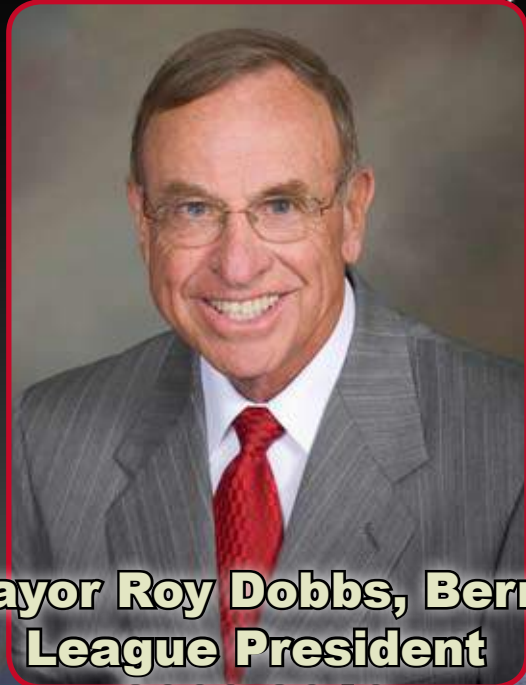


The Alabama Municipal JOURNAL

July 2009

Volume 67, Number 1



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League President
2009-2010**



**Mayor Charles Murphy
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Official Publication, Alabama League of Municipalities

July 2009 • Volume 67, Number 1

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Contents

<i>A Message from the Editor</i>	4
<i>The Presidents's Report</i>	5
League of Municipalities Provides Valuable Resources	
<i>Municipal Overview</i>	7
NLC Program Offers Prescription Discounts to City Residents	
<i>Final Report on the 2009 Regular Session</i>	9
<i>The Legal Viewpoint</i>	
Whose Tree is it Anyway?	13
<i>Legal Clearinghouse</i>	20
<i>Obituaries</i>	27
<i>Remembering Nina Miglionico</i>	28
2010 Municipal Photo Contest	30

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A Message from the Editor



Dull silver, extended-cab Ford pickup, middle of nowhere, 1981

During the summer of 1981, when I was 12, my parents took me, my brother and four cousins on a month-long, cross country trip from the east coast to the west. We traveled in a dull silver, extended-cab Ford pickup with a cream-colored pop-up camper in tow. Ranging in ages from 9 to 16, us six youngsters rode in the truck bed covered by a camper shell – the kind with roll-out windows and no air conditioning. Dad designed and built two sets of plywood box benches covered in scratchy, blue outdoor carpet to fit over each wheel well and double as storage for our clothes, food, camping gear and miscellaneous necessary items. For cushioning, we used our sleeping bags, pillows and each other.

We rode for days without radio, DVD players, handheld electronic games, cell phones, iPods or AC. The only entertainment we had was the scenery and our imaginations. (Today’s adolescent wouldn’t last 10 minutes.) If we needed a bathroom break, we tapped on the window of the truck cab and held up a sign. After the first few days, however, we simply tapped on the window and pointed to the youngest cousin – who seemed to need a break every 45 minutes. We read books, played games and fought constantly. Each night we stopped at a KOA (Kampground of America) where we used the facility’s bathhouses and laundry room and then bedded down in the pop-up camper. (Again, no air conditioning.) We ate canned sardines, beanie-weenies, Vienna sausages, hot dogs, baked beans and crackers. Sometimes Mom would mix all the leftovers together and call it “hobo stew”. To this day, I won’t eat sardines, beanie-weenies or Vienna sausages. Dad insisted we drink apple juice daily because he didn’t want any children with gastrointestinal issues, particularly in the middle of nowhere. (You’d be surprised how much “nowhere” we actually saw on that trip. My hometown, Bladenboro, NC, wasn’t so small after all.) I don’t drink apple juice now either.

We visited every national park of any significance as well as Disneyland and San Francisco. We saw incredible natural beauty and traveled over terrain that had no similarities to rural North Carolina. We were amazed by the endless lanes of traffic in Los Angeles and overwhelmed by the earthy vastness of the desert. Carlsbad Caverns, Canyon de Chelly, Petrified Forest, Montezumas Castle, the Grand Canyon, Zion Canyon, Bryce Canyon, Sequoia National Park, Yosemite, the Grand Tetons, Yellowstone, Mount Rushmore, Badlands National Park, Mammoth Cave ... Dad had our daily schedule planned nearly to the minute, including bathroom breaks (which changed constantly thanks to my youngest cousin’s tiny bladder).

After a month of togetherness, we arrived back in North Carolina with an entirely new perspective on the world. I was particularly thankful I had one sibling instead of five. No doubt my parents were thankful they had two children rather than six. Before school started that fall, Dad had each of us *write a report* on our favorite sight. We then *gave a presentation* – complete with slides – to the Rotary Club. That’s right. Each child wrote a paper and then presented it to a group of adults. Good times! Traveling is an education. Life is an adventure.

Congratulations to Gulf Shores City Clerk Renee Moore, MMC, who was chosen 2009 Clerk of the Year during the Alabama Association of Municipal Clerks and Administrators’ (AAMCA) summer conference last month. Renee is a past president of AAMCA, has served a three-year term on the International Institute of Municipal Clerks (IIMC) Board representing Region 3 and serves on IIMC and AAMCA committees each year.

I encourage you to enter the League’s third annual “Municipal Photography Contest” (see page 30). The winning photo will be featured on the cover of the League’s *2010 Annual Directory* which is distributed each year in January. Other entries may be used in the *Alabama Municipal Journal*, as well as other League publications, throughout the year. Pictures of municipal buildings, parks, streets downtowns, city festivals ... all are acceptable. Complete information is posted on our website at www.alalm.org.

Carrie

The President's Report



Roy H. Dobbs
Mayor of Berry

League of Municipalities Provides Valuable Resources

Shortly after I was elected League president, I received a congratulatory letter from my mentor and friend, Guthrie Smith, mayor of Fayette for 37 years from 1955 to 1992 and League President from 1965-66. Guthrie, who will celebrate his 97th birthday next month, has long been a champion of Alabama's municipal officials. His guidance and insight were certainly invaluable to me when I became mayor of Berry in 1992 – a struggling town in serious financial difficulty. Guthrie's wise counsel helped me rally my community and, through tremendous teamwork and effort, Berry went from near bankruptcy to solvency in just three years.

Many of Alabama's municipalities are currently facing formidable budgetary challenges. The national economic decline has affected nearly every community in the country and I understand from first-hand experience how difficult it can be to overcome looming problems – financial or otherwise. However, while it may be difficult, it **can** be done! We should all remember that we have incredible resources in each other. Many cities and towns have successfully overcome adverse situations and if you, as a mayor or councilmember, find yourself struggling to find a solution, don't hesitate to call on your municipal peers for guidance. I am more than willing to help you – just as Mayor Guthrie Smith has always been there for me. Please feel free to contact me at **205-689-4562** if I can be of any service to you.

Of course, the League staff is another invaluable resource we should be using frequently. Our legal department alone has more than 100 years of combined experience. From legal, legislative, CMO, membership, communications, finance, IT, insurance and loss control, each staff member is a standout in his/her profession. We are extremely fortunate to be represented by such a talented, knowledgeable, accommodating team! Let me share with you an excerpt from Guthrie's letter to me:

At the week's end you take stock, and you have been confronted with the wet versus the dry issue, the potholes in the street, pornographic magazines in the drug store, poor officiating at the girls' softball game, skipped garbage pickup and even a complaint about undressed mannequins in a downtown store window. I am happy to tell you here and now that there is a place you can turn to help you answer most of your perplexing problems – not the petty problems I have just mentioned. There is real help for you in answering all kinds of questions that best you as a municipal official. I refer to the headquarters staff of the Alabama League of Municipalities. The League staff is the most dedicated, cooperative, efficient and the best informed group I know of anywhere.

Guthrie understands the vital role our League of Municipalities plays in aiding our cities and towns. He encouraged me to become involved with the organization soon after I was elected. I encourage you to do the same and to take advantage of the many resources the League offers, including legal advice and educational opportunities. Visit the League's website at www.alalm.org often for information on the League's staff and services as well as important updates on municipal issues, grants, legislation and meetings.

I also strongly urge you to research the League's auxiliary programs such as the Alabama Municipal Insurance Corporation (AMIC), the Municipal Workers Compensation Fund (MWCF) and the Alabama Municipal Funding Corporation (AMFund), which was created a few years ago to assist Alabama's municipalities in funding local projects and equipment purchases through low-cost financing. Contact Greg Cochran, AMFund President, at 334-386-8130 for additional information if your city or town is considering a municipal project. For information on AMIC, contact Steve Wells at 334-386-4220 and for MWCF, contact Steve Martin at 334-262-2566. And, again, feel free to contact me at 205-689-4562. ■

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Municipal Overview



Perry C. Roquemore, Jr.
Executive Director

NLC Program Offers Prescription Discounts to City Residents

A program introduced by the National League of Cities (NLC) in November 2008 is helping cities around the country provide a benefit to their residents faced with the high cost of prescription drugs.

The NLC Prescription Discount Card program is designed to enable a participating city to help residents who are without health insurance, a traditional pharmacy benefit plan or have prescriptions not covered by insurance by providing an average of 20 to 25 percent off the full retail cost of prescription medication.

There are currently more than 100 cities participating in the program nationwide, from Saint Agatha, Maine (pop: 802) to San Jose, Calif. (pop: 900,000+), with an additional 100+ cities in the process of implementing the program as of the first of May.

There is no direct cost to participate in the program. The role of the city is to promote the program through the local media and to make the prescription discount cards available at locations throughout the city to those residents who might benefit from the program. The city is provided with a quantity of customized prescription discount cards with the city name and logo at no cost, along with sample marketing materials to promote the program.

The program is administered for NLC by CVS Caremark and includes nearly 60,000 participating pharmacies nationwide, including all major chains and most local pharmacies. To identify pharmacies in your city that participate in the program, go to: www.caremark.com/nlc and see: Quick Links – Locate a Pharmacy.

Each month, after the program is implemented, participating cities receive a report from NLC on the use of the discount card so the city can see the direct impact

of the program on helping its residents.

Clarksburg, W.Va., was one of the first cities to join the program. “In the first four months of the program, the city of Clarksburg (population: 16,743) has saved its residents over \$25,000 on the cost of their prescription drugs,” said James Hunt, Clarksburg councilmember and NLC immediate past president. By using the discount card, residents saved an average of \$11.60 off the retail prices of their prescriptions. Not only does the NLC Clarksburg prescription discount card help residents save money on their medications, it is easy to use,” Hunt said. “Clarksburg residents only have to show their card when purchasing medication at one of the participating pharmacies. There is no enrollment form required to get a card, no membership fee of any kind and city residents and their family members can use the card any time their prescriptions are not covered by insurance.”

There is no cost for a city to participate in the program. However, membership in the National League of Cities is required. “The savings to residents of Clarksburg in the first four months of the program alone is more than 10-15 times my city’s annual dues in NLC,” Hunt said. Given the nature of the discount program, participating cities can very likely save their residents more on the cost of prescriptions over the course of a year than the city’s annual dues to NLC. Several “introductory” membership plans featuring one or two year discounts of 15 percent or 35 percent, respectively are also offered through NLC.

For more information on the NLC Prescription Discount Card Program, contact Marc Shapiro at 202.626.3019 or shapiro@nlc.org or visit the NLC website: www.nlc.org/prescriptioncard For NLC membership information, contact Mae Davis at 202.626.3150 or mdavis@nlc.org. ■

~~\$14~~ Million Dollars

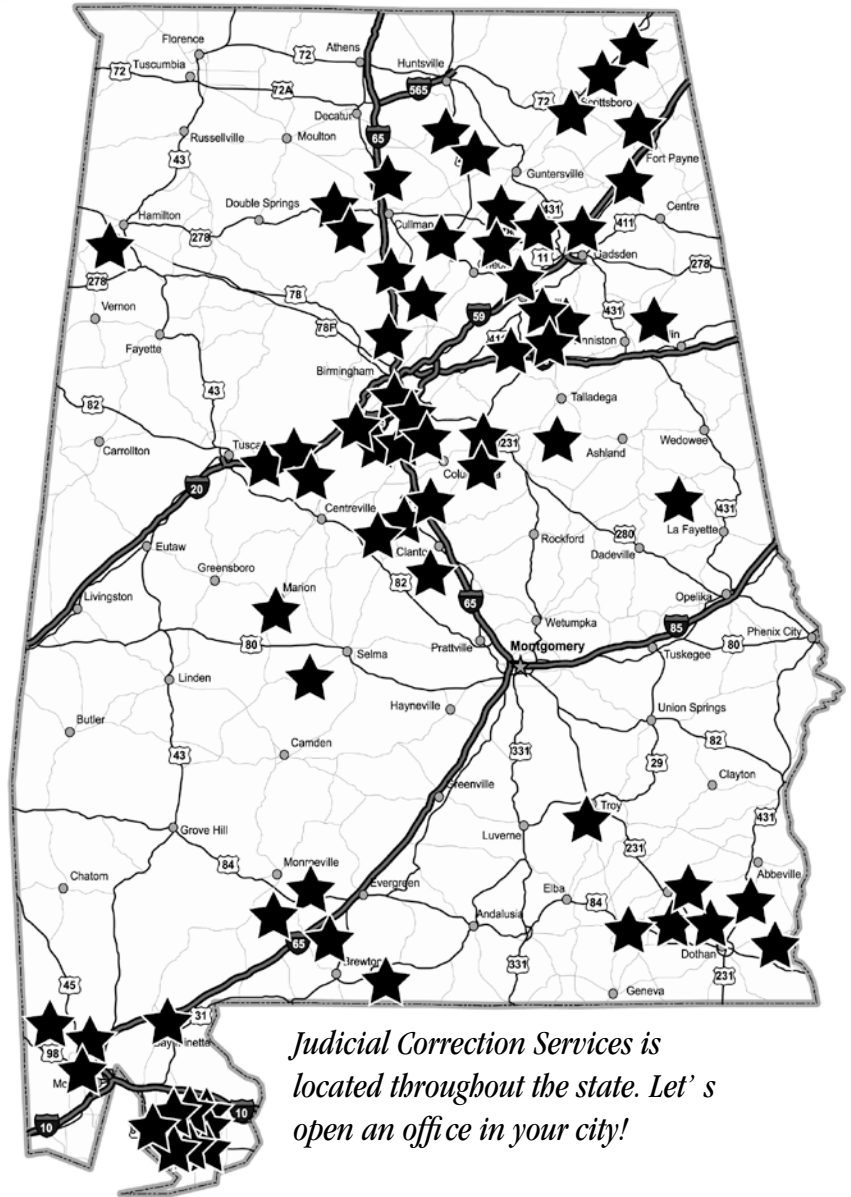
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Final Report on the 2009 Regular Session

The Alabama Legislature completed its 2009 Regular Session on Friday, May 15. This year, 1622 bills were introduced and 415 bills received final passage. By comparison, in 2008, 1606 bills were introduced and 220 received final passage.

Final Status of the League Legislative Package

Appropriation for Wastewater Treatment SRF (HB746 by Rep. Knight: In the late 1980's, the Alabama Legislature established a State Revolving Loan Fund for Wastewater Treatment (SRF). The purpose of the SRF was to take state funds and match them with federal dollars to create a loan fund to offer low interest loans to governmental entities for wastewater treatment projects. The General Fund Budget contained \$465,164 in additional matching funds from the legislature to continue Alabama's nationally recognized Wastewater Treatment SRF program. **ACT 2009-550**

Reverse Auction Procedures – HB734 by Rep. Oden: To amend Section 41-16-54, Code of Alabama 1975, as amended by Act No. 2008-379, 2008 Regular Session (Acts 2008, p. 703), to allow an awarding authority to make purchases through a reverse auction procedure if the amount is \$15,000 or more. **ACT 2009-728**

Residency of IDB Members – SB229 by Sen. Little (T): A League bill which proposes to amend Section 11-54-86, Code of Alabama 1975, relating to the board of directors of a municipal industrial development board; to authorize a certain number of members of the board of directors to be residents of the area outside of the corporate limits of the municipality where the industrial development board is organized. **ACT 2009-222**

Pre-Zoning of Property – SB283 by Sen. Coleman: This League bill proposes to authorize a municipality to pre-zone territory proposed for annexation into the corporate limits of the municipality by following the provisions of Article 4 of Chapter 52 of Title 11, Code of Alabama 1975; and to provide that the zoning shall be effective only if the territory is annexed into the municipality. **ACT 2009-629**

Mayor's Voting Power – Municipalities Under 12,000 Population – SB300 by Sen. Smith: This League bill proposes to amend Section 11-43-160 of the Code of Alabama 1975, to specify that in municipalities with a population of less than 12,000 inhabitants, the mayor may vote on the removal of an appointed officer of the municipality and the mayor would be considered as a member of the council in determining whether there is a two-thirds vote of the council for the removal of the officer. **ACT 2009-402**

Planning Commission Jurisdiction – SB422 by Sen. Waggoner: This League bill proposes to amend Section 11-52-30 of the Code of Alabama 1975, relating to the territorial jurisdiction of a municipal planning commission outside of the corporate limits of the municipality; to provide a procedure by which a municipal planning commission may establish a planning jurisdiction which extends less than five miles from the corporate limits of the municipality. **ACT 2009-498**

The League wishes to thank the following persons for sponsoring League bills this session: Representatives Marcel Black, Ron Johnson, Steve McMillan, Cam Ward, Warren Beck, Rod Scott, Randy Hinshaw and John Knight and Senators Zeb Little, Ted Little, Linda Coleman, Steve French, Hari Ann Smith, Jabo Waggoner and Roger Bedford.

Final Status of Bills with a Negative Impact on Cities and Towns

There were a number of bills introduced this session that would have had a negative impact on municipalities had they received final passage. Bills in this category that died this session included legislation to severely restrict municipal regulation of cell towers, to require municipalities to collectively bargain with their public safety employees, to grant tax exemptions to certain entities, to propose an initiative procedure for city ordinances, to establish a meet and confer law for police officers, to require state approval of building code amendments, to make it permissive to take municipal sales taxes off of groceries, to prohibit increases in certain ad valorem taxes, to increase the homestead exemption, to earmark future lodgings tax increases, to allow for voter recall of public officials, to regulate law officer internal investigations, to drastically reduce business licenses derived from the sale of prescription drugs, to prohibit accident response service fees, to allow many dilapidated billboards to be replaced when destroyed, and to establish that public officials present copies of requested public records within 5 business days. We can expect to see many of these bills reintroduced next session.

General Bills of Interest to Municipalities that Passed

Entertainment Industry Incentives – HB69 by Rep. Lindsey: Relating to the development in Alabama of the entertainment industry; to attract investment for qualified productions and qualified production companies; to help encourage increased employment opportunities within the state for the entertainment industry and increased global competition with other states in fully developing economic development options in Alabama within the industry; to provide rebates for qualified production projects; to provide exemptions from certain sales, use, and lodging taxes for production companies working in Alabama; to add new provisions to the Code of Alabama 1975, relating to income taxes and investment partnerships and limited liability companies; to require filing composite returns and remittance of taxes on certain nonresident partners or members; to provide for exemptions; to provide an offset for lost revenues resulting from the incentives offered; to specifically repeal inactive statutes providing exemptions which have expired by repealing Act 2001-975, 2001 Regular Session, as amended by Act 2005-305, 2005 Special Session, and to specifically repeal Section 40-18-24.1, Code of Alabama 1975. **ACT 2009-144**

CDARS Legislation – HB143 by Rep. Vance: To amend Section 41-14A-3 of the Code of Alabama 1975, the Security for Alabama Funds Enhancement (SAFE) Act, to authorize counties,

municipalities, and local boards of education to place their public deposits through a qualified public depository which arranges for the funds to be deposited through federally insured banks or other financial institutions so that the funds and any accrued interest are fully insured by the Federal Deposit Insurance Corporation (FDIC) and, at substantially the same time, the qualified public depository receives deposits from other financial institutions equal to or greater than the amount arranged to be deposited in other financial institutions. **ACT 2009-471**

DNA Testing – HB 146 by Rep. Johnson: Relating to criminal procedure; to allow an individual convicted of a capital offense who is serving a term of imprisonment or awaiting execution for a capital offense to file a motion to obtain forensic DNA testing on evidence that was secured in relation to the trial that resulted in his or her conviction; to provide that notice be given to the state when an individual files a motion for DNA testing; to specify the information to be included in the motion; to specify certain findings the court would make before ordering forensic DNA testing; to provide for testing procedures and post-testing procedures; to amend Sections 36-18-24, 36-18-25, and 36-18-32, Code of Alabama 1975, relating to DNA database; to provide under certain conditions for DNA testing of all persons arrested for a felony offense after October 1, 2010, or for any sexual offense; to increase the DNA database fee in all municipal, district, and circuit court criminal cases and certain other proceedings; to provide for distribution of the fee; and to provide for an appropriation for the

fiscal year ending September 30, 2009, and September 30, 2010. **Act 2009-768**

Authority to Fly U.S. Flag on Private Property – HB 149 by Rep. Fite: To allow an individual to fly the flag of the United States on his or her property and to void any covenant, contract, or restriction preventing an individual from flying the flag on his or her property. **ACT 2009-646**

Landlord Responsibility for Delinquent Tenant Bills – HB 164 by Rep. Ford: Relating to certain goods and services provided a tenant; to prohibit the provider of goods or services from requiring a landlord or property owner to pay the delinquent bill of a tenant for goods or services provided to the tenant if the account for the service is in the name of the tenant. **ACT 2009-570**

Alcoholic Beverages – Municipal Option Elections – HB 175 by Rep. Martin: To amend Sections 28-2A-1 and 28-2A-3, Code of Alabama 1975, and to repeal Section 28-2A-4, Code of Alabama 1975, relating to municipal option elections, to allow any municipality having a population of 1000 or more to hold a municipal option election. **ACT 2009-546**

Firearms – Emergency Powers – HB 225 by Rep. Keahey: To amend Sections 31-9-8 and 31-9-10, Code of Alabama 1975, relating to the emergency powers of the Governor and of local political subdivisions, to specify that these powers do not authorize the seizure or confiscation of firearms or ammunition from persons lawfully authorized to possess them and to specify certain conditions when a law enforcement officer may disarm an



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individual. **ACT 2009-572**

CA – Ad Valorem Taxes – Amendment 778 – HB242 by Rep. Newton (C): Proposing an amendment to the Constitution of Alabama of 1901, to provide that the prohibition in Amendment 778, now appearing as Section 269.08 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, against the payment of any fees, charges, or commissions for assessment or collection of any new taxes levied in order to comply with the provisions of Amendment 778 applies only to the levy and collection of additional ad valorem taxes levied specifically under the provisions of Amendment 778 and shall not apply to any prior or future levy set by or renewed under the laws or constitution of the state, and to provide for an election to be held on the proposed amendment. **ACT 2009-286**

Regulation of Fire Detection System Installers – HB289 by Rep. Hurst: Relating to fire alarm systems, to create a new chapter in Title 34 of the Code of Alabama 1975, to regulate and license persons who install a fire detection, fire alarm, or fire communication system; to provide for administration by the State Fire Marshal; to provide exceptions; to provide for fees; to provide for criminal and civil penalties. **ACT 2009-657**

Tax Exemption – Rescue Squads – HB315 by Rep. Thigpen: Relating to members of rescue squads of the Alabama Association of Rescue Squads; to provide for exemptions for all such squads and members from state and local gasoline and diesel fuel taxes, and tax and motor vehicle license fees on motor vehicles. **ACT 2009-660**

Approaching Law Enforcement Vehicle – HB361 by Rep. Martin: Relating to motor vehicles; to require the driver of a motor vehicle to move over when approaching a law enforcement vehicle, an emergency vehicle, or wrecker under certain conditions on a four-lane highway or slow down or to slow down on a two-lane road; to provide for penalties; to provide for a public awareness program; to repeal Section 832-5A-58.1, Code of Alabama 1975. **ACT 2009-577**

Alcoholic Beverages – Definition of “Beer” – HB373 by Rep. Jackson: To amend Section 28-3-1, Code of Alabama 1975, relating to certain definitions for the sale and licensing of alcoholic beverages, to further define the term “beer” for ABC licensing purposes, to include malt beverages with a higher alcohol content. **ACT 2009-771**

Oil and Gas Severance Taxes – HB382 by Rep. Knight: To amend Sections 9-17-25, 9-17-26, 9-17-27, 9-17-31, 40-20-2, and 40-20-8, relating to severance taxes on oil and natural gas; to add Sections 9-17-34 and 9-17-35 to Article 1 of Chapter 17 of Title 9; and to add Article 1A to Chapter 20 of Title 40 of the Code of Alabama 1975; to establish that severance taxes for certain offshore oil and gas produced for sale, transport, storage, profit or use will be based on the gross proceeds from the sale of the oil or natural gas. **ACT 2009-147**

ALDOT – Airport Hazards – HB409 by Rep. Newton (C): Authorizing the Department of Transportation to promulgate rules

continued on page 18



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(adjective)

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The Legal Viewpoint



By Ken Smith
Deputy Directory /General Counsel



Whose Tree is it Anyway?

*Go, then, and plant a tree, lovely in sun and shadow,
Gracious in every kind – maple and oak and pine.*

Marion Couthouy Smith

Trees provide many benefits for both property owners and municipalities. Trees provide tranquility and make us feel more relaxed. They help moderate the climate and can lower home energy costs. In a community, trees add beauty and grace and help prevent soil erosion. They contribute privacy, shade and recreational opportunities.

Many municipalities recognize these benefits by protecting trees from unnecessary destruction and injury, and through the creation of commissions to study ways to best protect the growth and use of trees in the community. Municipalities regulate professional tree surgeons and encourage and regulate landscaping. Municipalities can, and do, apply for designation as a Tree City, USA by the National Arbor Day Foundation.

Trees are normally planted alongside municipal streets and public ways. Regardless of the benefits trees provide, these public rights-of-way must be maintained for adequate traffic and safety needs. While everyone enjoys a quiet afternoon under the solace of a shady tree; after years of enjoyment by both young and old alike, these trees may become a source of liability for a municipality. Former League General Counsel Drayton Hamilton prepared an excellent article on this subject in 1974, which was updated by Perry Roquemore in 1984 and again by Ken Smith in 2004. This article updates the information provided in those articles.

Whose tree is it anyway?

To determine who is responsible or liable for a tree, it must first be determined who owns the tree and what type of ownership interest they have in the property where the tree is located. If the tree is located on municipal property held by the municipality as a fee simple, the municipality is certainly responsible for maintenance of the tree. Because the municipality owns the property in fee simple, it has all rights available to a property owner and has complete

control over the property. However, if the tree is located on an easement owned by the city, liability is less certain. For example, if the municipality has an easement on private property in order to provide access to land owned by the city, the municipality must work with the private land owner to maintain the easement and surrounding trees.

What can a municipality be held liable for?

Black's Law Dictionary defines a "tort" as a "private or civil wrong or injury, other than breach of contract, for which the court will provide a remedy in the form of an action for damages." *Black's Law Dictionary*, 8th ed. (2004). Municipal liability is usually based on negligence, pursuant to Section 11-47-190 of the Code of Alabama 1975. Essentially, this Code section establishes a negligence standard for municipalities. It states that a municipality can be held liable for the torts of its officers and employees which are due to "negligence, carelessness, or unskillfulness." In its simplest terms, a negligent tort arises if the plaintiff can prove four elements:

- 1) the defendant owed (or assumed) a duty to the plaintiff to use due care;
- 2) the defendant breached that duty by being negligent;
- 3) the plaintiff was injured; and
- 4) the defendant's negligence caused the plaintiff's injury.

All four elements must be satisfied for liability against the municipality to arise.

What duty does a municipality owe?

Section 11-47-190 of the Code of Alabama 1975, imposes a duty on municipalities to remedy defects in the streets – in other words, this section places a legal duty on municipalities to keep the streets, roads and sidewalks in a reasonably safe condition for use by the public. Likewise, in *City of Montgomery v. Quinn*, 19 So.2d 529 (Ala. 1944) the Alabama Supreme Court reaffirmed its earlier decision in *City of Mobile v. McClure*, 127 So 832 (Ala. 1930) in which it held that a municipality retains control over trees in its

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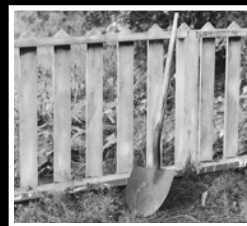
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streets and may act as to them under its police power.

“The general rule is that the public ways for their entire length and width should be reasonably safe for uses consistent with the reason for their establishment and existence. But this general rule is subject to the necessary qualifications that the municipal authorities may, in the exercise of a sound and reasonable judgment, fairly and with due regard to the public needs and welfare, apportion the surface streets to the use of vehicles, to the use of pedestrians, and to ornamentation and beneficial uses resulting from parkways ... Areas so apportioned to trees or grass plots are, of course, still a part of the street; and municipal duty in respect to such areas, as parts of streets, is not suspended or annulled.” *City of Birmingham v. Carle*, 68 So. 22 (Ala. 1915).

“A ‘street’ is, unless otherwise qualified, a public way or road, usually urban, and embraces the surface from side to side and end to end.” *Smith v. City of Birmingham*, 168 So.2d 35 (Ala. App. 1964).

Is knowledge of the defect required?

Yes. The cases dealing with the duty of municipalities to maintain their streets in a reasonably safe condition are too numerous to list here and, in any event, this requirement is generally well understood by municipal officials. It is, however, interesting to look at the Alabama Supreme Court’s holding in *McCarroll v. Bessemer*, 268 So.2d 731 (1972). *McCarroll* was a laborer in the Street and Sanitation Department of the City of Bessemer and was killed while in the performance of his duties while riding a garbage truck. The truck driver drove the truck near a large tree standing within the dedicated portion of the alley, and *McCarroll* struck the tree. *McCarroll* (Administratrix) contended that the city negligently failed to remedy a defect (the tree) in a public alley. She claimed that the city had left the tree in place for such an unreasonable length of time as to raise a presumption of knowledge of the defect, giving the city a duty to correct the defect. The Court cited Section 11-47-190 and concluded:

“This court, therefore, holds that a complaint which alleges that a municipal employee, while engaged in his governmental duties, is injured through the negligence of the city in failing to keep its streets or alleys reasonably safe for ordinary travel states a good cause of action ...”

Likewise, the Alabama Supreme Court recognized a cause of action against the City of Montgomery when a father brought suit claiming that the death of his minor child was caused by the falling of a rotten limb from a tree growing between the sidewalk and the curb. *City of Montgomery v. Quinn*, 19 So.2d 529 (Ala. 1944). The Court explained that it is well recognized that a municipality is liable for injuries resulting from a fallen tree that is “located either in the vehicular or sidewalk area of one of its streets,” but the

Court went on to limit that liability to situations in which the municipality “knew of the dangerous condition of the tree, or would have discovered such condition by the exercise of reasonable diligence.” *Id.* at 535-36.

What constitutes knowledge of a defect?

A municipality generally does not have a duty to constantly check trees for non-visible rot or decay. However, visible signs of rot or decay or other damage to a tree may give rise to a duty to inspect the tree. While rot or decay of a tree alone may not be a breach of duty, it serves to put the municipality on notice of the potential for injury. In *City of Birmingham v. Coe* the court held that the duty to remedy defects arises when the municipality receives actual notice, “or after the same has remained for such length of time that the law will infer that the defect ought to have been discovered and remedied.” 20 So.2d 110, 112 (Ala. App. 1944).

Black’s Law Dictionary defines actual notice as, “notice given directly to, or received personally by, a party.” *Black’s Law Dictionary*, 8th ed. (2004). A municipality receives actual notice of a decaying tree if, for example, someone calls city hall to report fallen limbs the decaying tree. Actual notice leaves no room for inaction by the municipality. Once a municipality has actual notice of a defect or potential for a defect, it must act to remedy the situation immediately.

Constructive notice on the other hand is defined as, “notice arising by presumption of law from the existence of facts and circumstances that a party had a duty to take notice of.” *Black’s Law Dictionary*, 8th ed. (2004). A municipality receives constructive notice if, for example, limbs continually fall from a tree without outside interference. Such instances may confer constructive notice on a municipality that the tree is rotting or decaying and should be removed before injury or damage occurs.

Up this point, this article has mainly discussed a municipality’s liability for damages resulting from fallen trees. However, there are other instances that must be considered involving trees which may create municipal liability for damages. For instance, a municipality may be liable if a tree blocks a driver’s line of sight thereby causing an accident, if the municipality failed to correct the problem.

Are there any defenses to liability?

Yes. Alabama has a pure contributory negligence standard which means that a damaged property owner cannot recover any damages if he is at fault as well. In *Alabama Power Co. v. Scholz*, the Alabama Supreme Court stated that, “[I]t is well established that a plaintiff in a negligence case cannot recover notwithstanding that he may have proven negligence on the part of the defendant, where plaintiff’s

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own negligence is shown by his or the defendant's proof to have proximately contributed to his damage, provided such contributory negligence is specially pleaded." 283 Ala 232, 238 (Ala. 1968). For example, in the instance that a tree is obstructing a roadway and a driver collides with the fallen tree, if the municipality pleads and proves that the driver was contributory negligent, the driver may be barred from recovering damages even if the driver proves that the city breached its duty to maintain the roadways. For example, if the city can prove that the driver was speeding and was therefore unable to stop before colliding with the tree, a court may determine that such actions on the part of the driver contributed to the damage and may bar an award of monetary damages to the driver.

Another possible defense is a *force majeure*, also known as an "act-of-God." Generally, this term is used to describe events that are abnormal, entirely natural in origin, and involve no human action or influence. Likewise, such events are normally thought to be unpredictable or unpreventable even through the exercise of ordinary care. The act-of-God defense is an affirmative defense that the municipality must plead and prove by a preponderance of the evidence. Acts of God often include weather related conditions such as wind, lightning, tornados, storms, and so forth. When a tree falls and it is determined that the fall was not the result of a previously existing dangerous condition such as rot or decay but rather the result of an act-of-God; the city may avoid liability by pleading and proving such a defense. In *Bradford v. Stanley*, the Alabama Supreme Court held that, "the act-of-God defense applies only to events in nature so extraordinary that the history of climatic variations and other conditions, in particular localities, affords no reasonable warning of them." 355 So.2d 328 (Ala.1978). The act-of-God defense may only be used when the municipality alleges that the injuries and damages were caused entirely by an occurrence in nature – not by the municipality's negligence.

How long does a plaintiff have to file suit?

Section 6-2-38 of the Code of Alabama 1975, states that a cause of action must be brought within two years. After two years, the statute of limitations has expired and the plaintiff will be barred from bringing suit.

Are municipalities immune from suit?

No. Prior to 1975, municipalities in Alabama were liable only for the tortious actions of their agents committed in the exercise of corporate or proprietary functions. Cities and towns were immune from suit if the tort was committed while the municipality was action in its governmental capacity. *Dargan v. Mayor of Mobile*, 31 Ala. 469 (Ala. 1858). However, in 1975, the Alabama Supreme Court totally abolished the doctrine of municipal immunity in *Jackson v.*

City of Florence, 320 So.2d 68 (Ala. 1975). The Court held that because the doctrine was judicially created, the Court had the power to abolish it. Thus, *Jackson* opened the door for suits against municipalities regardless of the function being performed by the municipality.

Is there a limit on a municipality's liability?

Yes. Section 11-93-2 of the Code of Alabama 1975, sets out the maximum amount of damages that may be recovered against a governmental entity. That section states:

"The recovery of damages under any judgment against a governmental entity shall be limited to \$100,000.00 for bodily injury or death for one person in any single occurrence. Recovery of damages under any judgment or judgments against a governmental entity shall be limited to \$300,000.00 in the aggregate where more than two persons have claims or judgments on account of bodily injury or death arising out of any single occurrence. Recovery of damages under any judgment against a governmental entity shall be limited to \$100,000.00 for damage or loss of property arising out of any single occurrence. No governmental entity shall settle or compromise any claim for bodily injury, death or property damage in excess of the amounts hereinabove set forth."

In addition, punitive damages cannot be recovered against a municipality. Section 6-11-26, Code of Alabama 1975.

May a municipality cut down a tree located on private property?

Before cutting down a tree on private property, a municipality should first seek to work with the private land owner to have the tree removed. However, if this is not successful, the municipality may remove the tree if such removal is an exercise of the municipality's police powers. The Alabama Supreme Court held in *City of Mobile v. McClure*, "That if the tree is cut in the exercise of the police power of the city, in caring for the health, comfort, and general welfare of the inhabitants thereof, and was not an arbitrary, corrupt or a manifest abuse of the right of such police power, and not rendered in an improper or negligent manner, the city is not liable in damages for doing so." 127 So. 832, 834 (Ala. 1930). For instance, as mentioned above, it may be necessary to remove – or at least trim – a tree to create a sight line for vehicular traffic to prevent accidents. ■

Final Report continued from page 11

to regulate the height of structures and objects of natural growth in the vicinity of certain airports; to specify the method of evaluating the value of property acquired for airport expansion; and to incorporate by reference certain provisions of the Code of Federal Regulations of the United States of America. **ACT 2009-579**

Mandatory Education Program for Municipal Court Clerks and Court Magistrates – HB421 by Rep. DeMarco: To require the Administrative Director of Courts and the Administrative Office of Courts to administer a mandatory education program and mandatory continuing education program for municipal court clerks and municipal court magistrates. **ACT 2009-710**

Equipment Rental Companies – Recovery Fee – HB445 by Rep. Page: To provide certain equipment rental companies may include a recovery fee in all rental agreements entered into in the state. The recovery fee provided in this section shall not apply to the leasing or renting of heavy equipment to the State of Alabama, any municipality, or any county. **ACT 2009-583**

Assault of Detention or Correctional Officers – HB518 by Rep. Payne: To amend Section 13A-6-21 of the Code of Alabama 1975, providing for the crime of assault in the second degree, to further provide that a person commits the crime of assault in the second degree if the person, with intent to prevent a detention or correctional officer at any municipal or county jail or state penitentiary from performing a lawful duty, causes physical injury to any person. **ACT 2009-717**

Gasoline and Diesel Tax Exemptions – Volunteer Fire Departments and Fire Districts – HB519 by Rep. Payne: Relating to volunteer fire departments and fire protection districts; to provide for exemptions for all such departments and districts from state and local gasoline and diesel fuel taxes. **ACT 2009-717**

Gas District Boards – Compensation – HB527 by Rep. Boothe: To amend Section 11-50-393, Code of Alabama 1975, relating to the compensation of the members of the boards of directors of gas districts organized by municipalities, to authorize an increase in the compensation for the members of the boards of directors for such corporations. **ACT 2009-588**

Wastewater Onsite Management Entities – HB543 by Rep. Grantland: Relating to the regulation of wastewater onsite management entities pursuant to Chapter 25A, Title 22, Sections 22-25A-1 to 22-25A-10, inclusive, Code of Alabama 1975; to repeal Chapter 25A and add a new Chapter 25B, Title 22, to the Code of Alabama 1975, and to amend Sections 37-4-1 and 40-21-53, Code of Alabama 1975; to provide for the management of privately owned wastewater systems in Alabama by wastewater management entities; to provide requirements and procedures for the establishment of regulated entities for the operation and management of wastewater systems in Alabama; to assure financial stability and the continued viability of wastewater utility management entities through regulation by the Alabama Public Service Commission; to provide for the protection of public health and the environment through the permitting of wastewater systems

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operated and managed by wastewater utility management entities by the Alabama Department of Public Health; to provide for a civil action to enjoin violations of the chapter; and to fund the operation of the new Chapter 25B through certification, permitting and regulatory fees, which shall be continuously appropriated to the Alabama Public Service Commission, the Alabama Department of Public Health, and the Alabama Department of Environmental Management for operations hereunder. **ACT 2009-773**

Law Enforcement Agencies – Mopeds – HB547 by Rep. Payne: Relating to motor vehicles; to authorize law enforcement agencies to operate motorized bicycles or mopeds or other vehicles upon the streets and highways of this state and upon sidewalks. **ACT 2009-719**

Capital Credit Program – HB568 by Rep. Knight: To extend the 20-year credit period under the existing capital credit program to 30 years, provided, that the total capital credit utilized over the 30-year credit period shall not exceed one hundred percent of the capital costs of the qualifying project; to make the full range of incentives offered to new and expanding businesses available on an equal basis to new and expanding corporate headquarters, data processing centers (including those of financial institutions and insurance companies), and research and development facilities; to make the full range of incentives offered to new and expanding businesses available on an equal basis to new and expanding producers of electricity or natural gas from biomass and biofuel producers. **ACT 2009-722**

Municipal Franchise Authority – HB595 by Rep. Fields:

Relating to municipalities; to amend Section 11-49-1 of the Code of Alabama 1975, to clarify that municipalities may not impose certain fees or charges in connection with the granting of consent to use public streets and places. **ACT 2009-301**

General Fund Budget – HB746 by Rep. Knight: To make appropriations for the ordinary expenses of the executive, legislative and judicial agencies of the State, for other functions of government, for debt service, and for capital outlay for the fiscal year ending September 30, 2010. **ACT 2009-550**

Class 7 or 8 Municipalities – Rural Scenic Right-of-Way Plan – HB773 by Rep. Hurst: To authorize any Class 7 or 8 municipality to establish a Rural Scenic Right-of-Way Plan for the use for recreational purposes of right-of-way along municipal streets and county roads under certain conditions. **ACT 2009-730**

Eluding a Law Officer – SB15 by Sen. Glover: To amend Sections 32-5A-193 and 32-5A-195 of the Code of Alabama 1975, relating to eluding a law enforcement officer; to provide a two-tiered level of crime for eluding a law enforcement officer; to provide for law enforcement officers to issue violations to owners of vehicles used for eluding. **ACT 2009-616**

Alabama Land Bank Authority – SB19 by Sen. Coleman: To provide for the creation of the Alabama Land Bank Authority for the purpose of acquiring tax delinquent properties for rehabilitation of such properties; to authorize the release of certain tax liens in order to facilitate the development of certain tax delinquent

continued on page 23



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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.

ALABAMA COURT DECISIONS

DUI: The Department of Public Safety is required to revoke a driver's license for consecutive five-year periods upon the fourth conviction and subsequent convictions for DUI. The Legislature intended that each conviction for driving under the influence from the fourth conviction forward would result in a corresponding five-year revocation in order to provide the utmost protection of the public's safety and that it is not inequitable to run the revocation periods consecutively, such that the defendant's revocation period ran for 15 years from date of the first of the last three DUI convictions. *Alabama Dept. of Public Safety v. Barbour*, 5 So.3d 601 (Ala.Civ.App.2008)

Elections: A candidate's filing of the pre-election report of campaign contributions and expenditures on the day of the primary election was the equivalent of not filing a report at all. Thus, the filing was untimely under the Fair Campaign Practices Act (FCPA) because the information contained in the campaign report was not available to the electorate before the time for voting, which undermined the purpose of reporting requirements under the FCPA. *Bryan v. Hubbard*, 6 So.3d 491 (Ala.2008)

Property: A trial court could not quiet title to property, where the landowner seeking to quiet title against a county water authority admitted that he was not in peaceable possession of part of the disputed property because a padlocked fence surrounded the county water authority's pumping station that was located on the disputed property. Although a boundary line between adjacent landowners may be fixed or changed by agreement or by adverse possession, neither process can relocate a section line as surveyed by the government surveyors. All disputes as to lines of sections and subdivisions thereof are to be governed by the United States Survey and located by reference to the original government survey. *North Clarke Water Authority v. Dockery*, 5 So.3d 634 (Ala. Civ. App. 2008)

Streets: A genuine issue of material fact as to whether vacating portion of a public street would result in loss of reason-

able and convenient access to property that abutted the street precluded summary judgment in favor of the abutting landowner in an action that challenged the city's decision to vacate portion of street. *City of Mobile v. Pinto Island Land Co.*, 5 So.3d 1248, (Ala.Civ.App.2007)

Tort Liability: A county board of education was immune from suit brought by a child injured while attending a football game. The football game was sponsored and controlled by the state high school athletic association, not the county board of education, and, thus, the board was immune, under a section of the constitution providing immunity from tort actions to the state and its agencies. The action was a tort action rather than an action for breach of implied contract. The board was not a party to any implied contract created by purchase of ticket to the game because the association set the rules, regulations, and ticket prices for the game. *Ex parte Jackson County Bd. of Ed.*, 4 So.3d 1099 (Ala.2008)

Workers' Compensation: An employee who was injured when he was struck by an automobile driven by a co-employee while crossing the street from his employer's parking lot to the employer's plant, and who sought workers' compensation benefits, was precluded from maintaining an action against the co-employee for negligent or wanton conduct, by virtue of co-employee immunity provided under workers' compensation statutes, even if co-employee was acting outside of his employment at the time of the accident. *Brunson v. Lucas*, 5 So.3d 1274 (Ala.Civ.App.2008)

UNITED STATES COURT DECISIONS AFFECTING ALABAMA

Courts: A defendant may waive his Sixth Amendment right to counsel whether or not he is already represented by counsel. The decision to waive need not itself be counseled. A defendant did not invoke his right to counsel at a preliminary hearing in which he stood mute while the court ordered the appointment of counsel for him, and thus the Sixth Amendment did not require suppression of his letter of apology to the victim's widow, written in response to subsequent police interrogation. *Montejo v. Louisiana*, --- S.Ct. ---, 2009 WL 1443049 (U.S.2009)

Search and Seizure: When a probationer has a condition of probation reducing his expectation of privacy, and the government has a higher interest in monitoring the probationer due to the nature of his criminal history, a search can

be permissible when supported only by reasonable suspicion. A probationer's expectation of privacy in his residence can be sufficiently diminished by his probationary status to make it "reasonable" for police to conduct a warrantless search based on mere reasonable suspicion. *United States v. Carter*, --- F.3d ---, 2009 WL 1108667 (11th Cir.2009)

Sex Discrimination: The Pregnancy Discrimination Act (PDA) did not apply retroactively. An employer does not necessarily violate the PDA when it pays, pursuant to a seniority system, pension benefits calculated in part under an accrual rule, applied only prior to the PDA, that gave less retirement credit for pregnancy leave than for medical leave generally. *AT&T Corp. v. Hulteen*, --- S.Ct. ----, 2009 WL 1361539 (U.S. 2009).

DECISIONS FROM OTHER JURISDICTIONS

Speech Regulation: Public officials' speech enjoys greater First Amendment protection than that of ordinary public employees speaking on matters of public concern. An elected city council member had standing to challenge the criminal provisions of a state Open Meetings Act, which criminalized the discussion of public matters by a quorum of public officials when outside of an open meeting, as creating an undue restriction on First Amendment speech rights. When a state seeks to restrict the speech of an elected official on the basis of its content, a federal court must apply strict scrutiny and declare that limitation invalid unless the state carries its burden to prove both that the regulation furthers a compelling state interest and that it is narrowly tailored to serve that interest. *Rangra v. Brown*, --- F.3d ---, 2009 WL 1100611 (5th Cir.2009)

ATTORNEY GENERAL'S OPINIONS

Constables: A constable may contract with a nonprofit organization, law firm, or private company to provide private investigative service and/or security service while holding office, as long as the duties of such employment do not overlap, interfere, or present a conflict of interest with the duties of constable. A constable may not privately contract to provide process service, because he or she has a preexisting statutory obligation to perform this duty. AGO 2009-071

Employees: A person employed by the county commission as an animal control officer is under the supervision of the county commission regardless of whether that person is commissioned as a deputy sheriff under Section 3-1-16 of

the Code of Alabama. AGO 2009-066

Property: Incorporated municipalities remain exempt from all duties and requirements of the Uniform Disposition of Unclaimed Property Act of 2004. Accordingly, incorporated municipalities retain discretion regarding the procedures to be taken with regard to unclaimed funds. The Attorney General's Office, however, recommends that entities exempt from the act maintain a clear policy regarding the procedures to be taken with regard to unclaimed funds. AGO 2009-073

Utility Boards: Board members of a municipal utilities board organized under section 11-50-310, *et seq.*, of the Code of Alabama, who are elected by the governing body of the municipality, may opt to receive directors' fees in accordance with either section 11-50-15 or section 11-50-313 of the Code of Alabama. AGO 2009-069 ■

The advertisement is for America's Tank Maintenance Company! It features the Utility Service Co., Inc. (USCI) logo at the top, which includes a stylized figure of a person working on a tank. Below the logo, the text reads "America's Tank Maintenance Company!" in a large, bold font. Underneath, it states "Utility Service Co., Inc. (USCI), whose origins date back to 1963, is the premier provider of professional water tank services. USCI maintains thousands of potable water tanks under full service asset management programs coast to coast. USCI provides tank funding and procurement services for new tanks and site management services for antennas on both existing and new tanks. Now Utility Service Co., Inc. introduces..." followed by the "WaterMix" logo. Below that, it says "Improve your water quality by minimizing organics, stabilizing disinfectant residuals, eliminating thermal water stratification and maximizing filter media efficiency." At the bottom, it lists "Call Your Local USCI Sales Representative:" and provides contact information for Michael Szabo: "706.575.1456", "mszabo@utilityservice.com", "Columbus, GA", and "www.utilityservice.com".

Final Report continued from page 19

properties; and to create a board to govern the land bank authority.
ACT 2009-738

Real Estate Advertisements – SB23 by Sen. Mitchell: To amend Section 34-27-32, as last amended by Act 2008-141, 2008 Regular Session, and Section 34-27-36, Code of Alabama 1975, relating to reciprocal broker licenses and advertising by real estate salespersons and associate brokers, to provide further for the criteria for a reciprocal broker license and remove the requirements relating to the specific size of letters in advertisements used by real estate salespersons and associate brokers. **ACT 2009-617**

Tax Exemption – Volunteer Firefighters – SB54 by Sen. Bedford: To amend Section 40-12-244, Code of Alabama 1975, to exempt certain volunteer firefighters from the payment of certain license taxes and registration fees on motor vehicles. **ACT 2009-618**

Sex Offenders – Verification of Local Address – SB58 by Sen. Penn: To amend Section 15-20-22, Code of Alabama 1975, to further provide for the procedures relating to the release of adult criminal sex offenders; to require the local law enforcement agency to verify the physical address where an adult criminal sex offender intends to reside upon release from a correctional facility and to require the responsible agency to notify the offender when the address does not comply with the requirements of law; and to prohibit the early release of an adult criminal sex offender who does not provide a proper physical address where he or she intends to reside as required by law. **ACT 2009-619**

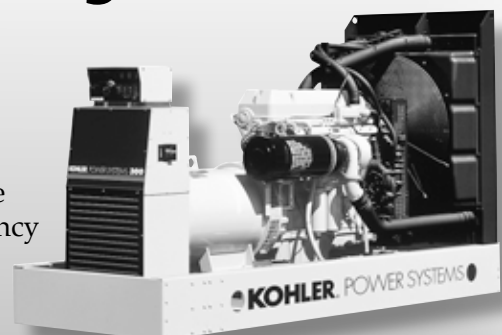
Ad Valorem Taxes – Redemption of Class III Owner-

occupied Property – SB142 by Sen. Mitchell: To amend Sections 40-10-19, 40-10-29, 40-10-75, 40-10-76, 40-10-77, 40-10-78, 40-10-82, 40-10-83, 40-10-120, 40-10-122, and 40-10-128, Code of Alabama 1975, relating to the redemption of property sold for delinquent ad valorem taxes, to allow tax status to remain for Class III owner-occupied property; and to require ad valorem taxes to be paid before the judge of probate issues a deed upon the expiration of three years from the date of sale of any real estate for taxes and provide further for the deposit of redemption money, to provide further for the rights of a purchaser where the tax sale proceedings were defective, for actions for possession and defenses that are defeated on grounds other than that the taxes were not due, for the tender of parties claiming adversely to the tax title, for the effect of payment by the original owner, and for the time and by whom the land may be redeemed. **ACT 2009-508**

Alabama Disaster Recovery Program – SB160 by Sen. Denton: To create the Alabama Disaster Recovery Program and the Alabama Disaster Recovery Program Fund to provide assistance to counties and municipalities to meet local needs during and immediately following certain disasters. **ACT 2009-342**

Code Update – SB178 by Sen. Brooks: To adopt and incorporate into the Code of Alabama 1975, those general and permanent laws of the state enacted during the 2007 First Special Session and 2007 Regular Session as contained in the 2007 Cumulative Supplement to certain volumes of the code and the 2007 Replacement Volume to certain volumes of the code; to adopt and incorporate into the Code of Alabama 1975, those general

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and permanent laws of the state enacted during the 2008 Regular Session and 2008 First Special Session as contained in the 2008 Cumulative Supplement to certain volumes of the code and the 2008 Replacement Volume to certain volumes of the code; to initially adopt and incorporate into the Code of Alabama 1975, 2007 Volume 22D (Local Laws Chilton - Colbert Counties) and to adopt and incorporate into the Code of Alabama 1975, the 2007 and 2008 Cumulative Supplement to local law volumes; to specify that this adoption and incorporation constitute a continuous systematic codification of the entire Code of Alabama 1975 and that this act is a law that adopts a code; to declare that the Code Publisher has certified it has discharged its duties regarding the replacement volumes; to expressly provide that this act does not affect any 2009 session statutes; and to specify the duties of the Secretary of State regarding the custody of these cumulative supplements, replacement volumes, and initial volume. **ACT 2009-149**

Fair Campaign Finance Reports – SB205 by Sen. Orr: To amend Section 17-5-8, Code of Alabama 1975, relating to reports of contributions and expenditures by candidates and committees, to provide that the reports shall be filed regardless if the candidate has an opponent in any primary, special, runoff, or general election. **ACT 2009-751**

Alcoholic Content of Wine – SB263 by Sen. French: To amend Section 28-3-1 and Section 28-3-168, and Section 28-3-168, Code of Alabama 1975, relating to alcoholic beverages, to increase the alcohol percentage in wine and provide further for the definition of fortified wine. **ACT 2009-509**

Class 6 Cities – Alternate Structure of Planning Commissions – SB286 by Sen. Waggoner: Relating to Class 6 municipalities; to provide for an alternate structure for the establishment and operation of the municipal planning commission. **ACT 2009-753**

Alabama Homebuyers Initiative Act – SB367 by Sen. Barron: To provide for a program to be administered by the Alabama Housing Finance Authority; to create a mortgage guarantee fund to offset certain losses of investors in the program; and to appropriate to the guarantee fund a total of six million dollars from the Alabama Capital Improvement Trust Fund. **ACT 2009-284**

Police Officer's and Firefighter's Survivors Educational Assistance – SB379 by Sen. Little (T): To amend Sections 36-21-101 and 36-21-102, Code of Alabama 1975, relating to Police Officer's and Firefighter's Survivors Educational Assistance; to define volunteer firefighter; and to provide free tuition for the dependents and spouses of full-time law enforcement officers, full-time firefighters, and volunteer firefighters who are killed or totally disabled in the line of duty. **ACT 2009-631**

County Bond Financing Agreements – SB393 by Sen. Butler: Relating to counties; to require a county entering into a bond financing agreement to complete a bond financing review form developed by the Office of Examiners of Public Accounts acknowledging that the county has considered the relevant factors important to the decision of entering into bonded indebtedness; and to require that the form be submitted to the Office of Examiners of Public Accounts and made available for public inspection. **ACT 2009-757**

Uniform Residential Landlord and Tenant Act – SB397 by Sen. Barron: Relating to landlord and tenant agreements pursuant to the Uniform Residential Landlord and Tenant Act; to amend Sections 35-9A-121, 35-9A-141, 35-9A-303, 35-9A-421, and 35-9A-461, Code of Alabama 1975; to provide further for territorial application, defined terms, landlord access, noncompliance by the landlord, remedies for noncompliance with the rental agreement and failure to pay rent; non-curable acts or omissions by a tenant or occupant; remedy after termination of a rental agreement; remedies for periodic and holdover tenancy; and remedies related to landlord's action for eviction, rent, damages, and other relief for breach of a rental agreement. **ACT 2009-633**

Competitive Bid Laws – City and County School Boards – SB418 by Sen. Preuit: To add Chapter 13B to Title 16, consisting of Sections 16-13B-1 to 16-13B-11, inclusive, to the Code of Alabama 1975, relating to competitive bid laws for city and county boards of education; to amend Sections 41-16-50 and 41-16-51, Code of Alabama 1975, relating to competitive bid laws; to remove the city and county boards of education from the competitive bid laws in Title 41 and provide substantially the same provisions in Title 16; to provide penalties for certain violations. **ACT 2009-760**

Rabies – SB469 by Sen. Dixon: Relating to rabies immunization of cats and dogs; to amend Sections 3-7A-1, 3-7A-2, 3-7A-3, 3-7A-5, 3-7A-7, 3-7A-8, 3-7A-9, 3-7A-10, 3-7A-11, 3-7A-12, and 3-7A-14, Code of Alabama 1975, to add members of the ferret (*Mustela putorius furo*) family to the list of animals required to be vaccinated against rabies; to provide further for public rabies clinics and set fees therefor; to provide further for penalties to owners of animals found to be unvaccinated; to allow for home quarantine as directed by the health officer; to provide for humane euthanizing of certain biting animals; to provide for quarantine of rabies endemic areas; to authorize exemptions from vaccinations under certain conditions; to add Section 3-7A-16 to the Code of Alabama 1975, to provide that persons assisting at rabies vaccination clinics would be considered volunteers. **ACT 2009-636**

Education Budget – SB570 by Sen. Sanders: To make appropriations for the support, maintenance and development of public education in Alabama, for debt service, and for capital outlay for the fiscal year ending September 30, 2010. **ACT 2009-339**

Proposed Constitutional Amendments

HB31, Act 2009-226 – Covington County Court Costs

HB120, Act 2009-298 – Tallapoosa County Court Costs

HB156, Act 2009-338 – St. Clair County Court Costs

HB218, Act 2009-544 – Bibb County Commission Home Rule Powers

HB242, Act 2009-286 – 10 Mill Ad Valorem School Tax – Fees for Assessment

HB253, Act 2009-551 – Special County Educational Taxes

HB318, Act 2009-543 – Macon County Court Costs

HB326, Act 2009-299 – Pickens County Probate Judge Equity Jurisdiction

HB423, Act 2009-547 – Assessment on Propane Gas Industry for Promotion Programs

HB424, Act 2009-580 – Propane Education and Research Council

HB564, Act 2009-306 – Geneva County Court Costs

HB706, Act 2009-303 – Russell County Court Costs

HB712, Act 2009-305 – Franklin County Court Costs

HB729, Act 2009-548 – Anniston Scholarship Appropriations

HB742, Act 2009-545 – Jefferson County Homestead Exemptions

HB764, Act 2009-304 – Shelby County Landfill

HB806, Act 2009-370 – Lawrence County Biosolids

HB824, Act 2009-555 – Lawrence County Landfill

SB162, Act 2009-227 – Tallapoosa County Court Costs

SB281, Act 2009-308 – Russell County Court Costs

SB449, Act 2009-307 – Russell County Court Costs

SB462, Act 2009-309 – Franklin County Biosolids

SB463, Act 2009-390 – Colbert County Biosolids

SB583, Act 2009-391 – Fort Payne City Jail Prisoners

Local Bills

HB57, Act 2009-236 – Covington County Solicitor's Fee

HB81, Act 2009-235 – Tallapoosa County Solicitor's Fee

HB83, Act 2009-321 – Washington County Voting Centers

HB172, Act 2009-322 – Henry County Revenue Commissioner Compensation

HB180, Act 2009-324 – Covington County Pistol Permits

HB240, Act 2009-553 – Mobile County Civil Service System

HB249, Act 2009-325 – Dale County Solicitor's Fee

HB250, Act 2009-326 – Dale County Coroner Compensation

HB252, Act 2009-346 – Mobile County Election Officers

HB294, Act 2009-659 – Colbert County Draft Beer

HB317, Act 2009-347 – Macon County Solicitor's Fee

HB320, Act 2009-472 – Chambers County Solicitor's Fee

HB323, Act 2009-473 – Montgomery City Retirement System

HB325, Act 2009-348 – Pickens County Juvenile Court

HB332, Act 2009-327 – Autauga, Chilton, Elmore Counties Solicitor's Fee

HB333, Act 2009-328 – Autauga, Chilton, Elmore Counties DA Investigators

HB358, Act 2009-662 – Jefferson County – Position of County Manager

HB367, Act 2009-392 – Calhoun County Coroner & Assistant Coroner Compensation

HB372, Act 2009-349 – Calhoun County Pistol Permits

HB375, Act 2009-709 – Jacksonville State University Police Department

HB387, Act 2009-350 – Houston County Lodgings Tax

HB430, Act 2009-474 – Randolph County solicitor's Fee

HB439, Act 2009-351 – Dallas County Solicitor's Fee

HB451, Act 2009-488 – St. Clair County Coroner's Health Insurance

HB457, Act 2009-554 – Mobile County Roads

HB467, Act 2009-476 – Montgomery County Annexations – Ad

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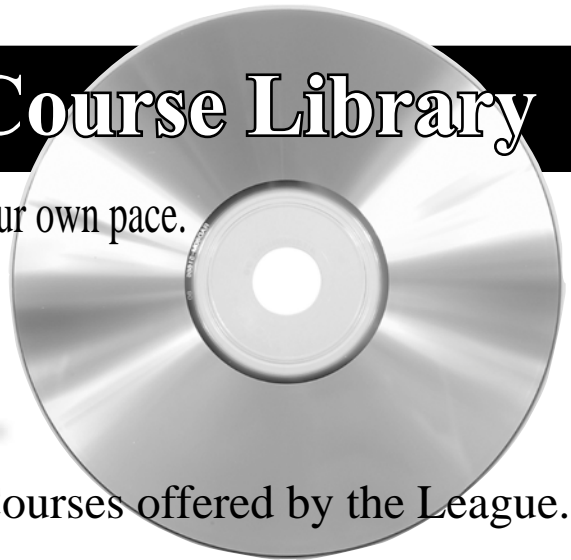
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Valorem Taxes

HB474, Act 2009-501 – Jefferson County Employees, Retirement System, Investment Manager
HB476, Act 2009-585 – St. Clair County Solicitor's Fee
HB505, Act 2009-352 – Marengo, Greene & Sumter Counties DA Investigators
HB506, Act 2009-393 – Marengo County Pistol Permits
HB513, Act 2009-394 – Houston County Pistol Permits
HB544, Act 2009-354 – Conecuh & Monroe Counties Pretrial Diversion Program
HB546, Act 2009-355 – Class 5 (Dothan) City Manager
HB563, Act 2009-356 – Geneva County Solicitor's Fee
HB584, Act 2009-357 – Limestone County Solicitor's Fee
HB586, Act 2009-358 – Mobile County Fire Districts
HB587, Act 2009-591 – Etowah County Sales Taxes
HB591, Act 2009-477 – DeKalb County Recording Fees
HB592, Act 2009-384 – Mobile County Subdivision Plats
HB599, Act 2009-359 – Northport Personnel Board
HB609, Act 2009-228 – Cullman County Solicitor's Fee
HB620, Act 2009-285 – Cullman County Community Development
HB635, Act 2009-775 – Birmingham Zoning Board of Adjustment
HB640, Act 2009-360 – Morgan County Retiring Officer Badge & Pistol
HB641, Act 2009-361 – Morgan County TVA Payments
HB645, Act 2009-362 – Class 5 (Dothan) Election Dates
HB646, Act 2009-385 – Dothan Sunday Sales
HB655, Act 2009-395 – Lauderdale County Court Costs
HB658, Act 2009-396 – Geneva County Coroner Compensation
HB665, Act 2009-363 – Prichard Water Works and Sewer Board
HB662, Act 2009-364 – Class 2 Planning Commission
HB668, Act 2009-329 – Lee County Sales and Use Taxes
HB669, Act 2009-594 – Chilton County Recording Fees
HB670, Act 2009-365 – Marengo Retiring Officer Pistol and Badge
HB690, Act 2009-777 – Jefferson County Commission Vacancies
HB695, Act 2009-478 – Perry County Solicitor's Fee
HB728, Act 2009-397 – Houston County Sunday Sales
HB730, Act 2009-596 – Jefferson County Tax Assessor
HB732, Act 2009-330 – Lee County Alternative Sentencing Board
HB738, Act 2009-389 – Baldwin County Revenue Commissioner
HB740, Act 2009-367 – Colbert County Court Costs
HB749, Act 2009-597 – Russell County Junkyards
HB756, Act 2009-331 – Cherokee County Juvenile Court
HB757, Act 2009-332 – Cherokee County Work Release Program
HB761, Act 2009-368 – Ozark Ad Valorem Tax
HB766, Act 2009-336 – Shelby County Chief Deputy Compensation
HB767, Act 2009-333 – Shelby County Solid Waste Fund
HB770, Act 2009-369 – Marshall County Solicitor's Fee
HB776, Act 2009-371 – Lawrence County Court Costs

HB777, Act 2009-386 – Lawrence County Sale of Surplus Property
HB778, Act 2009-372 – Walker County Solicitor's Fee
HB779, Act 2009-598 – Madison County License Director Invalid Check Procedures
HB780, Act 2009-373 – Talladega County DA Fund
HB781, Act 2009-374 – Talladega County Sheriff Expense Allowance and Salary
HB782, Act 2009-375 – Talladega County Court Costs
HB784, Act 2009-792 – Jefferson County Fire Districts
HB786, Act 2009-376 – Henry County Draft Beer
HB789, Act 2009-387 – Madison County Board of Health Fees for Environmental Services
HB791, Act 2009-377 – Huntsville City Board of Education
HB793, Act 2009-599 – Marshall counties Cities with Board of Education & Arab, Guntersville & Boaz Motor Vehicle License Fee for Education
HB796, Act 2009-600 – Baldwin County Ad Valorem Tax
HB818, Act 2009-601 – Autauga & Chilton County Court Reporters
HB819, Act 2009-378 – Covington County Roads
HB820, Act 2009-379 – Covington County Lodgings Tax
HB826, Act 2009-732 – Mobile County Industrial Parks
HB834, Act 2009-780 – Birmingham Retirement System
HB838, Act 2009-388 – Emerald Triangle Commission Abolished
HB845, Act 2009-380 – Scottsboro Draft Beer
HB851, Act 2009-782 – Mobile County Planning Commission
HB852, Act 2009-602 – Montgomery County Pretrial Diversion Program
HB872, Act 2009-603 – Wilcox County Solicitor's Fee
HB874, Act 2009-481 – Fayette County Work Release Board
HB879, Act 2009-733 – Colbert County Solicitor's Fee
HB888, Act 2009-482 – Lauderdale County Coroner's Compensation
HB909, Act 2009-483 – Coffee County Solicitor's Fee
HB914, Act 2009-735 – Tuscaloosa County Pretrial Diversion Program
HB915, Act 2009-484 – Tuscaloosa County Solicitor's Fund
HB916, Act 2009-485 – Tuscaloosa County Juvenile Court
HB925, Act 2009-736 – Lowndes County Lodgings Tax
HB926, Act 2009-784 – Macon County Probate Judge Salary
HB928, Act 2009-786 – Calhoun County Fire Districts
HB945, Act 2009-608 – Cleburne County Engineer
HB954, Act 2009-609 – Chilton County Sheriff Transaction Fees
HB957, Act 2009-611 – Lauderdale County Solicitor's Fee
HB958, Act 2009-612 – Jefferson County Solicitor's Fee
HB960, Act 2009-737 – Class 5 (Phenix City) Mayor and Councilmembers Expense Allowance
HB961, Act 2009-785 – Coosa River Valley Recreation Board
HB962, Act 2009-613 – Talladega County Civil Service System
HB963, Act 2009-614 – Talladega County Solicitor's Fee
HB966, Act 2009-615 – Baldwin County Sheriff Service of Process Serving Fee
SB48, Act 2009-16 – Jackson County Commission Staggered Terms

SB49, Act 2009-340 – Jackson County Gasoline Tax
SB59, Act 2009-740 – Montgomery Automatic Traffic Infraction Devices
SB123, Act 2009-341 – Macon County Solicitor's Fee
SB134, Act 2009-557 – Perry County – Gift or Sale of Gravel
SB179, Act 2009-152 – Lawrence County Community Development Commission
SB218, Act 2009-343 – Lee County Solicitor's Fee
SB219, Act 2009-150 – Camp Hill Sunday Sales
SB282, Act 2009-345 – Tallapoosa County Solicitor's Fee
SB284, Act 2009-491 – Chambers County Solicitor's Fee
SB285, Act 2009-401 – Randolph County Solicitor's Fee
SB366, Act 2009-381 – Lee County Commission Chair
SB375, Act 2009-556 – Perry County Gravel Sale or Gift
SB382, Act 2009-19 – Class 3 (Montgomery) Mayor and Council Vacancy Elections
SB392, Act 2009-756 – Franklin County Solicitor's Fee
SB413, Act 2009-460 – Butler, Crenshaw and Lowndes County Pretrial Diversion Programs
SB429, Act 2009-302 – Etowah County Sales and Use Tax
SB430, Act 2009-761 – Madison County Judgeship
SB508, Act 2009-493 – Cleburne County Solicitor's Fee
SB538, Act 2009-552 – Talladega County Additional Judgeship
SB566, Act 2009-494 – DeKalb County TVA Payments
SB573, Act 2009-409 – Albertville, Arab and Guntersville Draft Beer

SB584, Act 2009-459 – Montgomery County Judge of Probate – Appointment of Temporary Judges
SB586, Act 2009-497 – Etowah County Tourism Board
SB594, Act 2009-462 – Limestone County Rock Quarries
SB595, Act 2009-463 – Limestone County Rock Quarries
SB596, Act 2009-464 – Limestone County Rock Quarries
SB597, Act 2009-465 – Limestone County Rock Quarries
SB606, Act 2009-496 – Hanceville Mayor and Council Expense Allowance
SB613, Act 2009-764 – Montgomery I-65 Corridor Development Authority
SB633, Act 2009-767 – Morgan County TVA Funds

Annexation Bills

HB525, Act 2009-353 – Summerdale
HB701, Act 2009-366 – Cusseta
HB768, Act 2009-479 – Summerdale
HB769, Act 2009-398 – Hayneville
HB774, Act 2009-480 – Killen
HB875, Act 2009-604 – Crossville
HB899, Act 2009-605 – Clayton
HB921, Act 2009-606 – Talladega
HB955, Act 2009-610 – Elberta
SB347, Act 2009-334 – Guin
SB618, Act 2009-765 – Rainsville
SB623, Act 2009-766 – Owens Cross Roads

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Obituaries

Debra Hood

Former Greenville councilmember Debra Hood passed away February 15, 2009. She was 57. Hood served as councilmember from 1988-2000 and was instrumental in establishing the Main Street Program in Greenville. She was also instrumental in beautification projects such as the Clean City/Adopt-A-Mile Program and the Greenville Tree Commission Program. In addition, she played an important role in getting a "No Smoking in Municipal Buildings" policy adopted. She was also active with the Alabama League of Municipalities, serving on the Energy, Environment and Natural Resources committee and earning her Advanced Certified Municipal Official Certificate in 2000.

Joe Adkins

Joe Adkins, former Ashville Mayor has died at the age of 81. Adkins was a three-time mayor of Ashville.

James Agee Kelly

James Agee Kelly, former councilmember from Montevallo, passed away February 22, 2009, at the age of 73. Agee served on the Montevallo City Council from 1962 to 1972.

Gerald Young Allen

Gerald Young Allen, former Alexander City councilmember, died February 2009. He was 69. Allen was elected to the Alexander City council in 1968 and served until accepting a position working with then U.S. Senator John Sparkman in Washington in 1970.

Hollice Kendrick

Hollice Kendrick, former Scottsboro councilmember, passed away February 27, 2009. He was 68. Kendrick served Scottsboro on the Council from 2000- 2004.

Dr. Paul C. Bailey

Baileyton's former mayor, Dr. Paul C. Bailey, died March, 2009. He was 87. Bailey served as mayor for 18 years, just retiring this past November. During his term, Bailey was instrumental in getting a town park for his community, an industrial park for business to grow, the construction of Parkside School and numerous other projects for the town. Bailey was the great-grandson of the founder of the town. He also served in the U.S. Army during WWII.

Hugh Herring

Former Geneva mayor, Hugh Herring died in March, 2009. He was 82. Herring served as mayor of Geneva from 1964- 2000. His 36-year term made him the longest contiguously serving mayor in Alabama history.

Horace Clay Bassett

Horace Clay Bassett, former Citronelle mayor, passed away March 23. He was 79. Bassett served Citronelle as mayor for 20 years beginning in 1964.

Bob Parker

Bob Parker, former mayor of Fort Payne has died. He was 75. Parker served Fort Payne as a councilmember and later as mayor in the late 1990s. He was the Fort Payne police chief for 23 years.

Charles "Charlie" Harben

Saraland councilmember and former mayor, Charles "Charlie" Harben, has passed away. He was 76. Harben served the City of Saraland for more than 29 years.

C.W. "Bill" Skidmore

Former Saraland mayor C.W. "Bill" Skidmore passed away in May, 2009. He was 80. Skidmore served as mayor from 1957 until 1960 and again in 1964 until 1972.

Danny Hicks

Danny Hicks, former mayor of Oneonta, has passed away. He was 58. After serving one term on the Oneonta Council, Hicks was elected to four terms as mayor.

First Female President of the Alabama League of Municipalities Dies at Age 95

Nina Miglionico, the Alabama League of Municipalities' first female president (1981-1982) and Birmingham's first female city councilmember, died May 6, 2009, at age 95.

The daughter of Italian immigrants, Ms. Miglionico was a lifelong Birmingham resident and later became one of the first female lawyers in the state. She was the first woman elected to Birmingham's city government, serving on the Council for 22 years from 1963 until 1985. From 1978 until 1981, she served as Council President – the first female to hold that title.

During an era of racial turmoil Ms. Miglionico was a social progressive who championed the rewriting of segregation-era ordinances. In the spring of 1965, shortly before her re-election to a second term, her father discovered a bomb consisting of 38 sticks of dynamite on the front porch of their home on [Essex Road](#). Undaunted, she continued to serve the city through a total of six terms on the Council, earning loyal supporters while remaining a target of extremists. As late as 1974 her front yard was defaced by burning crosses.

Ms. Miglionico was elected the first female vice president of the League in 1980 and its first female president in 1981. An excerpt from the October 1980 issue of the *Alabama Municipal Journal* describes her as an active, straightforward leader:

“Miss Nina,” as she is known to her municipal friends, has served as Chairman, Vice-Chairman, and member of League standing committees, and has represented Alabama on National League of Cities' Committees. This past May, she was elected Vice-President of the League, the first woman to ever hold that position. To say the least, Miss Miglionico is an articulate, outspoken champion of Birmingham and all Alabama municipalities. She is thoroughly irritated by legislative and governmental restraints which hamstring cities everywhere. She also abhors mandates which restrict the efficient use of manpower and talent on the local level, particularly those dealing with local government ethics.

League Executive Director Perry Roquemore remembered Ms. Miglionico as a tiny woman with a tremendous spirit: “I was the League's staff attorney when Miss Nina was elected League President,” Roquemore said. “She was truly a remarkable person; someone I will never forget – not even five feet tall but able to command a room effortlessly. She was smart and well respected, but she was also gracious and wise. Her thoughtful approach to every situation was a great asset to the League and I'm honored to have worked closely with her.”

A graduate of Howard University, Ms. Miglionico earned her law degree from Alabama School of Law in 1936 and is thought to be the first woman in Alabama to have established her own firm. With 73 years of service, she held the unique distinction of being the longest practicing female attorney in the history of the State of Alabama. Among the many honors she received over her distinguished career were the Margaret Brent Award from the American Bar Association as one of the five outstanding women lawyers in America, the Maud McClure Kelly Award from the Alabama State Bar Women Lawyers Section and the Outstanding Alumna from the University of Alabama School of Law. She was also a past president of the National Association of Women Lawyers. The Birmingham Bar Association Women Lawyers Section named its award in her honor – the Nina Miglionico Paving the Way Award. ■



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2010 Municipal Photo Contest



The Alabama League of Municipalities is holding its third annual photo contest! The winning photo will be featured on the cover of the **2010 Annual Directory** as well as the cover of one issue of the *Alabama Municipal Journal*! Other honorable mention photos may be used in the *Alabama Municipal Journal*. **Entry form available online at www.alalm.org.**

CONSIDER INVOLVING YOUR COMMUNITY

Run a community wide contest, hold a contest at your community school, send the winners to us to compete statewide. Winners' name will be published with photograph along with photo description!

To Enter:

Photos must be of your municipality. Municipal buildings, parks, street scenes, downtowns, city festivals, etc. are all acceptable. Photos do not have to be taken by a professional photographer; however, all photos must be taken within the last 18 months. **ALL ENTRIES MUST BE VERTICAL. (Horizontal images will not fit the format used for the *Directory* or the *Journal*.) Entry must include a photo description as well as photographer's name.**

Photo Format:

Photos must be submitted on a cd. Entries should be vertical, color images and submitted in JPEG or TIFF format in a resolution high enough for print quality purposes. The print size for the *Directory* is approximately 8.5 x 11 inches. Therefore, the submitted image should be at least 150 dpi **at this size** (1,200 x 1,500 pixels), although 300 dpi (1800 x 1200 pixels) is preferred. **Submissions that are not vertical or that do not have the correct print quality size will be disqualified.**

Note: Photo files will not be returned. Please do not send your only file of a photo.

Ownership/Use Rights:

By entering the Alabama League of Municipalities (ALM) photo contest, photographers agree to have their submitted photograph displayed on any ALM or National League of Cities (NLC) publication as well as the ALM and NLC websites without any fee or other form of compensation. Photographers further agree that depending on the nature and use of the photograph, credit may not be attributed; however, for use on the cover of the *Directory* and the cover of the *Journal*, photos will be credited to the photographer named in the entry form. In the event that ownership of any photograph submitted to ALM is contested in any manner, ALM retains the discretion to disqualify that photograph and discontinue use of the photograph.

ALL ENTRIES MUST BE SUBMITTED BY NOVEMBER 6, 2009

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