

# The Alabama Municipal JOURNAL

August 2007

Volume 65, Number 2

## CMO Session 025

For dates and locations see p. 24



**Cynthia  
McCollum**  
Madison Councilmember  
and First Vice President  
of the National League  
of Cities



Cynthia McCollum co-leads National League of Cities Delegation on a recent visit to China. See Story p. 25

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Official Publication, Alabama League of Municipalities

August 2007 • Volume 65, Number 2

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*The Alabama Municipal Journal is published monthly by the Alabama League of Municipalities, 535 Adams Avenue, Montgomery, Alabama 36104, telephone (334) 262-2566. Website: www.alalm.org. Single copies, \$2.00. By subscription, \$24.00 per year. Advertising rates and circulation statement available at www.alalm.org or by calling the above number. Statements or expressions of opinions appearing within this publication are those of the authors and not necessarily those of the Alabama League of Municipalities. Publication of any advertisement should not be considered an endorsement of the product or service involved. Material from this publication may not be reprinted without permission.*

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# A Message from the Editor



Ah! Summer in the South! You'd think the heat and humidity would slow life considerably; however, there's seldom a slow time of year for municipalities ... or your League staff.

Congratulations to Mayor Sonny Penhale and the City of Helena for being ranked by *Money* magazine as No. 91 out of 100 on the list of America's Best Places to Live. Helena (pop. 13,500) was the only Alabama city to make the top 100 ranking in the 2007 comparison which focused on communities with populations between 7,500 and 50,000.

Congratulations also to Falkville Town Clerk Belinda Ealey who was recently named 2007 Municipal Clerk of the Year by the Alabama Association of Municipal Clerks and Administrators. Belinda, who has been in her position since 1984, is currently completing the requirements to achieve Master Municipal Clerk Certification.

Here at the League office we're gearing up for annual Policy Committee meetings. The FAIR Committee is scheduled for August 30<sup>th</sup>. EENR meets September 11<sup>th</sup>, TPSC on September 17<sup>th</sup>, CED on September 20<sup>th</sup> and HD on September 21<sup>st</sup>. Each meeting begins at 9 a.m. at League Headquarters in Montgomery. For a complete list of committee memberships, see page 9.

Theresa Lloyd, the League's CMO Program Administrator, has scheduled the next round of CMO training for September. The first session will be held at the Loxley Civic Center on September 13 followed by Auburn University at Montgomery on the 18<sup>th</sup>; the Cahaba Grand Conference Center in Birmingham on the 24<sup>th</sup>; and the Huntsville Marriott Hotel on the 27<sup>th</sup>. Sessions are \$100 and run from 9:30 a.m. to 3:30 p.m. with lunch included in the registration fee. The League's legal staff will conduct this set of CMO programs featuring Procurement Law Overview; Ethics and Conflicts of Interest; and The Official's Guide to Municipal Elections. For more information, see the ad on page 24 or contact Theresa at 334-262-2566.

Speaking of the 2008 elections, the legal staff is currently working on the *2008 Elections Manual*, which should be completed in September. Yes, we know you want it **now**; however, Act 2006-570, which made substantial changes to Alabama's election laws, including renumbering many Code provisions, has not yet obtained preclearance from the Justice Department. Once the Act has precleared, the manual can be completed. The 2008 Elections Calendar, which we ran in the July *Journal*, is posted on our website at [www.alalm.org](http://www.alalm.org).

The League's Loss Control division is also preparing for a busy fall with seminars planned for September 5<sup>th</sup> at the Wetumpka Civic Center; September 6<sup>th</sup> at the Orange Beach Community Center; September 12<sup>th</sup> at the Hoover Public Safety Center; and September 13<sup>th</sup> at the Oxford Civic Center. Sessions are held from 9 a.m. until 3 p.m. and are \$20 per person, which includes lunch. Topics to be covered: Hiring, Firing and Retention; Slip Trip and Fall Hazards; Developing a Safety Culture; and Coping with Paperless Workers Compensation Reporting. For more information, call Donna Wagner at 334-262-2566.

The Alabama Association of Municipal Attorneys (AAMA) recently mailed registration materials for its annual Fall Municipal Law Conference scheduled for October 11-13 at the Bay Point Marriott in Panama City, Florida. Municipal attorneys, judges and prosecutors are encouraged to attend. For more information, see page 26 of this publication or contact Sharon Carr at 334-262-2566.

I'll close by encouraging you to enter the League's inaugural Municipal Photography Contest. The winning photo will be featured on the cover of the League's *2008 Annual Directory and Vendor Listings* which is distributed each year in January. Other entries could be used in various League publications throughout the year. This is an excellent opportunity to engage your community in the process. You may want to consider having a competition with your local high school(s) and submitting the winner of your community competition as your entry to the League's contest. Pictures of municipal buildings, parks, streets downtowns, city festivals ... all are acceptable. All entries must be received at League headquarters by November 16. Complete contest guidelines, as well as an official entry form, are posted at [www.alalm.org](http://www.alalm.org).

Carrie

# The President's Report



Charles W. "Sonny" Penhale  
Mayor of Helena



## AMFund Provides Low-Cost Financing to ALM Members

The Alabama Municipal Funding Corporation (AMFund) recently closed loans for two more Alabama municipalities – Loxley and Fayette – for a total of \$1.2 million.

To assist municipalities throughout the state, the League developed AMFund, a program to provide low-cost financing to ALM members. AMFund's first bond issue closed on January 12, 2006, loaning approximately \$18 million to seven municipalities for various public purposes. Over the course of its first year, AMFund held three additional closings for seven additional municipalities. To date, AMFund has loaned approximately \$26 million to the following municipalities: Attalla, Calera, Childersburg, Cowarts, Decatur, Fayette, Foley, Gadsden, Hayneville, Jasper, Littleville, Louisville, Loxley (three loans), Rogersville and Southside. The League is very appreciative to these municipalities for their support.

### How Does AMFund Work?

Tax-exempt notes are issued and the proceeds fund the AMFund program, from which ALM members can borrow at low tax-exempt interest rates to fund or refund almost any municipal project, including new construction, repairs, equipment and refinancing of existing debt. AMFund takes advantage of the economies of scale offered through pooling several individual member financial needs into larger AMFund issues, usually giving municipalities a lower all-in yield, or overall cost, by allowing them to:

- reduce issuance costs,
- lower pricing and rates and
- simplify dept issuance procedures.

ALM members can borrow from AMFund by completing a simple application, generally including three years of audited financial statements, and, once credit is approved, by passing required ordinances and executing various closing documents and certificates. Depending on the economic life of the financed project, up to 30 years can be taken to repay, and nearly any principal repayment schedule can be accommodated. The entire amount can even be paid off early although early termination of a fixed rate loan *may* result in an additional cost.

AMFund is managed by a board of directors composed of five municipal elected officials. Mayor Roy Dobbs from Berry chairs this board and Councilmember Charles Woods from Childersburg serves as Vice Chair. The other members of the board are Mayors Jim Byard of Prattville, Wally Burns of Southside and Howard Shell of Atmore. We are grateful for their assistance with and sound management of AMFund.

The League would also like to thank the membership of the Alabama League of Municipalities for their support and endorsement of this program and we encourage you to consider applying for a loan from AMFund for your financing needs. For additional information, contact League staff members Greg Cochran or Ken Smith at **334-262-2566**. ■



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# Municipal Overview

## League Policy Committee Members



Perry C. Roquemore, Jr.  
Executive Director

The League has five standing policy committees comprised of mayors and councilmembers from each congressional district in the state. The committee chairs recently made appointments to these important League committees which will convene in late August and September at League headquarters to hear from state and federal resource advisors and to update their policy statements for the League's *Policies and Goals* document. This important document will be used by the Committee on State and Federal Legislation when it meets in November to develop the League's Legislative Package for the 2008 Regular Session. The League would like to thank the following committee members for their service in this important policy process:

### **Committee on Finance, Administration and Intergovernmental Relations**

**Chair:** Council Member Debbie Quinn, Fairhope

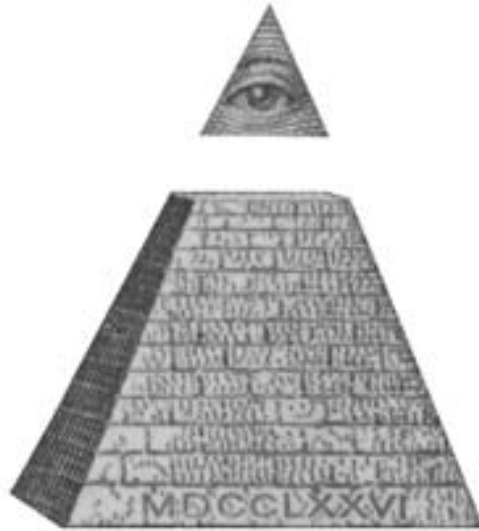
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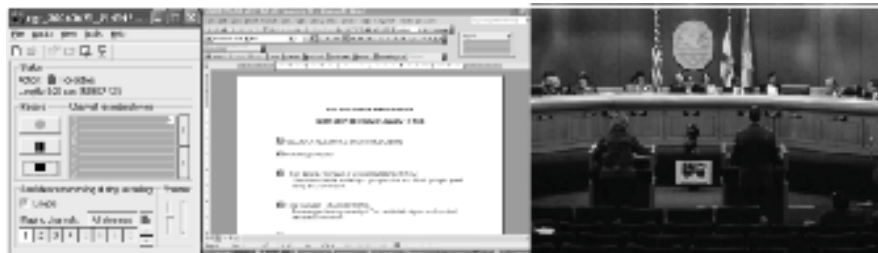
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# The Legal Viewpoint

By Ken Smith  
Deputy Director/General Counsel



## License Bill of Rights

In 1992, the Alabama Legislature passed the Taxpayer's Bill of Rights (BOR), Section 40-2A-1, et seq., Code of Alabama, 1975. These provisions were made specifically applicable to municipal sales and use taxes in 1998 by the passage of the Local Tax Simplification Act of 1998, Act No. 98-192 and the Local Tax Procedures Act, Act No. 98-191.

The applicability of the BOR to other municipal taxes, though, including business licenses, was questionable at best. This issue has now been resolved by the adoption by the Legislature of Act 2006-586, the Municipal Business License Reform Act in 2006. The Legislature, in this Act, adopted a BOR that applies to the assessment and collection of municipal business licenses.

The BOR in Act 2006-586 was modeled directly on the one for sales and use taxes in Title 40. In fact, there is little, if any, deviation between the two. Municipalities with procedures in place for their sales and use taxes should be able to use those procedures for the collection of licenses as well. Municipalities who collect their own licenses, but who have their sales and use taxes collected by other agencies may need to alter their procedures somewhat to comply with the new law. This article is intended to provide an overview of the BOR as it relates to municipal licensing.

### Records Maintenance

Section 11-51-190 requires taxpayers to keep and maintain an accurate and complete set of records, books and other information. These records must be sufficient to allow the municipality to determine the correct amount of the tax owed. These records must be open and available for inspection by the municipality upon request at a reasonable time and location. The municipality also has the authority to examine these books and records for "any purpose necessary for the proper administration of any matter under the jurisdiction of" the municipality.

### Procedures for Entry of Preliminary and Final Assessments

Section 11-51-191 of the Code governs how municipalities assess taxpayers for licenses taxes that are due, and also controls the payment of refunds to taxpayers.

If the municipality determines that the amount of sales

or use tax reported on a return is incorrect, or if no return is filed, the department may calculate the correct tax owed. The municipality will base its calculations on the most accurate and complete information reasonably attainable. This seems to place a duty on the municipality to conduct some sort of reasonable search for information on which to base the preliminary assessment.

At or before the issuance of a preliminary assessment, Section 11-51-186(2) requires the taxing jurisdiction to provide the taxpayer in simple and non-technical terms with:

- a. A written description of the basis for the assessment and any penalty asserted with respect to the assessment, and
- b. A written description of the method by which the taxpayer may request an administrative review of the preliminary assessment.

Once these steps are complete, the municipality may then enter a preliminary assessment for the correct tax, including any applicable penalty and interest. If the taxpayer agrees in writing with the preliminary assessment of the municipality, the municipality may then enter a final assessment for the taxes, penalties, and interest owed.

### Time Limitations

Any preliminary assessment must be entered within four years of the due date of the form, or four years from the date the form is filed with the municipality, whichever is later. There are exceptions to this time limitation:

- 1. A preliminary assessment may be entered at any time if no form is filed as required, or if a false or fraudulent form is filed with the intent to evade a tax;
- 2. A preliminary assessment may be entered within six years of the due date of the form, or six years from the date the form is filed with the municipality, whichever is later, if the taxpayer omits from the taxable base an amount properly includable therein which is in excess of 25 percent of its gross receipts or other applicable business license tax base.
- 3. A preliminary assessment may be entered within five years from the due date of the license form if the taxpayer or its authorized agent fails or refuses to execute and return to the taxing jurisdiction or its agent a written extension of the statute of limitations on issuing preliminary assessments for up to eight months, as requested by the municipality or its agent, within 30 days after receipt of the request for the extension.



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## **Service of the Preliminary Assessment**

The preliminary assessment must be mailed promptly to the taxpayer's last known address. The notice must be sent first class U.S. mail, or by certified mail with return receipt requested. The municipality also has the option of serving notice by personal delivery.

## **Review of Disputed Preliminary Assessments**

A taxpayer who disagrees with a preliminary assessment may file a written petition for review with the municipality within 30 days from the date of the entry of the assessment. The petition must set out specific objections. If the petition is timely filed, or if the municipality deems necessary, the municipality's license officer must schedule a conference to allow the taxpayer and the municipality to attempt to reach an agreement as to the amount owed, if any.

If the petition is not timely, or if the license officer, after further review, determines that the preliminary assessment should be upheld in whole or in part, the municipality may make the assessment final. Whenever practicable, the license officer must complete the review of the taxpayer's petition within 90 days following the day of the conference or the filing of the petition, whichever is later. Interest and penalties computed to the date of the entry of the final judgment should be included in this assessment.

At or before the issuance of a final assessment, Section 11-51-186(3) provides that the taxing jurisdiction must inform the taxpayer by a written statement of his or her right to appeal to the circuit court.

A final assessment must be mailed to the taxpayer's last known address. If the assessment is for a tax of \$500 or less, notice must be made by first class or certified mail with return receipt requested. The municipality must provide notice by certified mail if the assessment is for more than \$500. In either case, the municipality may provide notice by personal delivery.

## **Appeal of Final Assessments**

A taxpayer may appeal a final assessment by filing notice of appeal with the license officer within 30 days. The license officer shall promptly forward a copy of the notice of appeal and related documents to the administrative hearing officer appointed by the taxing jurisdiction to hear appeals of final assessments of the municipality's business license taxes. The administrative hearing officer functions in a manner similar to the Administrative Law Judge of the Department of Revenue and must be impartial and reasonably knowledgeable of the business license laws and the municipality's business license code or ordinances. The administrative hearing officer may be an employee of the taxing jurisdiction or otherwise, but may not be compensated for his or her services in whole or in part based on the portion or amount of the final assessment that he or she determines should be upheld, or any similar contingency. No filing fee or supersedeas bond shall be required by the taxing jurisdiction for these appeals.

In lieu of following this appeal procedure, a taxpayer may appeal the final assessment to the circuit court of the county having jurisdiction over the municipality which issued or on whose behalf the final assessment was issued. Notice of the appeal must be filed both with the circuit clerk of the court and with the municipal clerk. Notice of appeal must be given within 30 days from the entry of the final assessment.

The taxpayer must also either pay the tax, interest and penalties, or file a supersedeas bond with the court in double the amount of the license tax, interest and penalty shown on the final assessment. If the taxpayer can convince the circuit court clerk that he or she has a net worth of \$20,000 or less, including his or her homestead, the taxpayer may appeal without paying the tax or filing a bond.

The taxpayer may either appeal to the administrative law division or to court, even though he or she has paid the tax before taking the appeal.

These procedures for perfecting an appeal are mandatory. If these prerequisites are not satisfied, the appeal must be dismissed for lack of jurisdiction.

On appeal to circuit court, the final assessment is presumed correct. The taxpayer bears the burden of proving that the final assessment is incorrect.

A court cannot enjoin the collection of a tax due nor can it suspend payment of the tax during the appeal. If the assessment is reduced, any overpayment shall be immediately refunded to the taxpayer.

Either the taxpayer or the taxing jurisdiction may appeal to the circuit court from a final order issued by the administrative hearing officer by filing a notice of appeal with the administrative hearing officer and with the circuit court of the county having jurisdiction over the municipality which issued, or on whose behalf the final assessment was issued. Notice must be filed within 30 days from the date of entry of the final order. The procedures, presumptions, and related matters and rules shall conform in all material respects to those applicable to appeals from final orders of the Department of Revenue's Administrative Law Division under Section 40-2A-9.

## **Refund Procedures**

Section 11-51-191(g) provides that any taxpayer may file a petition for refund with the taxing jurisdiction for any overpayment of business license tax erroneously paid to that jurisdiction. If a final assessment for the tax has been entered by the taxing jurisdiction, a petition for refund of all or a portion of the tax may be filed only if the final assessment has been paid in full prior to or simultaneously with the filing of the petition for refund. A petition for refund must be filed within either:

- a. Three years from the date that the business license form was filed, or
- b. Two years from the date the business license tax was paid, whichever is later or
- c. If no form was timely filed, two years from the date of payment of the business license tax.

The municipality must either grant or deny a petition for

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refund within six months from the date the petition is filed, unless the period is extended by written agreement between the taxpayer and the taxing jurisdiction. The municipality must notify the taxpayer of its decision concerning the petition for refund by first class U.S. mail or by certified U.S. mail, return receipt requested, sent to the taxpayer's last known address. If the municipality does not grant a full refund within the time provided herein, the petition for refund shall be deemed to be denied.

If the petition is granted, or the taxing jurisdiction or a court otherwise determines that a refund is due, the overpayment shall be promptly refunded to the taxpayer by the taxing jurisdiction, together with interest to the extent provided in Section 11-51-192 (NOTE: Section 11-51-192 states that "interest shall be computed at the same rate prescribed by Section 11-51-208(f) relating to interest on delinquent or overpaid sales and use taxes levied by self-administered municipalities.")

The amount of overpayment plus any interest due may first be credited by the taxing jurisdiction against any outstanding final tax liabilities due and owing by the taxpayer to the jurisdiction, and the balance of any overpayment shall be promptly refunded to the taxpayer. If any refund or part thereof is credited to any other tax by the taxing jurisdiction, the taxpayer shall be provided with a written detailed statement showing the amount of overpayment, the amount credited for payment to other taxes, and the amount refunded.

A taxpayer may appeal from the denial for refund by filing a notice of appeal with the clerk of the circuit court of the county in which the municipality denying the petition for refund is located. Notice must be filed within two years from the date the petition is denied. The circuit court shall hear the appeal according to its own rules and procedures and shall determine the correct amount of refund due, if any. If an appeal is not filed with the appropriate circuit court within two years of the date the petition is denied, then the appeal shall be dismissed for lack of jurisdiction.

#### **Failure to Provide Notices**

The failure of a municipality or its designee to provide written notices prior to entering either a preliminary or final assessment as required by Section 11-51-186 (see above) does not prohibit the municipality from assessing any business license tax otherwise due, nor does this excuse the taxpayer from timely complying with any time limitations. However, if the municipality or its designee fails to substantially comply with the provisions of this section, the governing body of the municipality, its license officer, or another employee designated by the governing body shall, upon written application by the taxpayer or upon good cause shown, abate any penalties and waive any interest otherwise arising from an examination or assessment.

#### **Applicability to Other Taxes**

Section 11-51-191(c) gives the municipality the authority to adopt an ordinance to make the provisions related to preliminary

and final assessments and refunds applicable to other taxes not already governed by the Alabama Taxpayers' Bill of Rights and Uniform Revenue Procedures Act, Chapter 2A, Title 40.

#### **Interest**

Section 11-51-192 provides that the governing body of any municipality may elect, by the adoption of an ordinance, to assess interest on any business license tax delinquency. If assessed, interest on any delinquency shall be charged from the due date of the tax. If assessed by the municipality, interest shall be computed at the same rate prescribed by Section 11-51-208(f) relating to interest on delinquent or overpaid sales and use taxes levied by self-administered municipalities.

If the municipality elects to assess interest on business license tax delinquencies, it must also pay interest at the same rate on any refund of business license tax erroneously paid to the jurisdiction. Interest shall be computed on any overpayment from the date of the overpayment to the taxing jurisdiction, provided that interest on any refund of business license taxes of a municipality not administered by the Department of Revenue under Section 11-51-180 shall be limited in accordance with the principles of Section 11-51-208(f).

#### **Confidentiality of Information**

Section 11-51-196 requires keeping license information confidential. Specifically, this section states that:

"It shall be unlawful for any person to print, publish, or divulge, without the written permission or approval of the taxpayer, the license form of any taxpayer or any part of the license form, or any information secured in arriving at the amount of tax or value reported, for any purpose other than the proper administration of any matter administered by the taxing jurisdiction, or upon order of any court, or as otherwise allowed in this section."

No damages, attorney fees, or court costs can be assessed against elected officials, officers, or employees of a municipal government, or against the municipal government itself, for improper disclosure of taxpayer information. However, any person who willfully violates this restriction shall be convicted of a Class A misdemeanor for each disclosure.

This section does not prohibit disclosing, upon request, the fact that a taxpayer has or has not purchased a business license or of the name and address of a taxpayer purchasing or renewing a business license from the municipality. Additionally, statistical information pertaining to taxes may be disclosed to the municipal governing body upon their request.

The governing body of a municipality may adopt from time to time an ordinance consistent with Section 40-2A-10(d) to permit the exchange of business license information between and among the municipality and other municipalities adopting similar ordinances or between county and state governments, subject to the confidentiality restrictions imposed by this section.



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## **Taxpayer's Audit Rights**

These provisions do not apply to criminal investigations or investigations relating to the integrity of any officer or employee of the taxing jurisdiction.

At or before examining the books and records of a taxpayer, the municipality must provide the taxpayer with a written description, in simple and non-technical terms, of the role of the taxing jurisdiction and the taxpayer during the examination and a statement of the taxpayer's rights.

Except in cases involving suspected criminal violations, the taxing jurisdiction must conduct an examination of a taxpayer during regular business hours after providing reasonable notice to the taxpayer. A taxpayer who refuses a proposed time for an examination on the grounds that the proposed examination would cause inconvenience or hardship must offer reasonable alternative times and dates for the examination.

At any and all stages of the proceedings, a taxpayer is entitled to be assisted or represented, at his or her own expense, by an authorized representative. The taxing jurisdiction shall prescribe a form by which the taxpayer may designate this person to represent him or her in the conduct of any proceedings, including collection proceedings, resulting from actions of the taxing jurisdiction. In the absence of this form, the taxing jurisdiction may accept such other evidence that a person is the authorized representative of a taxpayer as it considers appropriate. Representation for these purposes is not considered the practice of law, meaning that individuals other than lawyers may serve in this capacity.

A taxpayer may make an audio recording of any in-person interview with any officer or employee of the taxing jurisdiction relating to any examination or investigation by the taxing jurisdiction. The taxpayer must, however, provide reasonable advance notice to the taxing jurisdiction of his or her intent to record. The recording is at the taxpayer's own expense and with the taxpayer's own equipment.

The taxing jurisdiction may record any interview if the taxpayer is recording the interview, or if it gives the taxpayer reasonable advance notice of its intent to record the interview. The taxing jurisdiction shall provide the taxpayer with a copy of the recording, but only if the taxpayer provides reimbursement for the cost of the transcript and reproduction of such copy. The cost charged for the recording must be reasonable.

## **Employees and Designees**

Section 11-51-186 places certain rights and obligations on municipalities and their designees:

1. Municipalities shall make available continuing education programs to train non-clerical employees of their revenue departments.

2. A municipality may not use the amounts of taxes assessed by an employee of the municipality as the basis of a production quota system for employees, or as a basis for evaluating an employee's or a designee's performance.

3. Designees and agents of a municipality – this refers to private collection firms – are subject to the same responsibilities and restrictions as are imposed on them by Chapter 51 of Title

11 and by Sections 40-2A-12 to 40-2A-14.

Failure to comply with any of these rights and obligations above does not prohibit the municipality from assessing any business license tax otherwise due, nor does this excuse the taxpayer from timely complying with any time limitations. However, in the event of a substantial failure to comply, the governing body of the municipality, its license officer, or another employee designated by the governing body shall, upon written application by the taxpayer or upon good cause shown, abate any penalties and waive any interest otherwise arising from an examination or assessment.

## **Abatement of Penalty**

Section 11-51-186(d) requires a municipality to abate any penalty attributable to erroneous written advice (including e-mail) furnished to a taxpayer or taxpayer's representative by an employee or agent of the municipality's revenue department or of its designee. However, this subsection applies only if:

1. The employee or agent of the revenue department or the designee provided the written advice in good faith while acting in his or her official capacity;

2. The written advice was in response to a specific written request of the taxpayer or the taxpayer's representative;

3. The written advice was reasonably relied on by the taxpayer, or by the taxpayer's representative in advising the taxpayer, and

4. The penalty did not result from the taxpayer's or the representative's failure to provide complete and accurate information or from a change in law or a new judicial interpretation of existing law.

## **Audit Limitations**

Section 11-51-187 prevents examining a taxpayer for business license purposes more than once every three license-year-cycle, unless reasonable cause exists, and the taxpayer is given notice consistent with Section 40-2A-13. Section 40-2A-13 requires notifying "the taxpayer in writing that an additional examination is necessary, together with the basis or bases for the additional examination." What constitutes "reasonable cause" for this purpose is not further defined in Act 2006-586.

Additional examinations can also be conducted if the taxpayer fails or refuses to provide to the taxing jurisdiction a true and correct copy of its federal income tax return for the prior two license years (or portions thereof) within 14 days after written request has been mailed or personally delivered to the taxpayer.

The following activities shall not constitute a business license examination for purposes of this restriction:

(1) The mere contact of a taxpayer or its authorized representative by a municipality or its agent for the purpose of obtaining information to confirm any information provided by the taxpayer in connection with its application for or renewal of its business license, or

(2) An inspection of the taxpayer's books and records consistent with one of the exceptions for sales and use tax examinations listed in Section 40-2A-13(c). ■

# LEGAL CLEARINGHOUSE

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

## **Application of Subdivision Regulations to Multi-Family Developments**

A recent decision from the Alabama Court of Civil Appeals has held that a county's application of its subdivision regulations to a condominium development does not violate the Alabama Uniform Condominium Act. *Dyess v. Bay John Developers II, L.L.C.*, 2007 WL 1519050 (Ala. Civ. App. 2007).

In *Dyess*, a developer in Baldwin County sought a declaratory judgment and injunctive relief against the county regarding the county's assertion that it must approve the condominium as a subdivision before issuing a building permit to proceed with the development of the condominium. One of the arguments presented to the court by the developer was that the application of subdivision regulations to a condominium violated the Alabama Uniform Condominium Act found at Section 35-8A-102 et seq., of the Alabama Code of 1975. The court determined that so long as the subdivision regulations do not impose requirements upon a condominium which are not imposed upon physically identical developments under a different type of ownership (i.e. apartment complexes) then it would not violate the act to apply subdivision regulations to a condominium.

While the court's opinion decides an issue relating to Baldwin County's subdivision regulations and the state law authorizing counties to regulate subdivisions, it does set a precedent for the definition of any subdivision, whether regulated by a county or a municipality. Section 11-52-1 of the Code of Alabama 1975, defines a subdivision as "The division of a lot, tract or parcel of land into two or more lots, plats, sites or other divisions of land for the purpose, whether immediate or future, of sale *or of building development* ...". Based on this definition and the court's rationale in the *Dyess* opinion, there is a strong implication that municipalities must treat multi-family developments (whether condominium or apartment) as subdivisions. Questions regarding this case and its application to local regulation issues should be referred to your municipal attorney.

## **LEGAL SUMMARIES**

### **ALABAMA COURT DECISIONS**

**Drug Forfeitures:** Forfeiture of owner's vehicle, based on possession of methamphetamine by the owner's son, who was driving the vehicle and was stopped for speeding, was not warranted. Evidence of the owner's awareness of son's 10-year-old drug conviction alone, without any evidence indicating that the owner was aware of recent drug activity by the son, was not enough to support a conclusion that the owner knew or should have known that her truck might be used to transport drugs, and it was unlikely that illegal drugs had been in vehicle during any time that the owner could have discovered them. *Kuykendall v. State*, 955 So.2d 442 (Ala.Civ.App.,2006)

**Licenses:** A roofing company filed for writ of mandamus to compel the city clerk to reissue a license after it was revoked for incomplete application. The roofing company failed to establish that it was entitled to a business license to operate a dirt pit as a matter of law, even though the clerk had initially issued the license believing it was unnecessary to obtain approval by the inspection department or planning commission and no city official raised questions regarding alleged deficiencies prior to the roofing company's filing the petition for mandamus. The city had a procedure for obtaining a business license; the procedure was not followed in initially issuing roofing company's license; and city could not be estopped from following the established procedure. *Presley Roofing & Const. Co., Inc. v. Lewis*, 953 So.2d 1264 (Ala.Civ.App., 2006)



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**Tracy Roberts**  
Assistant General Counsel



**Schools:** Education warrants issued by the county to fund a grant program for local school districts to fund capital improvements or retire debt were not chargeable against the county's constitutional debt limit, where the county secured the warrants with a pledge of education taxes, which was a new source of funding that was not available to the general fund. School buildings that were to be acquired with proceeds of the education warrants were "public facilities" within the meaning of the statute authorizing counties to issue warrants for acquisition of public facilities, even if the county did not ultimately own the buildings. The legislature included school buildings in the definition of public facilities, the legislature knew that school buildings were operated by local school boards, and the statute permitted the county to acquire public facilities not only for itself, but also for general benefit of the public. *Chism v. Jefferson County*, 954 So.2d 1058 (Ala., 2006)

**Subdivisions:** Application of subdivision regulations to a condominium development does not violate the Alabama Uniform Condominium Act so long as the regulations do not impose requirements upon a condominium which are not imposed upon physically identical developments under a different type of ownership (i.e. apartment complexes). *Dyess v. Bay John Developers II, L.L.C.*, 2007 WL 1519050 (Ala. Civ. App. 2007).

#### UNITED STATES COURT DECISIONS

**Search and Seizure:** Following a traffic stop, the defendant was arrested for manufacturing methamphetamine when evidence was found in the automobile in which he was riding. The United States Supreme Court held that the defendant, as a passenger, was seized and was entitled to challenge the legality of the stop. The passenger of an automobile that was pulled over by a police officer for a traffic stop was "seized" under the Fourth Amendment from the moment the automobile came to a halt on the roadside and, therefore, was entitled to challenge the constitutionality of the traffic stop; any reasonable passenger would have understood police officers to be exercising control to the point that no one in the automobile was free to depart without police permission. *Brendlin v. California*, 127 S.Ct. 2400 (U.S. 2007).

#### ATTORNEY GENERAL'S OPINIONS

**Parking Violations:** If a defendant fails to appear on a parking ticket, a municipal judge may issue a supplemental summons advising that the defendant will be subject to arrest for contempt for again failing to appear. If the defendant fails to appear on the supplemental summons the municipal judge may issue a warrant for the arrest of the defendant, and if found in contempt, the defendant may be fined and placed in jail for up to five days. If the defendant appears and a fine is imposed, but the defendant fails to pay, a municipal judge may issue a warrant. The municipal judge may place the defendant in jail until the fine is paid (or no longer than one day for each \$15 of the fine), he may order the defendant's employer to withhold payments from wages to pay fines or he may reduce the fine. A municipality may bring a civil action to recover a fine on an adjudicated ticket subject to the twenty-year statute of limitations for an action on a judgment. A municipality may not impose a late fee. 2007-103

**Firefighters:** Current law does not specifically prohibit persons 16 years of age and older from riding in fire trucks to the scene of a fire. If the Alabama Department of Labor determines that such activities are a danger to life and limb, they may promulgate rules and regulations that regulate or restrict the ability of persons who are under 18 years of age. 2007-104

#### ETHICS COMMISSION ADVISORY OPINIONS

**AO No. 2007-12:** There is nothing contained in the Alabama Ethics Law that would prohibit a State agency from instituting policies with stricter guidelines than those contained in the Alabama Ethics Law. ■

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# Alabama Conference of Black Mayors Celebrates 35th Anniversary



Members of the Alabama Conference of Black Mayors visited League headquarters in early July. First formed in 1972, the organization recently celebrated its 35th anniversary. Pictured from left to right: Mayor Johnny Ford, Tuskegee; Perry Roquemore, Executive Director, ALM; Mayor Ron Davis, Prichard; Mayor Fletcher Fountain, Fort Deposit; and Mayor John McGowan, Union Springs.

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## DATES AND LOCATIONS

### Loxley

September 13, 2007  
Loxley Civic Center

### Montgomery

September 18, 2007  
Auburn University at Montgomery

### Birmingham

September 24, 2007  
Cahaba Grand Conference Center

### Huntsville

September 27, 2007  
Huntsville Marriott Hotel



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# Cynthia McCollum Represents National League of Cities in China

By: Carrie Banks, Communications Director, ALM

NLC First Vice President and Madison Councilmember Cynthia McCollum recently returned from a 10-day trip to China sponsored by the National Committee on United States-China Relations. The group of 11 delegates, which included municipal officials from California as well as NLC Executive Director Don Borut, traveled to China to promote municipal dialogue between the two countries. McCollum served as the Delegation Co-leader with Jim Madaffer, First Vice President, California League of Cities and Council Member, San Diego, California.

Established in 1966, the National Committee on United States-China Relations is a private, non-partisan, non-profit organization founded to promote understanding and cooperation between the United States and Greater China and to create opportunities for informed discussion and debate about issues of common interest and concern to the United States, mainland China, Hong Kong and Taiwan.

McCollum, who had never traveled abroad, said she went to China expecting to see many impoverished areas. “I did see some of that, but I was impressed with how modern and clean most of the areas were that we visited,” she said. “We noticed the city of Qingdao (a coastal city) was powering their street lights with little windmills on top of the poles, which were really beautiful structures.”

Her delegation met with several business, academic, civic and government leaders, including the mayor of Beijing and the deputy secretary general of the Qingdao Municipal Government. On average, meetings with officials lasted approximately one hour and, according to McCollum, were interesting and useful. With a population exceeding 1.3 billion, infrastructure issues are a significant challenge for China. “One of the things that struck me the most was that they (people in China’s cities) never see blue sky because it’s always hazy from smog, cars and factories . . . that was just unimaginable to me,” she said.



Cynthia McCollum with Vincent Lo, Chair of Shui On Development Company.

McCollum said the trip to China was extremely valuable. “It’s very obvious that China is going to be a major power in the world so we need to ensure that we keep the channels of communications open so we can learn from each other.”

McCollum will become NLC President during the Congress of Cities to be held in New Orleans this November – the first Alabama official elected to this prestigious position. Her national platform will be to work closely with both the Democratic and Republican parties throughout the upcoming election year. “We know FY 08 is going to be an important year for this country because we will be choosing our next President,” McCollum said, “and so we (the NLC leadership) collectively decided to focus on getting our message to the Presidential candidates in hopes that, whoever wins, the transition team will pull NLC into the fold from the beginning.”

To that end, McCollum will be attending both the Democratic and Republican National Conventions. She said she and NLC will work with both parties to ensure that when they need information on cities or are faced with issues affecting cities they will know to use NLC as their main resource. In addition, she said NLC will also focus on comprehensive immigration reform and transportation issues since both have a great impact on municipalities throughout the country. ■

# AAMA Fall Municipal Law Conference



October 11 – 13, 2007



The AAMA fall conference has been scheduled for October 11 – 13, 2007, at the Bay Point Marriott Resort in Panama City, Florida. This year's meeting promises to be exciting and informative.

The fall conference begins at 1:00 p.m. October 11, Thursday afternoon, with a joint session for attorneys, prosecutors and judges. This session will cover the ethical issues presented by metadata—the hidden information embedded in every electronic document you create. Every lawyer must be aware of the implications of metadata. This topic should qualify for ethics credit.

The Thursday afternoon session will also include an overview of high speed police chases following the U.S. Supreme Court decision in *Scott v. Harris* presented by an attorney who represented the sheriff's deputy in the case. This session will also provide updates on Attorney General's Opinions and on the recently concluded 2007 legislative regular session.

A reception follows the Thursday afternoon session so that you can meet informally with other municipal legal representatives. On both Friday and Saturday morning, two separate concurrent sessions will be held, one for attorneys and another for prosecutors and judges. As always, you are free to attend either session, or switch between sessions as desired.

You should definitely plan to bring your family to this year's meeting. Bay Point is truly a first-class resort. Friday and Saturday afternoons are free to explore the area or just to relax. Overlooking beautiful St. Andrew's Bay, Bay Point offers top-rated golf courses and has numerous tennis courts. There are a number of swimming pools and outstanding restaurants on-site. Bay Point even has a sandy beach on the Bay where you can arrange for a wide array of thrilling water sports, include wave runner rides and dolphin tours. Additionally, the Resort has a marina on-site and can arrange fishing expeditions. Plus, the Bay Point spa offers a full set of treatment options.

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