

# The Alabama Municipal JOURNAL

March 2009

Volume 66, Number 9

## In this issue:

- Effective Lobbying Begins at Home
- Working with Municipal Boards
- 2009 Municipal Quality of Life Award Winners

Train Overpass by Terri Dennis, Guin  
2nd Runner Up, 2009 Photo Contest

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## Contents

<i>A Message from the Editor</i> .....	4
<i>The Presidents's Report</i> .....	5
Effective Lobbying Begins at Home	
<i>Municipal Overview</i> .....	7
NLC Survey" City Fiscal Conditions Continue to Worsen	
<i>The Legal Viewpoint</i> .....	9
Working with Municipal Boards	
<i>2009 Tentative Convention Program</i> .....	15
<i>Distinguished Service Awards Deadline Announced</i> .....	17
<i>Legal Clearinghouse</i> .....	18
<i>2009 Municipal Quality of Life Awards</i> .....	20
<i>AAMA Online Forum</i> .....	27

**Cover Photo: Train Overpass  
2nd Runner Up, 2009 Photo Contest  
Photographer: Terri Dennis, Guin**

## A Message from the

# Editor



Self-portrait of Craig and me on our way to a ball. White tie, tails and sparkly dress. Everyone should experience this at least once. It builds character.

**M**ark your calendars! The League's Annual Convention will be held May 2-5 at the Renaissance Montgomery Hotel & Spa the Convention Center in downtown Montgomery. (A tentative schedule is on page 15.) The Convention will begin on **Saturday, May 2** with registration opening at 10 a.m., Resolutions Committee at 11 a.m. and an afternoon general session from 2 until 5 p.m.

The 2009 Annual Municipal Golf Tournament (you must register to participate) will be held Sunday morning at Lagoon Park Golf Course and our ever popular Round Table Discussions will be offered Sunday afternoon from 2 until 4 followed by the ABC-LEO reception and then a League reception in the Exhibit Hall. Monday's schedule offers a variety of concurrent sessions followed by the evening banquet. The Annual Business Session will be held Tuesday morning from 8:30 until 10:30 followed by a special general session: Ask Your Attorney Panel. The Convention will conclude Tuesday afternoon following the President's Luncheon.

Convention registration materials were mailed last month to all mayors, councilmembers and clerks. The deadline for convention pre-registration is **April 10, 2009**. After that date, you'll have to register on-site in Montgomery. Materials are also available on our website at [www.alalm.org](http://www.alalm.org). Notifications for Distinguished Service Awards (20, 30 or 40 years in municipal office) *must* be received by League Headquarters *before* March 20, 2009 (see page 17 for details). Awards will be presented during the President's Luncheon on May 5.

Congratulations to the 2009 Municipal Quality of Life Award Winners and Honorable Mentions: Dutton, Jasper, Guin and Auburn. The Town of Dutton and City of Jasper were chosen by our panel of three outside judges as the winners for their population categories – 1 to 5,000 and 12,001 and Over, respectively (no entries were submitted for the 5,001 to 12,000 population category). The City of Guin was chosen as the Honorable Mention for the 1 to 5000 category and the City of Auburn received an Honorable Mention in the 12,001 and Over category. Dutton and Jasper will be recognized during a special Awards Ceremony at the Annual Convention in Montgomery. To learn more about the winning entries, see page 20 or visit the League's website.

Congratulations to **Terri Dennis** of Guin for her serene Train Overpass photo that appears on the cover of this issue of the *Journal*. Terri's entry was 2nd runner up in the League's 2009 annual photo contest.

**Closing thoughts.** I'm currently enthralled with David McCullough's *John Adams*. I also enjoyed the HBO miniseries based on the book, which was extremely well done but not comparable to reading the thoughts of the second President of the United States – as provided through McCullough's detailed research. Adams' unique relationships with our country's founding fathers, such as Thomas Jefferson, Benjamin Franklin and George Washington, is fascinating. These men, with their diverse personalities and backgrounds, not only forged a free and independent nation, they molded the framework for our government to derive its "just powers from the consent of the governed," thus creating a democracy exalted by Abraham Lincoln nearly a century later as "government of the people, by the people, for the people."

I wonder ... what would John Adams and his contemporaries think of the United States of America now – more than 230 years after declaring our unalienable right to life, liberty and the pursuit of happiness? Would they be proud?

Carrie



Melvin Duran  
Mayor of Priceville

## Effective Lobbying Begins at Home

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

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

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

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

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

Municipalities use a variety of ways to determine their positions on bills. A good place to start is the League's Statement of Policies and Goals, which enumerates the official association

stance on a variety of issues. It is important to take a position early in the legislative process because there is a greater opportunity to have an impact on the outcome of a bill. Also, officials will be prepared to respond quickly to subsequent requests for action.

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

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

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

In addition to contacting your district legislators, letters should also be sent to the chair of the legislative committee where a bill is pending so your position will be recognized. Copies should also be sent to the author and/or sponsor of the bill, to committee members and to League Headquarters. *For clarity, each letter should cover only one bill and should reference the bill number in a separate line close to the top of the page.*

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

*continued page 26*

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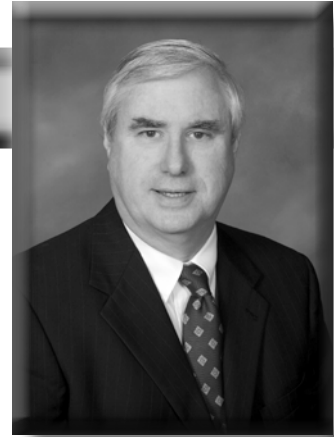
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# Municipal Overview

## NLC Survey: City Fiscal Conditions Continue to Worsen



Perry C. Roquemore, Jr.  
Executive Director

The unprecedented economic conditions facing the nation are increasingly straining the ability of cities to meet their financial needs. In a recently conducted survey of city finance officers by the National League of Cities (NLC), 84 percent reported facing fiscal difficulties, up from 64 percent only six months ago. This is the highest percentage in the history of NLC's surveys, dating back to 1985.

Almost all cities responding expect the current economic hardship to continue well into 2009. Ninety-two percent of the cities surveyed expected to have trouble meeting their city needs during this year.

According to the report, cities are responding to the economic downturn mainly through service cuts. Four in five (83 percent) city finance officers report that their cities have already responded to the fiscal and economic downturn by cutting expenditures and services. Similar numbers (80 percent) anticipate making further cuts in the next fiscal year.

In terms of the types of cuts, most reported instituting hiring freezes and/or staff layoffs (69 percent). Many (42 percent) also reported delaying or canceling outlays for capital infrastructure projects. One in five city finance officers reported across the board service cuts (22 percent) and cuts in services such as libraries, parks and recreation and special events (20 percent).

"Cities are responding as best they can," said NLC Executive Director Donald J. Borut. "Their citizens have increasing needs for services just at the same time that revenues are declining. Cities are making very difficult decisions amid rapidly changing economic circumstances."

Among those changing circumstances is the recent and ongoing turmoil in financial markets. Nearly one in two (46 percent) city finance officers reported difficulties in accessing credit and obtaining bond financing. Twenty-eight percent reported delayed or canceled municipal bond financing — financing that is most often used for capital infrastructure projects.

"It remains clear that cities and towns all over the country are no longer able to afford many important infrastructure projects and that federal action is needed to stimulate our nation's economy and get people back to work," said Carolyn Coleman, NLC federal relations director. "Getting the federal recovery package passed is vitally important for our communities."

City finances tend to lag the overall economy by 12 to 24 months. The degrading economic conditions seen during the fall months will be felt by cities through 2009 and likely through most of 2010. This time lag means cities will face an increasingly more difficult proposition as the year progresses.

"We must support our nation by recognizing that strong cities and towns serve as a backbone to economic growth," said Borut. "If the nation is going to see economic recovery then we must support and promote the financial health of our local communities."

The results are based on a national mail survey of finance officers in U.S. cities. Surveys were mailed to a sample of 530 cities. The survey was conducted in December 2008 and January 2009. Survey data are drawn from 156 responding city finance officers, for a response rate of 29 percent. To view the full report, go to [www.nlc.org](http://www.nlc.org). ■

# ~~\$14~~ Million Dollars



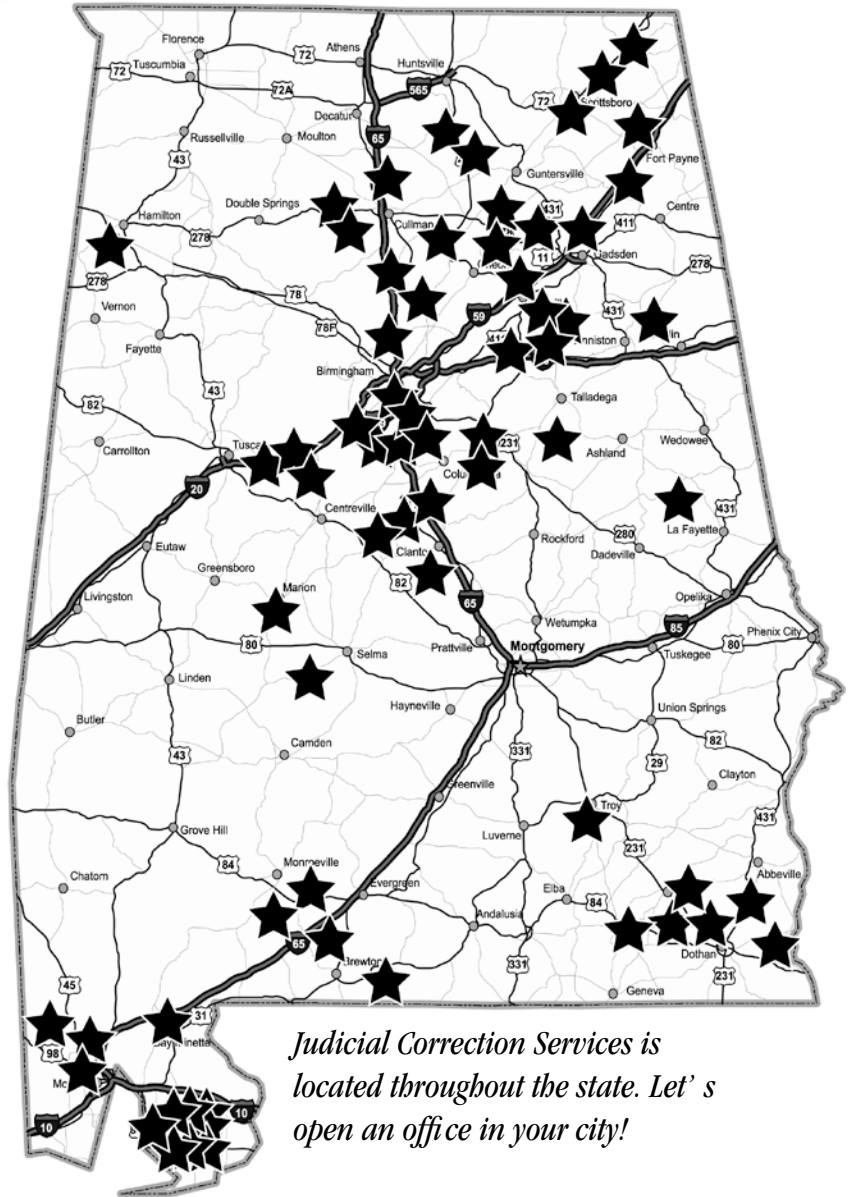
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# The Legal Viewpoint

By Ken Smith  
Deputy Directory /General Counsel



## Working with Municipal Boards

As municipalities grow to serve the needs of their residents, it becomes difficult, if not impossible, for a municipal official to stay abreast of developments affecting all municipal departments and agencies. Some municipalities have created council committees which function as an arm of the council. Council committees, usually composed of members of the council, observe the work of the various municipal departments and report back to the council regarding implementation of needed changes. The formation of committees enables council members to split the workload and concentrate their efforts toward improving specific areas.

Often, though, a service becomes so complicated that the council no longer feels qualified to deal with it themselves. The solution is often the creation of a separate board.

### What is a Board?

*Black's Law Dictionary*, Sixth Edition, defines a board as "[A] committee of persons organized under authority of law in order to exercise certain authorities, have oversight or control of certain matters, or discharge certain functions of a magisterial, representative, or fiduciary character."

In other words, a board functions in a representative capacity. The council may elect to delegate its power over a municipal function to a board which is created for a single purpose.

Municipalities in Alabama have the authority to create numerous types of boards. Some of the more common types include utility boards (water, sewer, electric and gas), library boards, industrial development boards, zoning boards and planning commissions. These boards exercise only the authority granted them by the legislature.

### Categories of Boards

It is important to remember that Alabama municipalities operate under the Dillon Rule, which provides that municipalities, being creations of the state legislature, can exercise only the powers the legislature chooses to delegate to them. So, in order to create a board and vest it with specific powers and duties, there must be legislative authority for the board. Under Alabama law, all municipal

boards fall into one of three distinct categories, depending upon legislative authority and the means of creation. There are incorporated boards, unincorporated boards and advisory boards.

Alabama law specifically provides for the creation of incorporated boards and unincorporated boards. An incorporated board is a totally separate entity from the municipality. Once it is created, an incorporated board has plenary power to act within its sphere of power, unfettered by the municipal governing body. Board members cannot be removed by the council. Generally speaking, board members serving on separately incorporated boards can only be removed by impeachment. AGO 1997-276.

Incorporated boards generally cannot be dissolved by the municipality. For example, the Attorney General has ruled that a water works board organized pursuant to Section 11-50-310 et seq. of the Code of Alabama 1975 may be dissolved in one of two ways. The city council of the municipality which authorized the incorporation of the board may offer to pay the debt of the corporation, which if accepted by the board, would result in either the dissolution of the corporation or the corporation's dissolution by a resolution of the board, but only if it does not have outstanding bonded debt. AGO 2002-104.

Unincorporated boards are less autonomous. They still have the power to act without interference from the governing body and the positions of the board members are secure. They cannot be removed other than according to the statutes governing them. However, unless otherwise provided by law, the council has the power to dissolve an unincorporated board and assume its duties or create a new board to perform those functions. AGO 1985-264 (to Hon. Anthony Miele, March 18, 1985).

Municipal boards may only exercise powers authorized by law. Unincorporated boards and incorporated boards are both created pursuant to statutory authority. The powers of these boards are outlined in the statutes under which they are created. Therefore, in order to determine who is eligible to serve on a board, whether they can be paid or what powers the board has, it is crucial to know

the board's statutory authority.

The statutory authority for an incorporated board will be found in the board's articles of incorporation or in the ordinance the council adopted authorizing the incorporation of the board. The code sections which govern an unincorporated board will be found in the ordinance the council adopted creating the board. Often, the statutory authorization for a board can also be found in the board's bylaws or other controlling documents. Once the statutory authority for the board is determined, it is a simple matter of checking the Code of Alabama to learn the board's powers and duties.

What if the articles of incorporation and bylaws are silent regarding the statutory authority for the creation of the board? This probably means that the board falls into the third category mentioned above and it is an advisory board.

Nothing in Alabama law specifically allows municipalities to create advisory boards. A municipality wishing to create a board for which no statutory authority exists should exercise caution in granting powers to the board. Legislative powers, or those exercised by the council as a public agency, cannot be delegated. McQuillin, *Municipal Corporations*, 3rd Ed., Section 12.38. Where the legislature has granted exclusive authority to the

council to act, the council cannot delegate that power to a board. However, advisory boards, while they cannot act for the council, provide several benefits.

Like council committees, an advisory board enables the council to stay informed about the multiple activities of the city or town. The board can process information submitted by citizens to ensure that the council receives only pertinent data for decision making. Advisory boards are like subcommittees. They are responsible for seeing that the council is fully informed on matters within their authority.

Also, an advisory board can buffer the council's actions. Rather than the council acting alone, they are somewhat insulated by recommendations made by a board which was able to devote much of its time to the full study of an issue.

Because the Code is silent on the subject of advisory boards, the council can decide for itself who should be eligible to serve. Membership requirements and an appointment procedure should be stated clearly in the ordinance creating the board. Many councils want a councilmember or the mayor to serve on all boards. As long as the board is advisory (and not created pursuant to statute), nothing prohibits elected officials from serving.

Council members, however, may remain liable for the



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actions of advisory boards. Therefore, it is crucial that the council not exceed its authority to empower the board and board members fully understand the nature of their roles.

**Why Create a Board?**

The simple answer to this question is that the municipal council may feel that the public is better served by the creation of an entity is solely devoted to the performance of a single function. But the board may also have broader powers than the municipality itself, which allows them to do certain things the city is unable to do.

For instance, municipalities are subject to Sections 68 and 94 of the Alabama Constitution, 1901. Section 68 states that no municipal employee may be paid for work which he or she has already performed. That is, retroactive raises are prohibited. Section 94 prohibits municipalities from giving anything of value to any private individual or group.

Separately incorporated boards are not restricted by these sections of the constitution. In *Opinion of the Justices, No. 120*, 49 So.2d 175 (Ala. 1950), Gov. Jim Folsom requested an opinion on the authority of incorporated industrial development boards to spend funds to promote private industry. The court determined that these expenditures did not violate Section 94, holding

that it is “clear that (the act authorizing the creation of industrial development boards) involves no expenditure of public money and the incurring of no liability that must or can be taken care of by taxation.”

The court reaffirmed this holding in *Alabama Hospital Association v. Dillard*, 388 So.2d 903 (Ala. 1980). In this case, the Department of Examiners of Public Accounts had determined that several expenditures by hospital boards, including flowers for hospitalized employees and for special events, payment of awards for employees and Christmas bonuses, violated Sections 68 and 94 of the Alabama Constitution. The department contended that hospital boards, although separately incorporated, remain political subdivisions of the county or municipality which created them.

The Alabama Supreme Court disagreed, ruling that “a public corporation is a separate entity from the state and from any local political subdivision, including a city or county within which it is organized.” The only limitation on expenditures by these boards, according to the court, is that funds may only be spent to further legitimate powers of the board.

Bear in mind this does not authorize the council to use an incorporated board to accomplish things the municipality

*continued page 13*



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## The Legal Viewpoint continued from page 11

cannot do itself. For instance, funds the municipality gives to a board, generally speaking, remain subject to Sections 68 and 94. Additionally, a municipality gives up its right to control a function by creating a board. As the court pointed out in *Opinion of the Justices* cited above, the only connections between an industrial development board and the municipality which created it are: 1) approval of the formation of the corporation; 2) approval of amendments to the certificate of incorporation; 3) appointment of board members; and 4) absorption of the board's property upon dissolution of the board. Other incorporated boards are similarly protected from interference by elected municipal officials.

While the extent of council participation in the activities of a separate board varies depending on the statutes, as a general rule the council is completely excluded from the board's decision-making process. This can become frustrating for municipal officials who want to see the board take some particular action.

In *Water Works Board of the City of Leeds. v. Huffstutler*, 299 So.2d 268 (Ala. 1974), the city of Leeds sought to unilaterally increase the number of members serving on its water board from three to five, despite a contrary provision in the board's articles of incorporation. The statutes governing the board were silent regarding the means for amending the articles.

The court rejected this attempt, holding that a legislative amendment which authorized the increase could only be implemented "if the directors of the water board and the governing body of the city agree that more effective representation of the community interest will result from such an increase." The court felt this was necessary to protect the independence of incorporated boards. See also, *AGO 1996-174 and Water Works of Wetumpka v. Wetumpka*, 773 So.2d 466 (Ala. 2000).

Bear in mind that at least one court has held a separately incorporated utility board was acting merely as an agent of the municipality rather than as an autonomous body, thus making the board subject to restrictions that ordinarily would not apply. In *Wetumpka v. Central Elmore Water Authority*, 703 So.2d 907 (1997), the Alabama Supreme Court held that in this instance, a separately incorporated utility board was actually acting as an agent of the municipality, and therefore, was restricted by Section 11-88-19, Code of Alabama 1975,

from duplicating the lines of an existing rural water authority. The court also held that 7 U.S.C. Section 1926(b) protected the rural water authority from encroachment by the municipal water board.

In addition, in *The Water Works & Sewer Bd. of Talladega v. Consolidated Publishing, Inc.* 892 So.2d 859 (2004), the Alabama Supreme Court held that because the separately incorporated water board had the qualities of an agency of the city of Talladega, its employees are public officers and servants of the city for purposes of the Open Records Act. This case has far reaching implications for both cities and separately incorporated boards. As a result, in 2006, the Alabama Legislature, at the request of the League, passed Act 2006-548, now codified as Section 11-40-24 of the Code of Alabama 1975, which specifically provides that employees of a separately incorporated public corporation are not employees of the municipality which authorized the creation of the public corporation.

### Limitations on Board Power

It is always important to remember that incorporated boards are created for specifically enumerated purposes. Although in many cases the powers of these boards are broad and these boards are frequently not subject to many

continued page 16

## 2009 CALL FOR NOMINATIONS

### AWARDS for MUNICIPAL EXCELLENCE

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# TENTATIVE PROGRAM

Most meetings and activities will take place in the Renaissance Montgomery Hotel unless otherwise noted. Casual dress is appropriate for all meetings. Business attire is appropriate for the Monday evening banquet. Attendees can earn CMO credits for the Certified Municipal Officials Training Program by attending sessions at this convention. The official Convention Program will contain the amount of credit hours that can be earned.

## Saturday, May 2

10:00 a.m. – 5:00 p.m.	Registration for Full Convention – Renaissance Montgomery Hotel
11:00 a.m.	Resolutions Committee Meeting
1:00 p.m.	Alabama Municipal Insurance Corporation (AMIC) Membership Meeting
2:00 p.m. – 5:00 p.m.	General Session
6:00 p.m.	League Welcome Party

## Sunday, May 3

7:30 a.m.	2009 Annual Municipal Golf Tournament – Lagoon Park Golf Course
1:00 p.m. – 5:00 p.m.	Convention Registration
2:00 p.m. – 4:30 p.m.	Rountable Discussions
4:30 p.m. – 6:00 p.m.	ABC-LEO Reception
5:30 p.m. – 7:00 p.m.	League Showcase and Exhibitors Reception

## Monday, May 4

8:00 a.m. – 5:00 p.m.	Registration
8:30 a.m. – 9:00 a.m.	Coffee Service
9:00 a.m. – 10:30 a.m.	Opening Session
8:30 a.m. – 9:30 a.m.	Clerks Breakfast and Business Meeting
9:30 a.m. – 5:00 p.m.	Clerks Meeting
8:30 a.m. – 5:00 p.m.	Alabama Association of Public Personnel Administrators
9:30 a.m. – 11:00 a.m.	Spouse's Breakfast – Embassy Suites
10:30 a.m. – 4:00 p.m.	Exhibits Open
11:00 a.m. – Noon	Concurrent Workshops
12:15 p.m. – 1:45 p.m.	Luncheon
2:00 p.m. – 5:15 p.m.	Concurrent Workshop Sessions
6:00 p.m.	Reception
7:15 p.m.	Banquet and Entertainment

## Tuesday, May 5

8:00 a.m. – Noon	Registration
8:00 a.m. – 8:30 a.m.	Coffee Service
8:30 a.m. – 10:30 a.m.	Annual Business Session
10:30 a.m. – Noon	Ask Your Attorney Panel
Noon	Luncheon

**Meetings and/or events are subject to change.**

## EXHIBIT INFORMATION

For exhibit information, contact Laura Anne Whatley of the League staff at 334-262-2566. The exhibits will open on Sunday night with a reception in the Trade Show and on Monday from 10:30 a.m. to 4:00 p.m.

## The Legal Viewpoint continued from page 13

of the constitutional restrictions applicable to cities and towns, the Attorney General has held that boards may expend funds only within their corporate powers and to further the purposes for which the board was created. See, e.g., AGO 2001-238. Expenditures by separately incorporated municipal boards must be necessary, appropriate and consistent with the purpose for which the board was created. AGO 1998-018.

### Open Meetings Law

The Alabama Supreme Court, in 2002, issued a decision indicating that the Alabama Sunshine Law did not apply to a public corporation organized under Sections 11-50-310 of the Code of Alabama 1975. See, *Water Works & Sewer Bd. Of Selma v. Randolph*, 833 So.2d 604 (2002). However, in 2005, the Alabama Legislature repealed the Sunshine Law and passed the Alabama Open Meetings Law which is codified at Section 36-25A-1, et seq. of the Code of Alabama 1975. The Open Meetings Law specifically applies to “all corporations and other instrumentalities whose governing boards are comprised of a majority of members who are appointed or elected by the state or its political subdivisions, counties or municipalities ...”. Section 36-25A-2, Code of Alabama

1975. All boards, whether incorporated or otherwise, are required to comply with the Open Meetings Law.

For more information on the Open Meetings Law, please see the article in this publication titled “The Open Meetings Law.”

### Conclusion

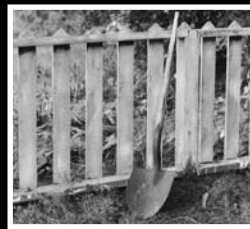
Municipalities desiring to delegate the responsibility and duties of overseeing municipal functions to a board should first be sure of their statutory authority. This authority should be clearly spelled out in the ordinance which created the board.

If no statutory authority exists and the council does not want to seek legislative authority, the only type of board which can be created is an advisory board. In this case, the council must clearly spell out the board’s powers and limitations in the creating ordinance. Also, the ordinance should specify who is eligible to be a member of the board and how members are appointed. Once appointed, board members must fully understand the nature of their position.

For a list of opinions and court decisions affecting boards, see page 99 of the *Selected Readings for the Municipal Official* (2008).

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# *Distinguished Service Awards*

**Presented at 2009 Annual Convention**

Each year during its Annual Convention, the League present Distinguished Service Awards to elected municipal officials, attorneys, judges, mayors, administrative assistants and clerks who have served for 20, 30 or 40 years in municipal office. Service in multiple positions may be combined to make the required number of years. These service awards will be presented at the 2009 Annual Convention at the Renaissance Montgomery Hotel during the luncheon on Tuesday afternoon, May 5. Please help us prepare for the presentation of the League Distinguished Service Awards by notifying League Headquarters **before March 20, 2009** of any official who has served for 20, 30 or 40 years in municipal office and *has not previously received a service award* for the number of years submitted. Visit [www.alalm.org](http://www.alalm.org) to download the appropriate form for this purpose.



# 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:** A defendant who had prior DUI convictions that were over five years old was not entitled to dismissal of an indictment charging him with felony DUI on the basis that an amendment to the DUI statute, passed over a year after the defendant's offense, provided that to be considered for sentencing purposes in a DUI prosecution any previous DUI conviction must have occurred within five years. The version of the statute in existence at the time of the offense controls. *State v. McCall*, 995 So.2d 183 (Ala. Crim.App.2008)

**Juveniles:** Juvenile Court had no jurisdiction over a 16 year-old charged with Second Degree Assault and therefore the Juvenile Court's order transferring the case to criminal court was void. *L.R.G. v. State*, 996 So.2d 208 (Ala.Crim.App.2008)

**Searches and Seizures:** In a matter of first impression, the Court of Criminal Appeals held that, due to their volatile nature, the threat posed by the operation of a methamphetamine lab constituted exigent circumstance allowing a limited warrantless search of the defendant's home. *Williams v. State*, 995 So.2d 915 (Ala.Crim.App.2008)

**Drainage:** A city's occasional cleaning and periodic maintenance of a creek did not constitute an assumption of a duty to maintain the creek. *Royal Automotive, Inc. v. City of Vestavia Hills*, 995 So.2d 154 (Ala.2008)

## UNITED STATES COURT DECISIONS AFFECTING ALABAMA

**Employees:** An employee who did not initiate a job bias complaint but spoke about harassment when questioned during her employer's internal investigation of sex discrimination allegations is protected from retaliation by her employer under Title VII of the 1964 Civil Rights Act. *Crawford v. Metropolitan Government of Nashville and Davidson County*, 129 S.Ct. 846 (U.S.2009)

**Employees – Disability Benefits:** The estate of a participant in a savings and investment plan (SIP) sued the plan administrator under ERISA, seeking to recover benefits. The U.S. Supreme Court held that a benefit plan participant's ex-wife is entitled to the proceeds from his savings and investment plan even though she waived her right to them in their divorce decree. *Kennedy v. Plan Adm'r for DuPont Sav. and Inv. Plan*, 129 S.Ct. 865 (U.S.2009)

**Searches and Seizures:** The exclusionary rule does not apply

for a police recordkeeping error. When police mistakes lead to an arrest and search in violation of the Fourth Amendment, evidence discovered during the search is not subject to suppression if the mistakes were the result of isolated negligence attenuated from the arrest and search. *Herring v. U.S.*, 129 S.Ct. 695 (2009)

**Searches and Seizures:** An officer's inquiries into matters unrelated to the justification for a traffic stop do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop. To justify a pat down of the driver or a passenger during the traffic stop, just as in the case of a pedestrian reasonably suspected of criminal activity, police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous. *Arizona v. Johnson*, --- S.Ct. ---, 2009 WL 160434 (U.S.2009)

**Schools:** Title IX of the 1972 Education Amendments which bars gender discrimination in federally funded educational institutions, does not preclude filing a gender discrimination suit against a school system under the federal civil rights damages statutes, 42 U.S.C. §1983. *Fitzgerald v. Barnstable School Committee*, 129 S.Ct. 788 (U.S.2009)

**Tort Liability:** In resolving a government officials' qualified immunity claims, courts need not first determine whether the facts alleged or shown by the plaintiff make out a violation of constitutional right, receding from *Saucier v. Katz*, 121 S.Ct. 2151 (U.S.2001). *Pearson v. Callahan*, 129 S.Ct. 808 (U.S.2009)

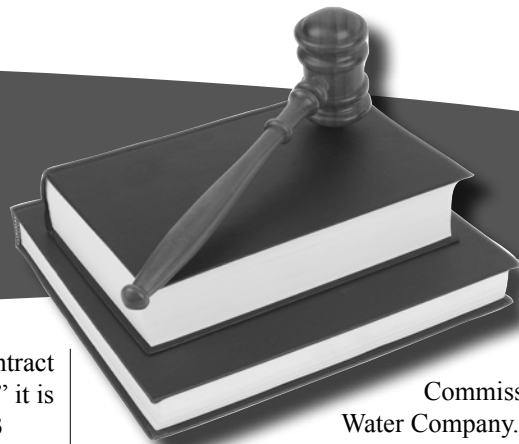
**Tort Liability:** Absolute immunity protects supervisory prosecutors from a civil rights lawsuit claiming that they failed to train properly and supervise subordinates in providing criminal defendants with potential impeachment material about confidential informers or to establish an information system for managing such information. Absolute prosecutorial immunity does not apply when a prosecutor gives advice to police during a criminal investigation, or when a prosecutor acts as a complaining witness in support of a warrant application. *Van De Kamp v. Goldstein*, 129 S.Ct. 855 (U.S.2009)

## ATTORNEY GENERAL'S OPINIONS

**Competitive Bid Law:** Pursuant to Section 11-14-2 of the Code of Alabama, a County does not have to use the bid process when selling real estate that is owned by the county that may be lawfully disposed. AGO 2009-031

**Competitive Bid Law:** A city may contract with a community center to renovate the center in exchange for the center making cultural facilities available to the public. If the project exceeds \$50,000, it is subject to bid under the Public Works Law. The city may contract with a third party to dispose of solid waste from and provide maintenance for a nature preserve. If the solid waste disposal contract involves \$15,000 or more, it is subject to

Tracy L. Roberts  
Assistant General Counsel



between  
the County  
Commission and the Gees Bend  
Water Company.

bid under the Competitive Bid Law. If the maintenance contract exceeds \$50,000, and otherwise qualifies as "public works," it is subject to bid under the Public Works Law. AGO 2009-033

**Employees:** For purposes of section 36-21-3 of the Code of Alabama, relating to lump sum payments to law enforcement officers, the population must be based on the most recent federal census and not on estimated figures. AGO 2009-037

**Property:** As a political subdivision of the state, it is a well established proposition of law that a county can exercise only that authority conferred on it by law. There is no statutory authority for a county commission to sell fuel. AGO 2009-034

**Property:** Pursuant to Section 11-47-21 of the Code of Alabama, if a town considers the space at the top of a water tower to be surplus real property, the town may lease this space for fair market value to a commercial interest. If the town determines that the property is not real property and the lease would be a grant of an exclusive franchise, the town may lease the space at the top of the tower by taking competitive bids. AGO 2009-028

**Utilities:** The jurisdiction of a water authority incorporated under Sections 11-88-1, et seq., of the Alabama Code, is not exclusive. A municipality may extend its services to provide water to the service area of a water authority with the consent of the authority. A water authority may extend its services to provide water to the service area of another water authority if the county commissions of the areas proposed to be served make findings that there is no public water system adequate to serve the area. Private individuals or entities are not prohibited from providing water in the service area of a water authority. AGO 2009-035

#### ETHICS COMMISSION ADVISORY OPINIONS

**AO NO. 2009-01(B):** Members of the Legislature may not be involved in fund raising activities on behalf of an organization on whose board they serve, as their fund raising activities could involve making solicitations from individuals or other entities with matters pending before the Legislature. Nothing may be solicited from a lobbyist other than a campaign contribution. Members of the Legislature may not use discretionary funds to benefit boards on which they or their spouse serve, regardless of whether the board is a charitable organization. It is also irrelevant whether the Legislator and/or his spouse is compensated for serving on that Board, as his or her mere service on the board makes the organization a business with which he or she is associated.

**AO NO. 2009-02:** The Wilcox County Commission may rent storage space at one of its buildings to the Gees Bend Water Company, while a Commission member is an owner/partner in the Water Company. But, it must be an arms-length transaction, the rental price must be based on the fair market value and the Commission member must not vote, attempt to influence or in any manner participate in the discussions or any aspect of the transaction

**AO NO. 2009-03:** A retired Circuit Court

Judge may use documents that were at one time confidential to assist him in writing a book about a case he presided over without violating the confidentiality provisions of the Alabama Ethics Law, once the information loses its confidential status. An individual against whom a complaint is filed with the Ethics Commission is not prohibited from using that information in any way he or she so desires; provided that the information and its use are not subject to the Grand Jury Secrecy Act, codified at Sections 12-16-214 through 12-16-216. The statute of limitations for the disclosure of confidential information begins to run at the time the confidential information is used or disclosed in a manner that could result in financial gain. Receiving permission to disclose what is considered confidential information under the Ethics Law, does not negate the confidentiality provision.

**AO NO. 2009-04:** Employees of the Mobile County Public School System may solicit contributions for the Large City School Superintendents' conference if, (1) vendors conducting business with the school system are not singled-out for donations, nor offered business in return for donations, (2) the solicitations are made in a general/generic way, so that specific vendors do not feel coerced into contributing, (3) all funds will be retained for the purpose of the Large City School Superintendents' conference and (4) there is no personal gain accruing to employees of the school system. In addition, employees of the Mobile County Public School System may not solicit lobbyists to contribute to the Large City School Superintendents' conference.

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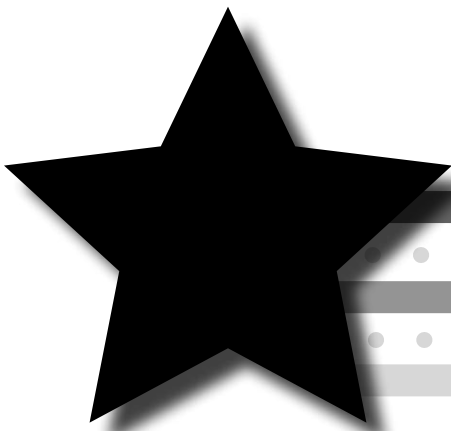
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# 2009 Municipal



This year's Municipal Quality of Life Awards program had nine entries with winners and honorable mentions in two categories. The Town of Dutton and City of Jasper were chosen by our panel of three outside judges as the winners for their population categories – 1 to 5,000 and 12,001 and over, respectively. The City of Guin was chosen as the Honorable Mention for the 1 to 5000 category and the City of Auburn received an Honorable Mention in the 12,001 and over category. Dutton and Jasper will be recognized during a special Awards Ceremony at the League's 2009 Annual Convention in Montgomery.

The Municipal Quality of Life Awards program was designed to recognize outstanding projects in local government and to share those success stories with other municipalities. The following information highlights the two winners and two honorable mentions in this year's Awards program. The complete entry for each is available on the League's website, [www.alalm.org](http://www.alalm.org), by clicking on the "Municipal Quality of Life Awards" button and then clicking on "2009 Winners."

## **Dutton's Community Library – "Dream" Winner: 1 to 5,000 population category**

Dutton's Rural Enrichment of Areas on the Mountain (DREAM) stresses that no one should be deprived of an opportunity to learn because they live in rural Alabama. Therefore, Dutton created a Community Library – a place for books, magazines and newspapers, access to high-speed internet, a learning center as well as a place where the community can gather to enjoy many varying activities. Even before the official opening, the Library sponsored a "Wizard of Oz" Halloween drop-in where all the library board members dressed in character and shared treats with the children from the porch. At Christmas, families were invited to bring their children for a photo op with Santa Claus. The official ribbon cutting in March 2008 featured an "Easter Eggstravaganza" hosted by the Easter Bunny where each child received a book to take home and then participated in an egg hunt in the Library yard.

The Dutton Community Library is structured as a place for children to learn, grow and explore new ideas. Five-year-

olds who have never seen a computer can play on them; thus, beginning a life-long process of learning with computers. A Mother's Day Tea brought mothers and children together to share a unique family experience. Children had time to color pictures and make cards for their moms and each mother was presented with a hardback craft book. The Dutton Library hosted 48 children in the Alabama Summer Reading Program and added a once-a-week pre-school reading program to prepare four and five-year-olds for the beginning of school in the fall. In August, the Library participated in the Annual National Night Out program during which, with the help of volunteers, the librarians packed over 200 backpacks with school supplies that were given to Dutton children the night before school started.

A "Friends of the Library" group was formed to raise money to purchase new books and plans are underway to increase the community center learning aspect of the Library by adding programs, such as computer assistance classes and an online tutoring program, designed to "TEACH" (technology, education and community hope). Through these specialized learning programs – and by offering the Library as a gathering place, particularly for groups such the Scouts – Dutton is meeting community needs that had previously been difficult to address.

## **Jasper's Community Effort Equals Quality of Life Winner: 12,001 and over population category**

Since its inception, the City of Jasper has been a sleepy community nestled in the foothills of the Appalachian Mountains in Northwest Alabama. With the arrival of Corridor X (future I-22), however, Jasper is now fully awake and focused on several revitalization efforts, earning a spot on the National Historic Register in the process. Every spring the city becomes a blaze of beauty as gorgeous flower pots hang from downtown lamp posts – transforming the area into a park-like setting. New underground wiring and historical lamp posts have been installed while approximately 650 buildings in the downtown historical district have been identified as historically significant and architecturally sound, thus qualifying for revitalization.

Jasper Memorial Park, built in the mid-1950s has evolved into a much improved community asset, home

# Quality of Life Awards

to the Memorial Park Natatorium, the Memorial Park Softball Complex and the Penn-Woods Walking Track. The Natatorium was an original community building and outdoor pool and has been completely renovated to accommodate meeting rooms, daycare facilities, a large community room and offices. The original building is tied to a swimming facility with a 25-yard, six-lane, indoor pool, as well as an outdoor and baby pool. The indoor facility features an accessible ramp lane and has hosted many Alabama State Park and Recreation events as well as events for the Special Olympics and Special Needs and Disabilities. Adjacent to the west, Apex Park was completed in 2007 and is designed for use by children with and without disabilities. The Memorial Park Softball Complex, a five-field facility with concession stand and bathrooms, was completed in 2008 and designed to accommodate any type of state or regional event.

The Penn Woods Walking Track is a half-mile, lighted course that transitions from the Natatorium and Apex Park to the ball fields and Swann Gym, an indoor basketball facility that houses the Jasper Park and Recreation Department. Murphy-Woods Fields, are two baseball fields designed for children ages 8 and under. The City is in the process of upgrading Trotter Field for ages 6 and under as well as Fowler Fields for children ages 9 through 14. In addition, Jasper turned what once was a housing project into an active park area featuring picnic pavilions, a half-mile walking track, children's playground, two basketball courts, a splash pad and a sand volleyball court. Other parks include North Jasper Park, a 15-acre facility featuring natural landscaping and Gamble Park, a six-acre property that is one of Jasper's most popular destinations. The City is also partnering with ADEM and CAWACO to restore a 1,500-foot stretch of Town Creek in the downtown area, restoring the WPA Pedestrian Bridge and stream area to its original 1930's appearance featuring stream weirs, a split-rail fence, exposed rock and a children's play area.

#### **Guin's Collins Life Center and Safe Shelter**

#### **Honorable Mention: 1-5,000 population category**

On March 7, 2006, a ground-breaking ceremony was held for the future Guin Senior Center and Safe Shelter – the first such facility in the United States. Throughout a two-year

**First Place Winners will receive a plaque and be featured in individual videos at the League's Annual Convention in May.**

**All entries were judged by a panel of three outside judges.**

#### **Winner: 1 to 5,000 Population**

**Town of Dutton:**

**Community Library – "DREAM"**

#### **Honorable Mention**

**City of Guin:**

**Collins Life Center and Safe Shelter**

#### **Winner: 12,000 and Over**

**City of Jasper:**

**Community Effort Equals Quality of Life**

#### **Honorable Mention**

**City of Auburn:**

**City of Auburn/Auburn University**

**Yarbrough Tennis Center**

*continued next page*

## *Municipal Quality of Life Awards* continued from page 21

period, the project took life. Money was obtained through the Department on Aging, FEMA (75 percent) and, in part, by local funds (25 percent). Contractor bids were taken three times before the project came within range of the grant monies secured. Once the building was near completion, a committee was established to invite citizens and area businesses to donate furnishings for the facility. Donors' names were engraved on a plaque. On April 21, 2008, local, state and national officials joined students, residents, city officials and Mayor Phil Seagraves for the grand opening of the new "Collins Life Center and Safe Shelter of Guin". Executive Director of the Alabama Department of Senior Services, Irene Collins, for whom the center is named, was on hand for the opening.

In addition to serving the daily needs of area seniors, the Center also functions as a public shelter in the event of a disaster. A FEMA-approved safety plan was developed and there is a trained volunteer team on call to help man the shelter when the surrounding counties are under tornado warnings. The building is designed according to FEMA standards to withstand hurricane and tornado force winds, floods and other hazardous conditions and has a short-term capacity of 150 people. There is a natural gas generator, stocked supplies, a command center with TV, weather radio

and Internet access, a refrigerator for insulin or formula, a medical needs room equipped with portable hospital beds and oxygen hook-up outlets, handicap-equipped showers, cots, pillows, and blankets.

The Collins Life Center operates according to the North Alabama Council of Local Government and State Department of Aging regulations during the hours of 9 a.m. until 1 p.m. and is equipped with two plasma TV/DVDs, a large projector screen, exercise equipment, console piano and a large dining area. There is also an Internet-accessible computer lab, library/sitting room, game room and fully equipped kitchen. The Center is available to seniors 60 years and older, and enrollment has increased 75 percent since it first opened.

### **City Auburn/Auburn University Yarbrough Tennis Center**

**Honorable Mention: 12,001 and over population category**

The offerings of Auburn's Parks and Recreation Department are highly utilized by Auburn's citizens and highly ranked in the City's annual Citizen Survey. For a number of years, Auburn had been seeking a solution to the

*continued page 24*



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## *Municipal Quality of Life Awards continued from page 24*

diminishing number of tennis courts in the community. By the early 2000s, ten of the 16 public courts had been demolished to make room for school or park facility expansions. By 2005, a decision was made to build a new City facility in phases – a first phase was budgeted for 2006. During that time, the Auburn University (AU) Athletic Department had been working to determine a way to upgrade its tennis facilities – six courts with minimal restrooms and no dressing rooms – and so the City and the Athletic Department began exploring the option to build a joint tennis facility that would serve the AU teams as well as Auburn’s citizens.

After preparing a master plan, it was determined that the best option was to build all phases of the public facility proposed by the City, as well as the outdoor hardcourts and indoor courts with dressing rooms and offices needed by AU. Auburn’s voters overwhelmingly approved a referendum authorizing the City to use a portion of its proceeds for the Special Five Mill Tax Fund to construct the original City project of 16 clay courts, clubhouse with pro shop, meeting room, restrooms, offices, showers and half the parking. The

City issued a general obligation (G) warrant to fund the construction of 12 outdoor lighted hardcourts with a tiered viewing area and six indoor courts with offices and locker rooms and parking for AU. The City leased the hardcourts and indoor courts portion long-term to AU for a monthly amount equal to the City’s principal and interest costs on the GO warrant.

The facility has been a resounding success with an average of more than 1,600 players per month paying court fees to use the facility. In July 2007, the facility hosted 10 events including a Southeastern Conference (SEC) tournament, two Alabama State tournaments for Junior Team Tennis and, most recently, a US Tennis Association’s Professional Women’s Tournament which drew players from around the world. Three Southern Tennis Association tournaments and a State Junior Team Tennis tournament are already scheduled for 2009, as well as the Men’s SEC Tournament, which provides solid revenue streams for the City through booked hotel rooms, food sales and other expenditures. ■



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# Effective Lobbying *continued from page 5*

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

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

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

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

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

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

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

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

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



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It's always important to read the fine print. Sometimes, however, it's hard to know where the fine print is located, or what it really means. Municipal law is loaded with fine print, and not just in contracts. State and federal constitutions, statutes and regulations, local laws and ordinances – they all contain fine print that make a difference providing your municipal client with effective representation. **Failing to locate and understand the fine print can cost your municipality money and simply waste your time.**

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