

THE ALABAMA MUNICIPAL **JOURNAL**

February 2004

Volume 61, Number 8



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Understanding the Alabama Legislature

story page 7

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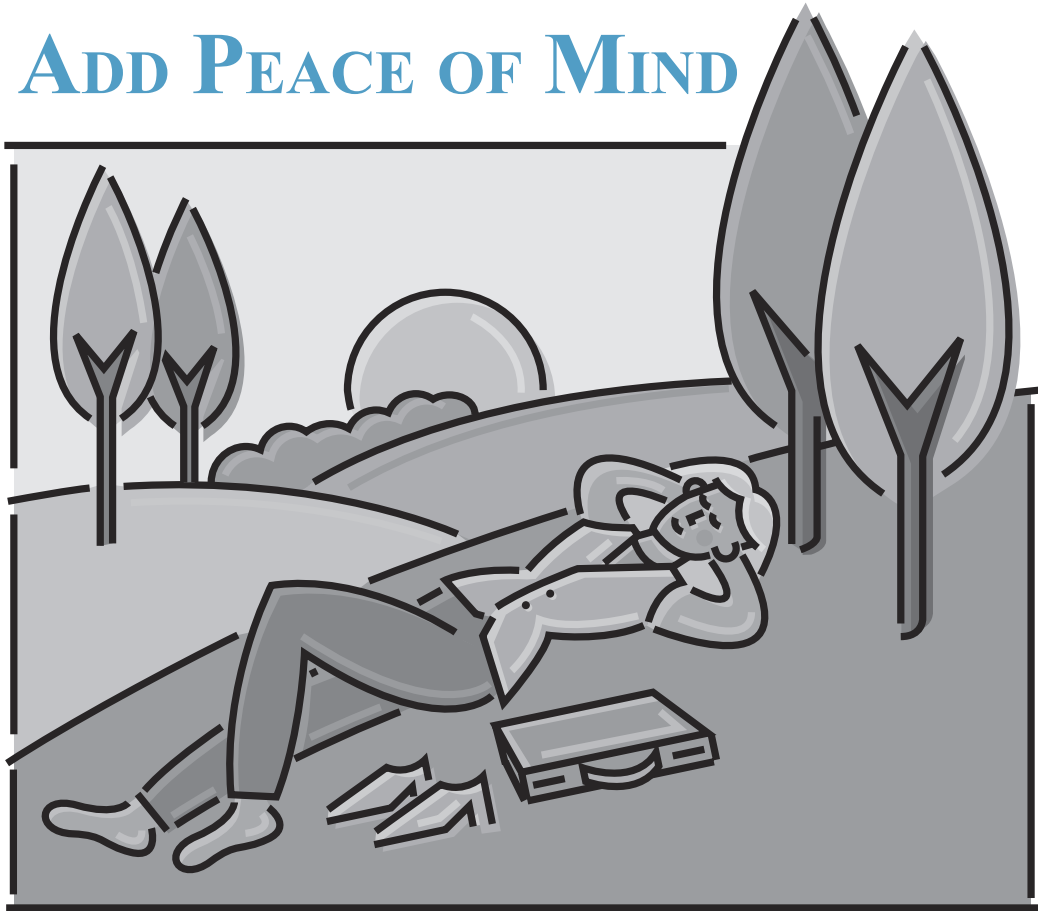
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- **2004 Senate and House Committees**
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The President's Report

Dan Williams
Mayor of Athens

“We Have Two Officers Down”

The beginning of a New Year in Athens has never been so tragic. Two fine, young men, who were roommates at the University of Alabama, died in the early morning hours of the New Year's day in an automobile accident. It was a shocking incident to all of us because they were well-known and came from fine families. The following day I was at the home of one family, talking with the father, when I received a phone call stating we had an incident involving our Police Department. I started to City Hall but on the way I heard over my phone the message: “We have two officers down”.

I have heard those words in movies and on television shows many times, but for the first time in my 20 years of public office they were real. The incident involved real cops, laying dead and dying, a real gun and bullets, a real man wanting to kill cops.

I went directly to the hospital, arriving as they carried a fine officer into the emergency room, his life swiftly slipping away from us, and saw the carnage inflicted upon him. His fellow officer was dead at the scene, killed inside his patrol car as he arrived to answer what everyone thought was a routine call for assistance. As the officer's wife and family began arriving at the hospital, things became more chaotic. It was a terrible time.

The second Officer had arrived at the scene within moments of the first Officer being killed, and unaware of what had happened, stepped out of his car and was gunned down by the assassin as neighbors watched from a few feet away. Two other Officers arrived moments later, attempted to give assistance to the fallen Officers, and took the assassin into custody, treating him gently, so as not to violate his rights. I think that act showed an amazing amount of restraint by our trained, professional personnel, and is a testament to the character of the Policemen we hire to protect us.

I went to the scene to be with our Police Chief, and to give support to the members of our Department and the Sheriff and District Attorney's investigative team as the incident was handled. We found that we knew the man who committed this terrible deed. He is from a fine, local family. From the facts that have emerged thus far, he had been diagnosed as a paranoid schizophrenic and had been committed to involuntary, institutional treatment by the Probate Judge at the request of his Mother. His behavior had been acceptable as long as he took proper medication, but he would quit taking it when he would be released from custody.

This young man went to a gun shop in Huntsville and purchased an assault rifle on Christmas Eve. The gun shop had him complete the required forms necessary to legally purchase the weapon, but he falsified the information related to his mental health conditions and nothing showed up when they checked his background.

These events, which were absolutely horrific for our City, brought out the greatest outpouring of compassion, care and concern from people all over the State of Alabama that we have ever witnessed. I want to thank all of our Municipalities for the support you have given to us during this time. I cannot adequately express to you our City's thanks for your care and concern.

One other thing I would ask of you. I want our League of Municipalities to immediately work with our Legislators and find a way to close the loophole that allowed this young man with his history of mental problems to purchase this weapon and commit this terrible act. I would hope that we could get something done by the Legislature during this session. I don't want any other Mayor to ever hear the words: “We have officers down.” ■

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Municipal Overview

By
PERRY C. ROQUEMORE, JR.
Executive Director

Understanding the Alabama Legislature

One of the prime functions of the League of Municipalities is to represent the interests of municipal government at the legislative level by informing members of legislation introduced that might affect municipal government and by presenting bills to the legislature on behalf of the municipalities of this state.

It is important for municipal officials to have a good basic understanding of the legislative process in Alabama. This article briefly explains the workings of the Alabama Legislature and how legislation is passed by that body.

Constitutional Provisions

Article IV of the Alabama Constitution of 1901 (Sections 44 through 111) establishes the legislative department of state government. Section 44 states that the legislative power of the state shall be vested in a legislature composed of a Senate and a House of Representatives. Section 44 has been construed by the Alabama Supreme Court to give plenary power to the state legislature. *State v. Lane*, 181 Ala. 646, 62 So. 31.

According to the Court, the Alabama Legislature possesses all of the legislative power which resides in the state under the United States Constitution, except as that power is expressly or impliedly limited by the Alabama Constitution. This differs from the powers granted to the United States Congress in that Congress can exercise only those powers enumerated in the Constitution of the United States or implied therefrom.

Article IV prescribes the manner of drafting bills, the organization and qualifications of members of both houses, authorizes each house to determine the rules of its proceedings and establishes procedures for the enactment of laws. Due to space limitations, only the provisions most applicable to the interests of municipalities will be discussed

in this article.

Composition of the House and the Senate

The state legislature consists of 35 Senators and 105 members of the House of Representatives. This number was established by order of a three-judge federal district court for the Middle District of Alabama, Northern Division, in the case of *Sims v. Amos*, 336 F. Supp. 924, aff'd, 409 U.S. 942 (1972). In the decree, the court divided the state into 105 House districts and 35 Senatorial districts. Each House district is entitled to one Representative and each Senate district is entitled to one Senator. Each district has approximately the same number of people as any other district.

Qualifications of Legislators

Section 47 of the Alabama Constitution of 1901 states that Senators must be at least 25 years of age at the time of their election and Representatives must be at least 21 years of age at the time of their election. Both Senators and Representatives must also have been citizens and residents of Alabama for three years and must have lived in their respective districts for at least one year immediately preceding their election.

Section 60 of the Alabama Constitution states that no person convicted of embezzlement of public money, bribery, perjury or other infamous crimes is eligible for membership in the state legislature.

Each house has the authority, given by the Alabama Constitution, to punish its members. With the concurrence of two-thirds of either house, a member may be expelled. A member who has been expelled for corruption is not thereafter eligible for membership in either house. Sections 53 and 54, Alabama Constitution of 1901.

Election and Terms of Members

Members of the House and the Senate are elected, for four-year terms, on the first Tuesday after the first Monday in November in the even years which are not leap years. Their terms begin on the day following their election. Their terms expire on the day after the election of their successors four years later. Section 46, Alabama Constitution of 1901. Amendment 57 to the Alabama Constitution provides that each house shall judge the qualifications of its members.

Organizational Session

The state legislature meets in Organizational Session on the second Tuesday in January following the election of members. The only business that may be transacted at such

continued next page

a session is the organization of the legislature for the ensuing four years, the election of House and Senate officers, the appointment of standing and interim committees, the canvassing of election returns and the determination of contested elections.

During the Organizational Session, the House membership elects a Speaker who has the duty of presiding over the House of Representatives. The House membership also elects a Speaker Pro Tem to preside over the House in the absence of the Speaker.

The Senate is presided over by the Lieutenant Governor. During the Organizational Session, the Senate chooses a President Pro Tempore to preside in the absence of the Lieutenant Governor.

Pursuant to Section 53 of the Alabama Constitution, the House and the Senate adopt rules of procedure for the next four years.

Legislative Committees

The standing committees of each house are established by the rules of each house. These committees, which are required by the Alabama Constitution, operate throughout the session for the consideration of legislation assigned to them.

Committee members are named at the Organizational Session and hold membership throughout their terms. The members of House standing committees are appointed by the Speaker of the House. A rules change approved by the Senate this year provides that the members of Senate standing committees are appointed by the Senate President Pro Tem.

Length of Sessions

Amendment 339 to the Alabama Constitution requires the state legislature to meet in annual regular sessions. Each regular session is limited to 30 legislative days within 105 calendar days. Each special session called by the Governor is limited to 12 legislative days within 30 calendar days.

A legislative day is a day on which either house of the legislature is actually in session. Normally, the legislature will meet in session two days per week and schedule committee work on the other days.

Types of Bills

Amendment 397 to the Alabama Constitution states that a general law is a law which in its terms and effect applies either to the whole state or to one or more municipalities of the state less than the whole in a class.

A special or private law is one which applies to an

individual, association or corporation.

A local law is a law which is not a general law or a special or private law.

Section 11-40-12, Code of Alabama, 1975, establishes eight classes of municipalities based on population. The legislature has the authority to pass measures which affect only those municipalities within a specified class or classes. Such classification legislation is defined as general law by Amendment 397 to the Alabama Constitution. Any such legislation which has application to only one municipality must be advertised prior to introduction according to the provisions of Section 106 of the Alabama Constitution.

Section 106, as amended by Amendment 341, states that notice of all local bills must be published, prior to introduction, at least once a week for four consecutive weeks in some newspaper published in the county. If no newspaper is published in the county, then the notice must be posted, prior to introduction, for two consecutive weeks at five different places in the county.

Steps in Passing Legislation

If a member of the legislature decides that a proposal has merit and that legislation should be enacted, the legislator prepares a bill or has a bill prepared for introduction into the house of which he or she is a member. That legislator then becomes the sponsor of the bill.

Many bills are introduced in both houses of the legislature on or about the same date. This practice is not prohibited except the Constitution, in Section 70, requires that all bills to raise revenues shall originate in the House of Representatives. There is no limitation upon the number of sponsors that may sign a particular bill.

After introduction, the bill is assigned a consecutive number, for convenience and reference, and is read by title only.

This action is known as the first reading of the bill. The Speaker of the House of Representatives or the President Pro Tempore of the Senate, depending on the body where the bill was introduced, refers the bill to a standing committee of the House or the Senate.

Section 62 of the Alabama Constitution states that no bill shall become a law until it has been referred to a standing committee of each house, acted upon by such committee in session, and returned therefrom.

Standing committees are charged with the important responsibility of examining bills and recommending action to the full House or Senate. At some time when the House or Senate is not in session, the committees of each house will meet and consider the bills which have been referred to them

and decide whether or not particular bills should be reported to the full membership. It is during these committee sessions that members of the general public are given an opportunity to speak for or against the measures being considered by the standing committees.

Bills which are favorably acted upon by the standing committees are reported to the entire house for consideration and are placed on the regular calendar. Bills reported unfavorably are placed on the adverse calendar. If a committee fails to act, the membership of each house, by a vote, may require the committee to act and report its action to the body at its next meeting.

The committee reports a bill to the full house when the reports of the committees are called. The bill is given its second reading at that time and is placed on the calendar. The second reading is by title only.

Section 63 of the Alabama Constitution of 1901 requires that every bill be read on three different days in each house and that each bill be read at length on final passage.

Bills are listed on the calendar by number, sponsor and title in the order in which they are reported from committee. Bills are considered for a third reading (passage) in the order of the calendar unless action is taken to consider a bill out of regular order.

Important bills can be brought to the top of the order by special order or by a suspension of the rules. Special orders are recommended by the Rules Committee and must be adopted by a majority vote. In the final days of a session, both houses usually operate daily on special orders.

When a bill comes up for consideration, the entire membership of the house considers its passage. The bill is read at length, studied and debated. In general, regular parliamentary rules of procedure apply when a bill is being debated on final passage. Each house has special rules which limit debate.

A majority vote in each house is necessary for passage of legislation except in cases where the Constitution requires more than a simple majority. For example, a proposed Constitutional Amendment must receive the vote of three-fifths of all members elected. Section 284, Alabama Constitution of 1901. In a special session, any legislation not covered in the Governor's call, or proclamation, must receive a two-thirds vote in each house. Section 76, Alabama Constitution of 1901.

After a bill has been voted on, any member who voted with the prevailing side may move to reconsider the question, but the time within which bills may be reconsidered is limited in both houses.

Bills passed in one house are sent to the other house by

a formal message and the bills then receive their first reading in the second house. Proposals go through the same procedure in the second house committee study and report, second and third readings and floor debate and votes.

If the second house passes the bill without amendment, it goes back to the originating house for enrollment. If a bill is amended in the second house, it must be returned to the first house for consideration of the amendment. The first house may vote to concur or not to concur, in which case the bill dies. The first house may vote not to concur and request a conference committee to work out the differences between the two bills. If the other house agrees to a conference, the presiding officers of each house appoint members to the conference committee.

The conference committee meets and tries to reconcile the differences in the two versions of the bill. If agreement is reached and both houses adopt the conference committee report, the bill is finally passed.

Sometimes a house may refuse to adopt the report of the conference committee and ask for a further conference. If the committee is still unable to reach an agreement, it may ask to be discharged and request the appointment of another conference committee to begin the process again. If the conferees never agree, the bill is lost.

When a bill is passed in both houses in identical form, it is enrolled or copied in its final form and sent to the house of origin for signature by the presiding officer in the presence of the members. The measure is then sent to the second house where it is also signed by the presiding officer in the presence of the members. Then the bill is sent to the Governor. The Governor is not required to sign proposed Constitutional amendments, they are sent directly to the Secretary of State for submission to voters for ratification at the time prescribed in the legislation.

Action by the Governor

When a bill reaches the Governor, he may sign it and thus complete the enactment of a bill into law. However, if the Governor objects to the bill, he may veto it or suggest amendments to the bill and return it to the house of origin. The bill is then reconsidered, first by the originating house and, if passed, by the second house. If a majority of the members elected to each house agree to the proposed amendments, the bill is returned to the Governor for his signature.

If both houses cannot agree to the Governor's amendments or if the Governor proposes no amendments but returns the measure, the bill has, in effect, been vetoed. The houses then may try to override the Governor's veto. An affirmative vote of 18 Senators and 53 Representatives is

continued next page

required to override the Governor's veto.

If the Governor fails to return a bill to the house of origin within six days after it is presented to him, Sundays excepted, the bill becomes law without the Governor's signature, unless the return was prevented by recess or adjournment. In such a case, the bill must be returned within two days after the legislature reassembles or the bill becomes law without the Governor's signature.

Bills which reach the Governor less than five days before the end of the session may be approved by him within 10 days after adjournment. Bills not approved within that time do not become law. This is known as the pocket veto.

The Governor has the authority to approve or disapprove any item or items of an appropriation bill without vetoing the entire bill.

Budget Isolation Resolutions

Amendment 448 to the Alabama Constitution states that the Governor must submit a proposed budget to the legislature by the second day of each regular session. The legislature must make the basic appropriations necessary for the current budgetary period before passing any other legislation. However, if three-fifths of a quorum adopt a resolution declaring that this restriction does not apply to a certain bill, that bill may proceed to final passage. This is

known as the budget isolation resolution and permits the legislature to enact legislation prior to adopting a budget.

Unfunded Mandates

The Alabama Constitution provides that any general law whose purpose or effect is to require a new or increased expenditure of funds held or disbursed by the governing body of a municipality or county, or instrumentality thereof, shall not take effect unless (1) it is approved by the affected governing bodies or (2) the legislature provides funding to pay for the mandate or (3) the legislature passes the legislation by the affirmative vote of two-thirds of those voting in each house.

The amendment does not apply to: (1) local laws; (2) acts requiring expenditures of school bonds; (3) acts defining new crimes or amending definitions of crimes; (4) acts adopted prior to the ratification of the amendment; (5) acts adopted to comply with federal mandates, only to the extent of the federal mandate; (6) acts determined by the Legislative Fiscal Office to have an aggregate insignificant fiscal impact on affected governments; or (8) acts of general application prescribing the minimum compensation for public officials.

The term "aggregate insignificant fiscal impact" shall mean any impact less than \$50,000 annually on all affect governments statewide. ■

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ENVIRONMENTAL OUTLOOK



By Gregory D. Cochran
Director, State and Federal Relations

Scrap Tire Law Raises Funds to Clean Illegal Dumps

According to a state commission appointed in 1999 to study the issue, 15 million to 20 million used tires in more than 850 illegal dump sites dot Alabama's landscape. Many entrepreneurs bring tires from Florida, Mississippi and North Carolina to Alabama to dump in landfills. Alabama allows tires in its landfills without many regulations or an infrastructure for enforcement.

By fall, the state hopes to have more than \$3 million to help reverse Alabama's reputation as a regional dumping ground for scrap tires. Last year, the Legislature passed the Scrap Tire Environmental Quality Act. It imposes a \$1-per-tire fee on used tires, which will fund cleanup efforts at illegal dumps and help create markets for the roughly 4 million scrap tires Alabamians generate every year.

Alabama became the last state in the Southeast, and one of the last in the country, to pass a comprehensive scrap tire law. Scrap tires can present environmental and health hazards, which become more acute if the tires catch fire. The Alabama Scrap Tire Commission reported 145 tire fires in a 36-month period ending in 2001. A tire fire almost four years ago in Moody burned 11 days, sending flames 100 feet in the air and toxic smoke to surrounding properties. Other contaminants leached into the soil as firefighters sprayed the fire with water. Tire stockpiles also attract disease-causing vermin. Most recently, these stockpiles have come into focus as a prime breeding ground for the mosquitoes that pass West Nile virus to humans.

In 1999, the Alabama Legislature passed a law designed to license businesses that deal with scrap tires and to trace the tires. That gave some governments, such as Jefferson County, the green light to aggressively monitor scrap tires and go after illegal dumps. The county hired a full-time inspector for the job. But that only addressed part of the issue. The scrap-tire problem is twofold: reducing the

stockpiles of scrap tires, and finding a better place for them. The solution also needed a two-tiered approach.

Alabama's new law sets aside 40 percent to 75 percent of the scrap-tire fund for cleanup projects, and up to 20 percent to promote markets for the recycled tires. No more than 20 percent can be used for administration. Two cement kilns and one paper mill in Alabama use tires for fuel, although discussions are going on now with two more plants that would use recycled tires. Other potential uses include material for road construction, reuse in other rubber products and several applications in landfills.

By December 30, the state had collected more than \$843,000, according to the Alabama Department of Revenue. At that pace, it would take in about \$3.4 million its first year – about \$400,000 short of what the state estimated it would collect. Industry and government officials said Alabama's new law has the components to get a handle on an ongoing problem. If there's a scrap-tire pile out there and the debris can be quickly removed and the land restored, the scrap-tire-fee money will be used. But if the violator is found, enforcement procedures that will be in place will make the responsible party take the lead in the cleanup and restoration.

USDA Rural Development Funds Bolster Sewage Capacity

Thanks to USDA Rural Development, plans are underway for a larger capacity sewer system as well as a new wastewater treatment plant to serve the growing population of Calera in upcoming decades. The \$8 million dollar project will double the capacity of the system, reduce

continued next page

surface water seepage and construct a second treatment plant.

“I am pleased with our partnership with the town of Calera and appreciate the vision and leadership that Mayor Roy is providing. USDA Rural Development funds, combined with their strong commitment, will insure that Calera is prepared to address their future growth and challenges,” said Steve Pelham, State Director of USDA Rural Development.

The project will come together in three phases. First, the capacity of the current system will be doubled from 750,000 gallons per day to 1.5 million gallons per day. Second, corrections will be made to prevent surface water, mostly from areas on Highway 31, from getting into the system. The third phase of the project will be the Northend Waste Water Treatment Plant. The new plant, located on State Highway 70, will serve northern sections of Calera with a capacity of 3 million gallons per day, bringing the total capacity of the system to 4.5 million gallons per day.

“By making this commitment to improvements of our system, the city will be able to continue its growth for the next 30 years,” said Calera Mayor George W. Roy.

Did You Know

How much trash is generated after Christmas? In a recent *Huntsville Times* article, the number of “extra tons” of waste disposed of days after the holiday were documented. On the Monday and Tuesday after Christmas this year, Huntsville sanitation crews collected more than 1700 tons (or 3.4 million pounds) of garbage and trash – almost twice the 973 tons normally collected on “non-Christmas season” days. This year’s numbers are also well above last year’s Christmas 2002 total of 1,379 tons. The Huntsville sanitation crews serve 52,000 households. ■

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THE LEGAL VIEWPOINT

By Ken Smith
Deputy Director/Chief Counsel

Effective Lobbying Begins at Home

Since the Regular Session of the Alabama Legislature convenes this month, printed below are some tips that may help municipal officials prepare for the next legislative months.

Stay well informed. The League posts a weekly Legislative Bulletin to our website (www.alalm.org) that highlights priority bills as they move through the legislative process and serves as a way for the League to request action from municipal officials. The Bulletin is the main communication between the League and member cities and towns on legislative issues.

We urge all officials to promptly read the Bulletin and to communicate with other officials and employees who may need to be informed about legislative actions. Information on the status of bills not included in the report can be obtained by calling League Headquarters. When quick action is needed, the League will contact officials via e-mail, fax messages and telephone calls.

The Bulletin is posted by Friday afternoon during the session. We encourage each official to visit the League website often for updates. Links to important state legislative websites are also posted on the League site.

Place someone in charge. Make sure one person is responsible for immediate review of the Legislative Bulletin and for initiating a timely response by your city or town. This person generally duplicates the Bulletin (which can be downloaded from our site at www.alalm.org); distributes it to all councilmembers; and coordinates any follow-up responses needed. During the busiest periods of the legislative session, a response from your city or town may be needed in less than in one or two days and, occasionally, in one or two hours. Therefore, it is vital that someone assume responsibility for coordinating the response from your municipality.

Take a position early and follow through. Establish a quick and simple procedure to enable your city or town to take positions on bills discussed in the Legislative Bulletin and on other bills of interest to your area.

Municipalities use a variety of ways to determine their positions on bills. A good place to start is the League's Statement of Policies and Goals, which enumerates the official association stance on a variety of issues. It is important to take a position early in the legislative process because there is a greater opportunity to have an impact on the outcome of a bill. Also, officials will be prepared to respond quickly to subsequent requests for action.

Most important, provide follow-up responses as requested throughout the legislative session. Bills are heard before several committees, and letters are not usually distributed with the bills as they travel through the process. It is vital to continue to respond immediately to requests for letters and telephone calls even though you may have responded at an earlier time in the session.

Legislators need to hear from municipal officials. Otherwise, they are forced to make decisions on important local issues without knowing the impact on municipalities in their districts.

The importance of contacting a legislator on time cannot be overemphasized. The most eloquent letter or phone call does no good if it arrives *after* a vote. If your city or town has an established position on a piece of legislation, officials should be able to send, with little or no delay, follow-up letters if requested in the Legislative Bulletin or by the League staff.

In addition to contacting your district legislators, letters should also be sent to the chair of the legislative committee where a bill is pending so your position will be recognized. Copies should also be sent to the author and/or sponsor of the bill, to committee members and to League Headquarters.

continued next page

ters. *For clarity, each letter should cover only one bill and should reference the bill number in a separate line close to the top of the page.*

Resolutions and letters are effective. Single resolutions alone may not create much of an impact. But, if a resolution is combined with resolutions on the same subject from neighboring municipalities, the impact may be great. A letter with a resolution attached may have the most impact.

Say thanks. Remember to thank legislators *regularly* and *publicly* for their work and their support, and their votes. **Never** discount the importance of a thank you. Few people remember to thank their legislators and they clearly remember those who do. Recognition at council meetings, presentation of certificates or plaques or a letter to the editor praising the responsiveness of legislators to local needs can be effective public ways of saying thanks to your representatives.

A word of caution: avoid public criticism of your legislator's actions. Some members of the legislature rarely vote with cities and towns yet come through on crucial votes. Taking them to task in a public forum for a series of votes on relatively unimportant issues can lose their votes permanently on much more vital issues. It is much more effective to sit down with a legislator in private to discuss areas of disagreement.

Keep the League staff informed. Always send the League copies of your letters. The staff needs to know to whom you write, when you write and what you say. And, if you receive a response from a legislator, let us know about that also. The League staff reads your letters and incorporates your arguments and local circumstances into testimony before committees when required. Staff members also cite your letters when they talk with legislators.

Meet regularly with your legislators. Correspondence with legislators on issues of importance to cities and towns will be more meaningful if an on-going personal relationship has been established with senators and representatives. Like most municipal officials, you probably run into your legislators at community events.

In addition, it is important to meet formally at least once a year with each of your lawmakers to review key League and municipal issues. Be sure to meet with Congressional representatives as well. There is no substitute for knowing your federal and state lawmakers, as well as key members of their staffs, so that an immediate and effective contact can be made when necessary.

Collaborate with community groups. Establish positive links with community groups to explore potential collaborative legislative action. The local chamber of commerce, voters organizations, taxpayers associations and other business, professional and community groups can be natural allies on certain issues since the health and well-being of your community are in their best interest as well as yours.

Establish a working relationship with the media. Local editorial support or opposition can be extremely helpful on many priority bills. Consider sending letters to the editor or by-lined opinion editorials which are based on solid information you provide about the local impact of legislation under consideration. A copy of letters to the editor or op-ed pieces should also be forwarded to the League.

Stick with it. Some issues come up year after year. It is a fact of life in public policy-making that some things just take time. Consistent participation by a municipality year after year is essential to long-term success in the legislature.

Follow the Golden Rule. Approach legislators the way you, as a municipal official, want to be approached by your constituents: *with courtesy and respect.* ■

NLC-Sponsored Regional Meeting on Youth Participation

Register now for the **February 28, 2004** regional meeting on "Promoting Youth Participation in Local Government." This one-day meeting will be held in Orlando, Florida, and is being co-sponsored by the National League of Cities. The event will bring together municipal officials, youth and municipal government staff who are interested in beginning or enhancing local youth engagement efforts. Workshop topics will include building youth-adult partnerships and forming youth councils. This event is made possible through the support of the MetLife Foundation.

Registration is free, but space is limited; so register today! For more information, visit www.nlc.org/iyef, or contact **Alicia Johnson** at **202/626-3046** or ajohnson@nlc.org.

The Municipal Trouble Shooter

Good News/Bad News for Municipal Liability

Ken Smith, Deputy Director, Chief Counsel

A recent decision by the Alabama Supreme Court reads a little like a good news, bad news joke for municipalities. First, the good news. The Court held that municipalities do not undertake a legally enforceable duty to provide skillful fire protection when they create a volunteer fire department. The Court also held that volunteer firefighters are immune from liability for negligence under the Volunteer Service Act, and, thus, a municipality cannot be vicariously liable.

Now, the bad news. The Court examined the potential liability for the actions of a municipal police officer and appears to substantially narrow the applicability of the substantive immunity rule.

Obviously, this is no joke, nor is there anything humorous in the facts which led to the case. A family home was destroyed by fire, always a tragic event, despite the efforts of a municipal volunteer fire department. The alleged liability of the municipal police department arose because an officer refused to allow the plaintiff homeowners to reenter the home and fight the fire themselves. The case is *Hollis v. City of Brighton*, ___ So.2d ___, 2004 WL 42906 (Ala. 2004). Read on for a more complete discussion of this case.

Fire Department Liability

At the time of the fire in this case, the City of Brighton operated a municipal fire department consisting of approximately nine local residents who serve on a voluntary basis. The department had three trucks. No firefighters stayed at the station, and the volunteers kept their uniforms at home. Firefighters were notified of fires by pager and responded by dressing at home and reporting to the station. Testimony revealed that not all firefighters were able to attend every fire because of private jobs and other circumstances that prevented them from responding.

The plaintiffs first argued that the firefighters in this situation were not true volunteers because they received what was categorized by the Court as a 10-dollar expense stipend per fire. The Court held that since no evidence was presented to demonstrate that the 10 dollars was intended as compensation rather than expenses, payment of this money did not change the volunteer status of the department or of the firefighters themselves.

The trial court granted the municipality a summary judgment on the liability for the operation of the fire department "based upon substantive and discretionary immunity." On appeal, the plaintiffs argued that substantive immunity does not protect a municipality for operating a fire department, citing *Williams v. City of Tuscumbia*, 426 So.2d 824, 825

(Ala.1983) and *Ziegler v. City of Millbrook*, 514 So.2d 1275 (Ala.1987).

In these two cases, the Court held that by creating professional fire departments, the municipalities had undertaken a duty to provide skillful fire protection. Further, if the unskillfulness of the firefighters employed by these municipalities breached that duty, the respective cities would be directly liable for the breach.

The Court in the *Brighton* case distinguished these cases, though, finding a difference between a municipality's operation of a professional fire department and a volunteer department. The Court concluded that this is so because "in creating a volunteer fire department, a city is relegated to the vagaries of volunteer manpower, the undertaking by the city is too indistinct to support a legally enforceable duty to provide skillful fire protection."

Unfortunately, the Court specifically stopped short of stating that volunteer fire departments are shielded from liability by substantive immunity. The holding does, though, provide two very good conclusions for municipalities. Following this decision, it is clear that, first, the operation of a volunteer fire department does not create a legally enforceable duty on the municipality to provide skillful fire protection. And, second, a small fee, such as the 10 dollars paid in this case, does not alter the status of volunteer firefighters, thereby making them subject to liability.

The Court reached one other conclusion on the issue of firefighter liability that benefits municipalities. The Court held that volunteer firefighters are immune from liability due to the Volunteer Service Act, Section 6-5-336, Code of Alabama, 1975. Further, because the liability of the employer (master) under the rule of respondeat superior depends upon the liability of the employee (servant), the Volunteer Services Act also insulates municipalities from liability for the actions of their volunteer firefighters.

Police Department Liability

The disturbing aspect of the *Brighton* case comes from the Court's discussion of the liability of the police department. And, largely, that concern stems from two sentences: "Substantive immunity, as it applies to police services however, immunizes only decisions of the governing authorities of a municipality not to deploy police officers or not to deploy more police officers for a particular service. Substantive immunity does not immunize a municipality from vicarious liability for the tortious act of a particular police officer."

continued next page

(Citations omitted.)

This appears to be the first time that the Court has so severely limited the applicability of substantive immunity. Admittedly, the substantive immunity rule is intended to be narrow, essentially applying only where the cost of holding a municipality liable is outweighed by the benefit the public receives when the municipality is protected by immunity. Nowhere, though, has the Court made a blanket statement that substantive immunity was intended only to protect a municipality where the municipality is assigning officers. In fact, the cases cited by the Court for support instead indicate that substantive immunity has a broader sphere of operation.

For instance, in *City of Birmingham v. Benson*, 631 So.2d 902 (Ala. 1993), the Court held that the rule applies “in those narrow areas of governmental activities essential to the well-being of the governed, where the imposition of liability can be reasonably calculated to materially thwart the City’s legitimate efforts to provide such public services. ... [substantive immunity] must be given operative effect only in the context of those public service activities ... so laden with the public interest as to outweigh the incidental duty to individual citizens.”

And, in *Borders v. City of Huntsville*, [Ms. 1020452, July 25, 2003] — So.2d —, — (Ala.2003), the Court noted merely that substantive immunity has been extended

to the context of police activities and held that the facts of the case did not justify applying the substantive immunity rule. The Court did not indicate in any way that the rule applies only where a municipality is determining how many officers to assign.

Nor was this limitation of the rule discussed in the other cases cited by the Court. See, *Calogrides v. City of Mobile*, 475 So.2d 560 (Ala.1985), *Garrett v. City of Mobile*, 481 So.2d 376 (Ala.1985), and *Nichols v. Town of Mount Vernon*, 504 So.2d 732 (Ala.1987). In fact, the Court in the *Nichols* case stated simply that “the failure to provide police protection or the alleged inadequacy of police protection will not supply the basis for a tort action against a city.” The Court did not find that these are the only situations where substantive immunity is appropriate.

The Court remanded the case to the trial court to develop facts to determine whether the actions of the police officers in this case amounted to negligence. The City is liability only if these actions were negligent. Thus, the finding that substantive immunity should not apply in this case does not automatically subject the municipality to liability. The Court’s conclusive limitation on the extent of substantive immunity, though, may restrict the application of the rule in future cases.

And that could be very bad news.

Laughing yet?



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Legal Notes

Lorelei A. Lein
League Counsel

COURT DECISIONS FROM OTHER JURISDICTIONS

Environment: A Clean Water Act citizen suit alleging that a city's mosquito spraying program discharges pollutants into navigable waters without a required permit is not barred by the fact that the Federal Insecticide, Fungicide, and Rodenticide Act does not provide for citizen suits. *No Spray Coalition v. New York City*, 351 F.3d 602 (2nd Cir. 2003)

Prisoners: The Religious Land Use and Institutionalized Persons Act, which bars the imposition of a substantial burden on prisoners' religious exercise unless the government shows that such burden is the least restrictive means of furthering a compelling governmental interest, has a secular purpose, does not have the primary effect of advancing religion, and does not foster government entanglement with religion, and therefore does not violate the establishment clause. *Madison v. Riter*, — F.3d —, 2003 WL 22883620 (4th Cir. 2003).

ATTORNEY GENERAL OPINIONS

Fire Protection: A volunteer fire department is exempt from county building inspection fees. 2004-044. NOTE: While this opinion is specific to the inspection fees charged by counties, the same analysis would apply to municipalities.

Elections: The municipal officers of a municipality incorporated after the 2000 general municipal election, hold office until the 2004 general municipal election and until their successors are elected and qualified. 2004-046.

Ordinances: An ordinance intended to be of permanent operation that is introduced at a regular council meeting may subsequently be considered by the council at a properly called special meeting. 2004-053.

Council and Councilmembers: In municipalities with populations of less than 12,000 where the council consists of five councilmembers and the mayor, four members of the council constitutes a quorum. The mayor may be counted for purposes of determining a quorum. 2004-054.

Mark Your Calendars

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will be held
May 22-25 in
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Federal Legislative and Regulatory Issues

Mary Ellen Wyatt Harrison
Staff Attorney

No Child Left Behind Funding

President Bush recently announced proposed increases for Title I funding for disadvantaged students and the Individuals with Disabilities Education Act (IDEA). In the 2004 Fiscal Year budget proposal the President proposes increasing Title I and IDEA by \$1 billion each. The \$1 billion each is below the amount authorized for each of these projects. Last year the President's proposed budget provided \$9.7 million less than the amount authorized in No Child Left Behind, which included a 40 percent cut in afterschool programs. After extreme lobbying efforts, many of the afterschool programs were restored. In the President's proposal, funding for disadvantaged students is \$7 billion below the amount promised in No Child Left Behind.

Funding for Housing, Workforce Programs May Be Cut in FY 05

The federal deficit is threatening to top the \$500 billion mark this year. In light of that President Bush will be looking for ways to cut costs in 2005 Fiscal Year, and domestic programs and services could be the first to feel the pinch. The president's FY 05 budget proposal aims to reduce the deficit by limiting spending on housing vouchers, health care for veterans, and job training and employment programs.

Some say the deficit is the result of domestic program expenditures spiraling out of control. But according to the Center on Budget and Policy Priorities (CBPP), funding for domestic discretionary programs outside homeland security – if the FY 04 omnibus spending bill is enacted upon Congress' return – would increase from \$336 billion in 2001 to \$389 billion in 2004. If inflation is taken into account, this represents a 9.8 percent increase.

President Bush is also expected to request additional funding for programs to train more nurses, encourage sexual abstinence among teenagers and recruit volunteers for homeland security response activities.

FEMA Offers Online Training for Community Emergency Response Teams

Community Emergency Response Teams are comprised

of volunteers who assist victims and first responders during disaster situations. An online, independent study course is now available to new and current Community Emergency Response Teams (CERTs) members.

The online training takes between six and eight hours to complete. The training consists of an introduction to CERT and lessons on fire safety, hazardous material and terrorist incidents, disaster medical operations, and search and rescue. A certificate is awarded upon completion. The Federal Emergency Management Agency (FEMA) is offering the Introduction to Community Emergency Response Teams, or to anyone interested in CERT. The course is located at <http://www.training.fema.gov/emiweb/is/is317.asp>.

Artistic Excellence Applications Due March 15, 2004

Applications for the Grants for Arts Projects (GAP) from the National Endowment for the Arts are due March 15, 2004. The programs that are eligible for the grants are listed below with contact information for each discipline or field.

Dance

Regional and national tours; home-based performances; commissioning and development of dance works and the restaging of repertory; residencies and choreography workshops for artists; touring dance company presentations; dance festivals; and services to dancers, choreographers and companies, including convening, data collection, information sharing and technical assistance. Contact: (202) 682-5739. More information: <http://www.arts.gov/grants/apply/GAP05/Dance.html>.

Design

Innovative projects, which include competitions; commissions; community workshops surrounding new projects; exhibitions of recent works; publications of advances in design or design theory; and conferences, symposia and other gatherings that promote innovation is

design practice. Contact: (202) 682-5797. More information: <http://www.arts.gov/grants/apply/GAP05/Design.html>.

Folk and Traditional Arts

Presentations of Living Cultural Heritage, including public performances, exhibitions, festivals, workshops and demonstrations, touring and media such as film, video, radio and the Internet. Contact: (202) 682-5678. More information: <http://www.arts.gov/grants/apply/GAP05/Folk.html>.

Literature

Literary Publishing projects, such as the publication, production, promotion and distribution of books and magazines; payments to writers; efforts to increase book sales/magazine circulation and expand readership; and online publishing projects. Contact: (202) 682-5771. More information: <http://www.arts.gov/grants/apply/GAP05/Lit.html>.

Local Arts Agencies

Marketing, box office and audience development activities; conferences, convening workshops, technical assistance, leadership training, and other professional development opportunities for artists; subgranting for service activities on behalf of local arts agency's constituents; and community-wide cultural planning. Contact: (202) 682-5586. More information: <http://www.arts.gov/grants/apply/GAP05/Locals.html>.

Media Arts

Exhibition of film/video art; national or regional distribution of film/video/audio art; and preservation of film/video/audio artworks and services that support preservation efforts. Contact: (202) 682-5742. More information: <http://www.arts.gov/grants/apply/GAP05/Media.html>.

Multidisciplinary

Creation and presentation projects; residencies; artistic training; and technology and new media. Contact: (202) 682-5658. More information: <http://www.arts.gov/grants/apply/GAP05/Multi.html>.

Museums

Special exhibitions including catalogues; residencies; commissions or public art; and services to the field. Contact: (202) 682-5576. More information: <http://www.arts.gov/grants/apply/GAP05/Museums.html>.

Music

Public presentations and performances of artistically excellent works; commissions, premieres, and subsequent

performances of new works; residency activities; professional artistic development and training programs for musicians; and services that reach a broad constituency of music organizations or musicians. Contact: (202) 682-5590 (for organizations with names that begin A through L); (202) 682-5487 (for organizations with names that begin M through Z). More information: <http://www.arts.gov/grants/apply/GAP05/Music.html>.

Musical Theater

Creation of New Work and 2004-05 Musical Theater Productions, which include commissioning, development, and production of new musicals and musical adaptations; development programs and labs for new musical theater work; and production or presentation of existing contemporary musicals and work from the musical theater canon that will occur during the 2004-05 season (with project activities beginning on or after Jan. 1, 2005). Contact: (202) 682-5509. More information: <http://www.arts.gov/grants/apply/GAP05/Musicaltheater.html>.

Opera

New productions of traditional and contemporary works; remountings of existing productions; world, national and regional premieres; commissioning and development of opera works; touring, especially to those areas and constituencies that are underserved including schools; programs that provide access to and experience with the art form for adults, children and intergenerational groups; professional development programs for artists who have finished their conservatory training and are emerging on the professional stage; documentation, preservation and conservation of America's opera heritage; and services to opera companies, singers, composers and librettists. Contact: (202) 682-5700. More information: <http://www.arts.gov/grants/apply/GAP05/Opera.html>.

Presenting

Presentations in any combination of performing arts disciplines. Presentation projects may include ancillary activities such as lecture-demonstrations and workshops; commissioning/producing new performing arts works or remounting significant works; and collaborations with other presenters and/or community organizations. Contact: (202) 682-5658. More information: <http://www.arts.gov/grants/apply/GAP05/Presenting.html>.

Theater

Creation of New Work and 2004-05 Musical Theater Productions, which include commissioning, development and

continued page 29

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production of new musicals and musical adaptations; development programs and labs for new musical theater work; and production or presentation of existing contemporary musicals and work from the musical theater canon that will occur during the 2004-05 season (with project activities beginning on or after Jan. 1, 2005). Contact: (202) 682-5509 (for organizations with names that begin A through H); (202) 682-5511 (for organizations with names that begin I through Q); (202) 682-5020 (for organizations with names that begin R through Z). More information: <http://www.arts.gov/grants/apply/GAP05/Theater.html>.

Visual Arts

Exhibitions; residencies; periodicals, publications, or catalogues; and commissions or public art. Contact: (202) 682-5555. More information: <http://www.arts.gov/grants/apply/GAP05/Visualarts.html>.

E-9-1-1 Technology Facilitated by Grant Program

The deadline to apply for the fourth and final round of funding for wireless E-9-1-1 implementation and enhancement projects from the Public Safety Foundation of America (PSFA) is just around the corner. The organizations that are eligible are those that need financial assistance to upgrade or acquire wireless E-9-1-1 technology. Each applicant can request up to \$100,000. If needed, the applicant can request additional funding; however, if additional funding is requested, the applicant must justify the need for additional assistance.

Wireless E-9-1-1 technology enables public safety answering points (PSAPs) to geographically locate calls to 9-1-1 from mobile phones and, subsequently, improve emergency response times.

Public safety and nonprofit organizations are eligible for grants in the following areas: planning and coordinating; PSAP equipment and technology; strategic deployment initiatives; and education. Planning and coordinating funds could be used to determine how to best implement wireless E-9-1-1 location technology for a single PSAP, or for county, regional or statewide coordination. Grants under the PSAP Equipment and Technology category support hardware and software purchases, upgrades, telephone circuit installations and database creation. Efforts to address implementation challenges and issues related to improving the overall quality of an E-9-1-1 system are eligible for funds under the Strategic Deployment Initiatives area. The Public Safety Foundation of America also funds the development of programs that educate public safety agencies and others about the importance of wireless telephone location technology.

Specific activities funded under the program – as well as projects that are not eligible for funding – are listed online at <http://www.psf.us>, under the link entitled “PSFA Funding

Parameters.” Though it is not required, applicants who can provide “a reasonable amount of matching funds” are preferred.

Applications must include:

- 1) financial statements that clearly document the organization’s financial need;
- 2) evidence that existing financial resources already are committed and, therefore, are not available for E-9-1-1 upgrade activities; and
- 3) information on how the proposed upgrades would facilitate the deployment of wireless E-9-1-1 location technology.

Project budgets are the most important component of the application, and they are acceptable only if they are complete; consist strictly of items that the PSFA funds; contain line item details and prices for all project components; and are accompanied by a narrative that describes the function of each item in the budget.

The funding is typically for one year. Sometimes, however, programs will be supported for up to three years. Proposals for projects lasting more than one year must demonstrate that multiyear support is essential to starting up the new initiative and those specific, measurable outcomes will result. Annual evaluations also will be required of multiyear endeavors.

To apply for assistance, organizations must first complete a pre-application questionnaire. Pre-applications are due **March 5, 2004**. They can be obtained online at <http://www.psf.us>, or by calling (386) 322-2500. Upon completion, they should be sent by e-mail to PSFA@APCO911.org. If responses to the questionnaire indicate that a proposal satisfies PSFA guidelines, pre-applicants will receive full grant applications. The deadline to submit a formal grant application is April 5, 2004. For more information, contact the PSFA’s Grants and Program staff, (386) 322-2500; e-mail, PSFA@APCO911.org.

DOI Seeks Applications for Water Purification Research Program

The Department of the Interior (DOI) is accepting pre-proposals for the Desalination and Water Purification Research and Development (DWPR) Program. The Department is seeking studies and research aimed at reducing the cost of desalting and water purification processes.

continued next page

Local governments, public housing authorities, and nonprofit organizations are some of the entities eligible for DWPR funds in five research areas: membrane process; thermal process; nontraditional and alternative desalination; ancillary and economic improvements; and concentrate issues.

Grantees will need to match at least 50 percent of the project cost.

The deadline to submit a pre-proposal – which cannot exceed six pages in length – is **March 27, 2004**. Pre-proposal packages can be obtained online at <http://www.usbr.gov/pmts/acquisitions/AAMSSol.html>. Though pre-proposals are not mandatory, DOI encourages applicants to submit them.

Orchestras Eligible for Funding

The American Symphony Orchestra League is soliciting applications for the 2004 MetLife Awards for Excellence in Community Engagement. These awards recognize orchestras of all sizes that have instituted programs that have effectively engaged their communities and would serve as models for other orchestral groups.

The awards are based on the following: engagement, orchestra involvement, collaboration, community involvement, innovation, replication and measurable results. Therefore, in their applications, orchestras must explain:

- 1) how they engaged the community – as well as nontraditional audiences – through the program;
- 2) their role – as well as the role of the music director – in shaping or participating in the program;
- 3) whether the program involves partnerships with other organizations to further community outreach initiatives;
- 4) how the program has enhanced and strengthened the orchestra's role in the community as a "cultural citizen";
- 5) how the program offers a new approach to the traditional challenge of audience development and diversity;
- 6) how other orchestras could learn from the program; and
- 7) the impact and success of the program.

Members of the American Symphony Orchestra League are eligible for \$7,500 each. Three orchestras will be recognized this year. Applications can be downloaded from www.symphony.org/edu/metlife/index.shtml.

For more information, contact Polly Kahn, (212) 262-5161; e-mail, pkahn@symphony.org. ■

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