead of schedule. The center is a 24-hours-a-day, 7 days-a-week, nerve center for homeland security information and incident management. This center makes full nationwide connectivity for all 50 states a reality and allows the Department of Homeland Security to receive information in real time. It also helps the department work more closely with federal agencies and quickly share law enforcement

and state and local intelligence information about terrorists with appropriate state and local agencies. The center uses the newly created, Internet-based Homeland Security Information Network, which allows the Department of Homeland Security to maintain up to the minute information and then share this information instantly with all 50 states, more than 50 major urban areas and thousands of state and local agencies. Information will also flow into the Homeland Security Operations Center from cities and homeland security partners throughout the country. Many of these partners are even physically represented in the operations center, including seats for 35 government agencies and local representatives such as the New York and Los Angeles police departments.

With the Democratic and Republican national conventions on the horizon, the opening proves to be very strategic. The Department of Homeland Security has been working closely with state and local officials in New York and Boston to ensure the security of these events and has designated them National Special Security Events. The Department of Homeland Security is also meeting soon with representatives from the professional and collegiate sports associations to determine how to increase security for upcoming large sports events in the fall.

Congress Again Fails to Reach Agreement on Transportation Reauthorization Bill

Continued failure to reach agreement on an overall funding level for a six-year transportation reauthorization bill threatens to snuff out the last flicker of hope that House and Senate conferees can complete a bill before the Congressional summer recess which had not taken place at press time. Senate Environment and Public Works Chair James Inhofe (R-Okla.), chair of the conference committee, cancelled a scheduled July 13 conference meeting because House conferees were unable again to reach agreement on a formal response to the Senate's June 23rd offer to finance

continued next page

the bill at \$318 billion. A hastily called meeting for July 15 was also scrapped at the last minute when House conferees were unable to reach agreement on a counter-proposal. House conferees missed the original reply deadline of July 7. Bipartisan support for \$318 billion continues to hold firm, at least publicly, among a majority of Senate conferees.

In the House, Majority Leader Tom DeLay (R-Texas), a transportation conferee, continues to say that House Republican leaders will not send a transportation bill to President Bush that he will veto. Congressional staff, however, confirmed that House Republican leaders floated an informal proposal the weekend prior to the cancelled meetings for a \$295 billion transportation bill. States could expect a 93 percent minimum guarantee at this amount although the proposal does not offer a trigger date for this rate of return. The House majority's leadership trial balloon floats between the \$284 billion House bill and the \$318 billion Senate bill; however, analysts point out that the guaranteed portion is only \$286 billion, making the bill's price tag essentially the same as the House bill. The Administration remains committed to veto any transportation bill that violates three guiding principles for Administration support — no new taxes, the bill must pay for itself and the bill must be deficit neutral. According to Senate Budget Committee

analysis, however, even the Administration's \$256 billion proposal, incorporated in its proposed fiscal year 2005 budget, increases the federal deficit by \$12 billion. The only certainty is that Congress must pass another extension for TEA-21 before leaving for summer recess and the party convention season. Congressional staff reports that talks are underway for an unprecedented fifth extension. Proposals range from a 60-day extension through September 30, to one that extends until the end of the 2005 fiscal year next September.

House Spending Bill Boosts Title I, IDEA Funding

Two popular education programs received funding boosts in early July when the House of Representatives marked up the FY 2005 Labor/HHS/Ed Appropriations bill. Both Title I Grants and the Individuals with Disabilities Act (IDEA) received a \$1 billion increase in the chairman's mark. These funding increases reflect President Bush's FY 2005 budget proposal. Title I Grants are distributed to school districts with disproportionate amounts of low-income students to ensure that all students receive a high quality education and achieve academic proficiency. Title I is authorized at \$20 billion under the No Child Left Behind Act. The Chairman's mark provides \$13.3 billion for this important program. The increase in funding for IDEA brings

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Elections: Section 17-11A-1(e) of the Code of Alabama 1975 requires that an absentee ballot submitted in a municipal election without proper identification must be treated and counted as a challenged ballot. In a municipal election, the poll workers who count the absentee ballots are required to open the third envelope and determine whether proper identification has been provided by the voter with the absentee ballot. The absentee election manager may write the voter's name on the return address line on the third envelope before mailing that envelope and the absentee ballot materials to the voter. This information will allow the absentee election manager to record the receipt of the absentee ballot on the absentee list required to be maintained by the absentee election manager. 2004-161.

Nuisances: If the appropriate city official, as defined by Section 11-53B-3 of the Code of Alabama, relating to the authority to repair or demolish unsafe structures, determines that a mobile home, trailer, double wide, manufactured home, or manufactured building in the city is unsafe to the extent it is a public nuisance, the city is authorized by Section 11-53B-1 et seq., of the Code of Alabama 1975 to demolish it and seek recovery of costs. 2004-162.

Officers and Offices: If a city has, by ordinance, given the authority to initiate an appointment of a city attorney to the mayor, subject to the council's consent at its next meeting, the council may not unilaterally appoint or terminate such attorney. In addition, if such authority has been given to the mayor, then the mayor likewise has the authority to initiate a termination of the city attorney subject to the council's consent at its next meeting. 2004-163.

Boards: There is no statutory basis for the disqualification of a nominee to a board of adjustment because of his or her membership in a civic organization that has taken a position on issues before the board, nor is there any statutory authority requiring that person's recusal from voting on such issues. However, allowing a board member to vote on certain issues may constitute a violation of the State Ethics Law, but this determination must be made by the State Ethics Commission. 2004-164.

Buildings: A county board of education must comply with the building code of the Alabama Building Commission but is not required to comply with county or city building codes. Board projects are subject to review and inspection only by the Alabama Building Commission and are not required to pay local building permits. 2004-165.

Contracts: Act 2004-638 repealed the contractor's sales and use tax exemption found in Section 40-9-33 of the Code of Alabama 1975 and that section will not be revived when the provisions of Act 2004-638 terminate on October 1, 2006. Contracts exempt from sales or use tax entered into before the repeal of Section 40-9-33 on July 1, 2004, will continue to be exempt from sales and use tax until the contracts are completed. However, change orders to previously exempt contracts entered into after July 1, 2004, will be subject to sales and use taxes. 2004-170.

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Municipal Overview

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proposed League Budget for 2004-2005 fiscal year was adopted.

Mayor Sue Glidewell of Rainbow City, Chair of the Alabama Municipal Insurance Corporation, and Mayor Leon Smith of Oxford, President of the Municipal Workers' Compensation Fund, presented the reports on the activity of their respective programs.

League Communications Director Carrie Banks updated committee members on the latest activities in her department. She said that the new editions of the *Selected Readings for the Municipal Official* and the *Handbook for Mayors and Councilmembers* had been written. Once the layout has been completed, they will be sent to the printer. The books should be available for distribution to all officials when they assume office in October. She also mentioned several other League publications prepared by her department.

Deputy Director/League Counsel Ken Smith discussed two recent cases of the Alabama Supreme Court involving Priceville and the Talladega Water Board. Legislation will probably be necessary to solve problems caused by these decisions.

League Legislative Liaison Hal Bloom told members that House Speaker Seth Hammett had decided to seek reelection to his House seat and as House Speaker. He also stated that the Governor may call a special session in October to consider accountability measures. Greg Cochran, Director of State and Federal Relations, discussed briefly the transportation reauthorization act and the latest news on the Federal budget process.

Mark your calendars for the following future events:

- **Committee Day** – August 9, 2004
- **General Election Date** – August 24, 2004
- **Runoff Election Date** – September 14, 2004
- **AAMA Mid-Year Meeting** – September 24-25, 2004
- **Inauguration Day** – October 4, 2004
- **Orientation Sessions for Newly-Elected Officials** – October 12, 2004 (Montgomery); October 18, 2004 (Dothan); October 22, 2004 (Birmingham); October 26, 2004 (Florence)
- **Year-End Executive Committee** – October 21, 2004
- **Committee on State & Federal Legislation** – November 9, 2004
- **NLC Congress of Cities** – November 30 through December 4, 2004 – Indianapolis, IN

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the total Federal commitment to \$11.7 billion. This would provide 19.7 percent of the national average per pupil expenditure — still half of the full funding level that Congress committed to paying when the IDEA was enacted law in 1975. Even Start, a popular and effective program that provides literacy services to low-income families, was slated for elimination under the Bush Administration budget. The chairman's mark restores funding to Even Start at the FY 2004 level of \$250 million. Mark-up of the Senate Labor/HHS/Education appropriations bill was scheduled for the same day, but at the last minute was cancelled. Sources predict the Senate will delay mark-up until September.

Report Reveals Shortage of Mental Health Resources for Children

One in five youth between the ages of 9 and 17 have a mental disorder such as depression, bipolar disorder, schizophrenia and post-traumatic stress disorder, according to the U.S. Surgeon General. But the high cost of treating these problems and a lack of adequate inpatient hospitalization, outpatient and residential treatment, and specialized foster care services forces many minors with no criminal history into juvenile detention centers, a new congressional report reveals. Two-thirds of juvenile detention facilities hold youth who have no criminal charges against them but are, instead, waiting for mental health treatment. Of the 698 juvenile detention facilities operating in the United States, approximately 75 percent participated in a survey to determine what happens to children with mental disorders when community services are not readily available. The study was requested by Collins, chairwoman of the Senate Governmental Affairs Committee, and the House Government Reform Committee Ranking Member Rep. Henry Waxman, D-Calif. Juvenile detention centers are intended to hold individuals 21 years of age and younger in secure correctional facilities either during the pre-adjudication process or immediately post-adjudication. But 347 of the 524 facilities that participated in the investigation "hold youths that do not need to be in detention as they wait for mental health services outside of the juvenile justice system," says the report. According to one administrator for a Louisiana detention center, "we appear to be warehousing youths with mental illnesses due to lack of mental health services." And yet, more than half of these centers reported that their staffs have received poor, very poor or no mental health training.

To address the deficiencies in mental health services, legislation has been introduced. The legislation is entitled the Keeping Families Together Act, S. 1704, that would

authorize \$55 million in grants to states over a six-year period to create systems of care to treat and provide services to emotionally disturbed children and youth. S. 1704 is pending markup in the Senate Committee on Health, Education, Labor and Pensions. A copy of the report is available at www.house.gov/reform/min/pdfs_108_2/pdfs_inves/pdf_health_mental_health_youth_incarceration_july_2004_rep.pdf.

In related news, the Senate has unanimously approved another bill aimed at improving the mental health of youth by boosting funding for suicide prevention activities at the federal, state and local levels.

The Garrett Lee Smith Memorial Act, S. 2634, would authorize \$62 million over the next three years, and such sums as determined necessary for FYs 08 and 09, to support:

- grants for states, Indian tribes and tribal organizations, and nonprofit and public organizations to create statewide early intervention and suicide prevention strategies;
- the creation of a technical assistance center to assist states, localities, tribes and community service providers with planning, implementing and evaluating their strategies; and
- grants to colleges and universities to improve their suicide intervention and prevention services for students through counseling centers, psychological services centers, mental health centers, psychology training clinics, and mental health and substance abuse screening programs.

The measure awaits markup in the House Energy and Commerce Committee.

Program Notebook: NIJ To Award Funding for Cold Case Investigation

Help solving decades-old crimes is available to state and local governments from the National Institute of Justice (NIJ) through its Solving Cold Cases With DNA program. Under this program, states and localities can receive funds to resume investigations into sexual assaults, murders and other serious, violent offenses, including kidnappings, which have yet to be solved but now stand a chance, thanks to new advances in DNA technology. In the past, DNA proved useful to investigations only when large, pristine amounts of it existed on biological evidence related to, or at the scene of, a crime. But today, forensic analysts can use old, poor quality, compromised and limited amounts of DNA to identify perpetrators and solve cases previously thought to be

unsolvable. Even samples that once produced inconclusive results may now be useful with newer, more advanced methods of DNA analysis.

The Solving Cold Cases With DNA program is a component of President Bush's Advancing Justice Through DNA Technology initiative, which provides \$1 million in funding over five years to:

- eliminate DNA sample backlogs;
- strengthen crime laboratory capacity at the state, federal and local levels;
- provide post-conviction DNA testing to protect the innocent;
- use DNA to identify missing persons;
- train the criminal justice community; and
- stimulate more research and development on all areas of forensic science to enhance state and local labs' capacities to keep up with the expanding DNA analysis workload.

More information on this initiative is available at <http://www.ojp.usdoj.gov/nij/dnainitiative/initiative.html>.

Grants from the Cold Cases program may be used to fund DNA testing in certified or accredited laboratories; staff overtime and consultant and contractor salaries; travel costs incurred on interviews of victims and witnesses; and purchases of supplies and equipment that are necessary to conduct applied research, development, demonstration, evaluation or analysis. Funds cannot be used to support equipment, material and supply purchases strictly; training or direct services; or work that is being funded under another program. Requests for funding should include plans for reviewing, selecting and prioritizing cases; letters of intent from collaborating criminal justice agencies; strategies for involving victims or victims' families in the process; action plans for instances in which further DNA testing is necessary; and methods for following up with investigatory processes when DNA matches are obtained.

In choosing cold cases to pursue through this program, NIJ advises applicants to consider, among other things, if evidence that has been stored over the years could now, using new techniques of DNA analysis, provide new clues to a case; whether victims and witnesses are still alive and interested in solving a case; and if statute of limitation issues would affect the ability to prosecute and resolve a case. Additional guidelines for applicants are available online at <http://www.ncjrs.org/pdffiles1/nij/s1000671.pdf>.

The application review process will take approximately six months, according to NIJ. Reviewers will look for proposals that demonstrate an understanding of the problem and its importance; quality and technical merit; the potential for significant advances in the criminal justice field; staff capable

of successfully managing the effort; an appropriate budget; and well-defined plans for disseminating results to researchers, practitioners and policymakers, as well as other audiences. The deadline to apply for funding is Sept. 9, 2004.

Applications for the Solving Cold Cases With DNA program must be submitted electronically through the Office of Justice Programs' Grants Management System at <https://grants.ojp.usdoj.gov>. Applicants have until Sept. 7, 2004, to register with this system for the purpose of applying under this program. For more details on this program, contact the Department of Justice Response Center, (800) 421-6770.

Foundation News: Starbucks Offers Funds for Youth Leadership Programs

Community programs that encourage youth to become literate and respect diversity are eligible for grants from the Starbucks Foundation. Awards ranging from \$5,000 to \$20,000 are available to youth development and literacy organizations across the nation through the Youth Leadership Grants Program. Organizations eligible for funding must have nonprofit status; focus their activities on youth between the ages of 6 and 18; and involve Starbucks partners, or employees. Under this program, two types of funds are available: Power of Literacy grants and Leaders in Diversity grants.

Through the Power of Literacy component, funds are available for:

- writing programs that stimulate personal development and encourage social commitment by providing high standards of excellence in writing and literacy;
- demonstrating the power of writing and literacy in the lives of youth;
- encouraging writing and literacy as powerful communication tools for promoting social issues; and

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• promoting youth voices through publishing and spoken word community performances.

Past literacy grantees have used their funds to offer afterschool writing and literacy programs to youth in need of academic help, tutor children in housing projects and conduct family literacy events. Starbucks partners participated in these literacy programs as tutors, or by hosting poetry slams and book readings for youth. Leaders in Diversity grants support programs that teach youth to value diversity in race, culture, ethnicity, socioeconomic background, sexual orientation, gender and faith. Funds can be used to:

- develop and nurture leadership skills — including a high competence in diversity awareness and appreciation — in youth;
- mentor youth to become leaders who understand the value of diversity in their communities;
- connect with and engage families and communities in efforts to strengthen youth leadership; and
- build bridges of understanding between individuals, groups and diverse communities.

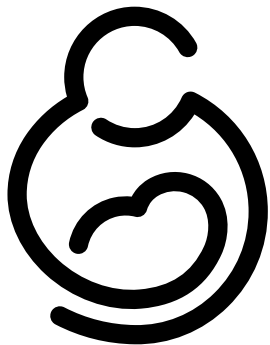
Diversity programs funded in the past have included workshops to build youth awareness and education around

gay, lesbian, bisexual and transgender issues; productions of plays to promote tolerance; anti-prejudice programs in schools; and summer camps for teens who face discrimination for having AIDS, being poor or for the color of their skin. Priority will be given to proposals that would reach underserved communities and communities of color; represent models in nontraditional learning environments and are directly engaged in service delivery; and demonstrate program sustainability. Applicants can apply for one of two levels of funding — local and regional grants. Local grants of between \$5,000 and \$10,000 are available for programs that would involve at least one Starbucks store within the applicant's community and reach at least 20 youth.

Regional grants of \$20,000 are available for programs that would involve three or more Starbucks stores and deliver services, disseminate information, provide training and build networks in a major metropolitan area or region. Projects may be eligible to receive funding for up to three consecutive years. The deadline to submit an application is Oct. 1, 2004. Application guidelines can be downloaded from <http://www.starbucks.com/aboutus/criteria.asp>. Completed applications must be mailed to the foundation. For more information on this opportunity, contact the Starbucks Foundation Hotline, (206) 318-7022. ■

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