

The Alabama Municipal JOURNAL

September 2009

Volume 67, Number 3

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Official Publication, Alabama League of Municipalities

September 2009 • Volume 67, Number 3

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A Message from the Editor



Above is a photo of an apartment complex located on Adams Avenue in Montgomery across the street from League headquarters. Every morning as I drive into the League parking lot, I see these old vehicles in front of this old building and can't help but feel as if I've been in a time machine. This picture was taken in July 2009.

H1N1 Flu Update

Last month I attended an Alabama Department of Public Health briefing on the H1N1 (swine) flu. Dr. Don Williamson, state health officer, said this virus has spread more rapidly around the world than any in human history – just six weeks – and that “we are now seeing a pandemic in real life.” While there’s absolutely no need to panic, parents should consider having their children (6 months and older) vaccinated as soon as the H1N1 vaccination is available. The state is expected to receive about 600,000 doses of the H1N1 vaccine in mid-October. An additional 300,000 will be shipped to Alabama every two weeks after that. Two million doses are expected by December and will most likely be a two-tiered vaccination with a second shot administered 21 days or so after the first. The initial target groups for the vaccine are:

- Children 6 months through adults age 24
- Pregnant women
- Healthcare and emergency service personnel
- People with household contact of children under 6 months of age
- Adults ages 25 through 64 who are at higher risk due to chronic health disorders or compromised immune systems

After the initial focus, the vaccine is expected to be offered to healthy adults. Influenza immunizations will be recommended but not mandated for school students, and written permission will be required before children are immunized in the schools. Specifics will be announced through ADPH at a later date. **In addition, we’ve posted some very good information on page 21 of this publication on how to protect yourself against the flu.** Dr. Williamson further stressed during the briefing that if you are sick – STAY HOME! Of course, you can expose others to the virus 24 to 48 hours before exhibiting symptoms, but if you do become sick, STAY HOME. Do not return to work until you’ve been fever free (without the aid of any medication) for 24 hours. For additional information, visit www.adph.org.

Annual Photography Contest: November 6 deadline

The November 6 deadline for the League’s Annual Photography Contest is just a few weeks away (see page 9 for more info). PLEASE SEND IN YOUR SUBMISSIONS ASAP! The winning photo will be featured on the cover of the League’s 2010 *Annual Directory and Vendor Listings* which is distributed in January. Other entries may be used in the *Alabama Municipal Journal*, as well as other League publications, throughout the year. Pictures of municipal/historical buildings, parks, streets downtowns, city festivals ... all are acceptable. Because the winning photo will appear on the cover of the *Directory*, the picture must be vertical shot taken at a high resolution so the print quality is not compromised. We’ve received a few images that are horizontal and, therefore, do not qualify for the contest. Please make sure your submissions comply with all the requirements and that the a completed entry form, which can be downloaded from our website is included. For more information and an entry form, visit www.alalm.org and click on the 2010 Municipal Photo Contest icon on the right side of the home page. Previous contest winners were: Wetumpka’s Bibb Graves Bridge by Frank Williams (2008) and Tuscaloosa’s RBC Centura Bank Building by Jeff Motz (2009).

AAMA/AMJA – October 8-10

Registration materials were mailed last month for the joint Fall Municipal Law Conference of the Alabama Association of Municipal Attorneys (AAMA) and the Alabama Municipal Judges Association (AMJA) which will be held October 8, 9 and 10 at the Bay Point Marriott in Panama City, Florida. Municipal attorneys, judges and prosecutors are encouraged to attend. For more information, contact Sharon Carr at 334-262-2566 or visit <http://alalm.org/AAMA/AAMA.html>.

Carrie

The President's Report

Roy H. Dobbs
Mayor of Berry



2009 CMO Graduation Ceremony Held August 27th

On August 27, the League held commencement ceremonies in Montgomery for its Elected Officials Training Program. These graduation exercises marked the 14th group of officials to receive their basic CMO (Certified Municipal Official) certification and the 11th group to receive their advanced CMO certification. My congratulations to all the graduates! The special ceremony that was held a few weeks ago further signifies your commitment as an elected official to your community. I'm a firm believer in the League's CMO program. It's truly designed to guide and support municipal officials in carrying out their elected duties efficiently and effectively.

The Elected Officials Training Program consists of a series of one-day continuing education programs designed for elected municipal officials – mayors and councilmembers – who voluntarily wish to receive formal training in municipal government. Officials who complete 40 credit hours of training are awarded the professional designation of Certified Municipal Official. Training sessions are conducted twice each year at four regional sites throughout the state. Additional hours may be earned by attending designated sessions during the annual League Convention and other approved events sponsored by the League and the National League of Cities. A limited amount of credit may be obtained by attending other approved courses. The training program can be completed in as few as two calendar years.

The Elected Officials Training Program is an ongoing project of the League to fulfill the education mandate contained in its constitution. The first session of the Elected Officials Training Program was held at the Adams Mark Hotel in Mobile on September 22, 1994. The same program was offered in Birmingham, Montgomery and Huntsville. Nearly 200 officials enrolled in the program during the first sessions. Currently more than 2,000 municipal officials are enrolled and have attended one or more courses.

Session topics include council meeting procedure, rules of parliamentary procedure, the Open Meetings Act, public records, ordinance drafting, powers of municipalities,

ethics laws, conflicts of interests, duties of mayors and councilmembers, tort liability, annexation, zoning, subdivision regulation, municipal revenues and expenditures, the competitive bid law, personnel issues, insurance issues and regulatory powers of municipalities.

In 1998, the League added an Advanced CMO Program for those officials who had received the CMO designation and desired additional training. During its January 2000 meeting, the League's Executive Committee approved the addition of a continuing education requirement to the Elected Officials Training Program. The committee members felt the new requirement would strengthen the CMO Program. As of Jan. 1, 2000, each Advanced CMO Graduate is required to earn ten (10) credit hours of approved training within two (2) calendar years to maintain their Advanced CMO active status. Any CMO Advanced Graduate who does not earn at least ten (10) approved credit hours of training within two (2) calendar years will have their Advanced CMO status designated as "inactive" until such time as the required ten (10) hours of approved credit is earned. The continuing education credits started at the 2000 Convention in Birmingham.

This year, a total of 33 municipal officials successfully completed the requirements to receive their CMO certification. Twenty-two officials received their Advanced CMO certification. As he has done at all the previous CMO graduation ceremonies, Representative Bill Dukes of Decatur addressed the 2009 graduates of the Elected Officials Training Program. He has been a key player in municipal government for more than 30 years – 18 of them as mayor of Decatur. A past president of the League, Rep. Dukes was elected to the Alabama Legislature in 1994 and currently serves as chair of the House County and Municipal Government Committee. Following his comments, Rep. Dukes handed out plaques to those graduates who were able to attend the commencement ceremonies. The 2009 graduating class of Certified Municipal Officials is listed on pages 24 and 25. ***Congratulations!*** ■

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Municipal Overview

Perry C. Roquemore, Jr.
Executive Director



Why Training Matters

Recently I read an excellent article by my counterpart at the North Carolina League of Municipalities, Ellis Hankins, titled “Can we afford to cut back on educating municipal officials?” I’ve taken the liberty of reprinting a portion of his article for you to think about as you’re developing budgets for the next fiscal year.

“Like most municipal officials these days, you’re probably in the stretch-and-squeeze mode – stretching every dollar of revenue and squeezing the last drop of value out of each expenditure. You’re eyeing price tags, looking for bargains. But in your efforts to cut back, remember that some investments are necessary to improve your most valuable assets – your staff and leadership.

“Travel and training are frequently the first items cut when the budget gets tight. But short-term savings can be expensive over the long run, or even the short term. Some of your employees have to maintain professional certifications that require continuing education. If they lose those certifications, they may not be able to continue their work or certainly will not do it as well. Nearly every employee needs to maintain and update their skills with classes and workshops; this should be a routine part of their jobs. Workshops and classes may be available locally, but some will require travel.

“The League and many of its affiliated organizations offer professional development and training at their meetings and conferences.”

After reading these remarks, I thought about the great training opportunities available to Alabama municipal officials and employees. There are a number of courses offered for municipal clerks, city managers and administrators, attorneys, judges, elected officials, revenue officers, finance officers, law enforcement officers, firefighters, planning and zoning officials and other city hall employees. Among those entities offering training are the League, the National League of Cities (NLC), the Alabama Association of Municipal Clerks and Administrators (AAMCA), the Alabama Association of Municipal Attorneys (AAMA), the Alabama Municipal Judges Association (AMJA), the Alabama

Municipal Revenue Officers Association (AMROA), the Alabama City County Management Association (ACCMA) and the Alabama Planning Institute. Many of these courses are offered with the assistance of various state universities and several programs offer certification upon completion.

Training of municipal officials has been a longtime goal of the Alabama League of Municipalities. Our highly successful Certified Municipal Officials Program has had 3347 municipal officials voluntarily attend at least one League CMO course since 1993. Of this number 849 officials have completed 40 credit hours of training on municipal subjects and have received their designation as a Basic Certified Municipal Official. In addition, 379 officials have completed 80 credit hours of training on municipal subjects and have received their designation as an Advanced Certified Municipal Official. The League also provides important training opportunities at the League’s annual convention in the spring.

In addition to training offered through the League, NLC is an excellent educational resource for municipal officials and I encourage you to consider attending the annual Congress of Cities this November.

NLC Congress of Cities in San Antonio, Texas

If you could create an ideal meeting for a local leader, what would it look like? What would make it the one meeting you had to attend in order to gather all the information you needed to help your city survive and thrive in a time of economic crisis? Would the best meeting possible include:

- Thousands of elected and appointed officials from across the country who are gathered in one place and primed to share great ideas and best practices?
- Substantive workshops featuring content experts and experienced city officials and staff sharing the latest information on solutions to the challenges that affect your city as well as the most up-to-date facts and analysis of national and regional trends that are shaping your community?
- Professional development trainings that address your

continued on page 11

~~\$14~~ Million Dollars



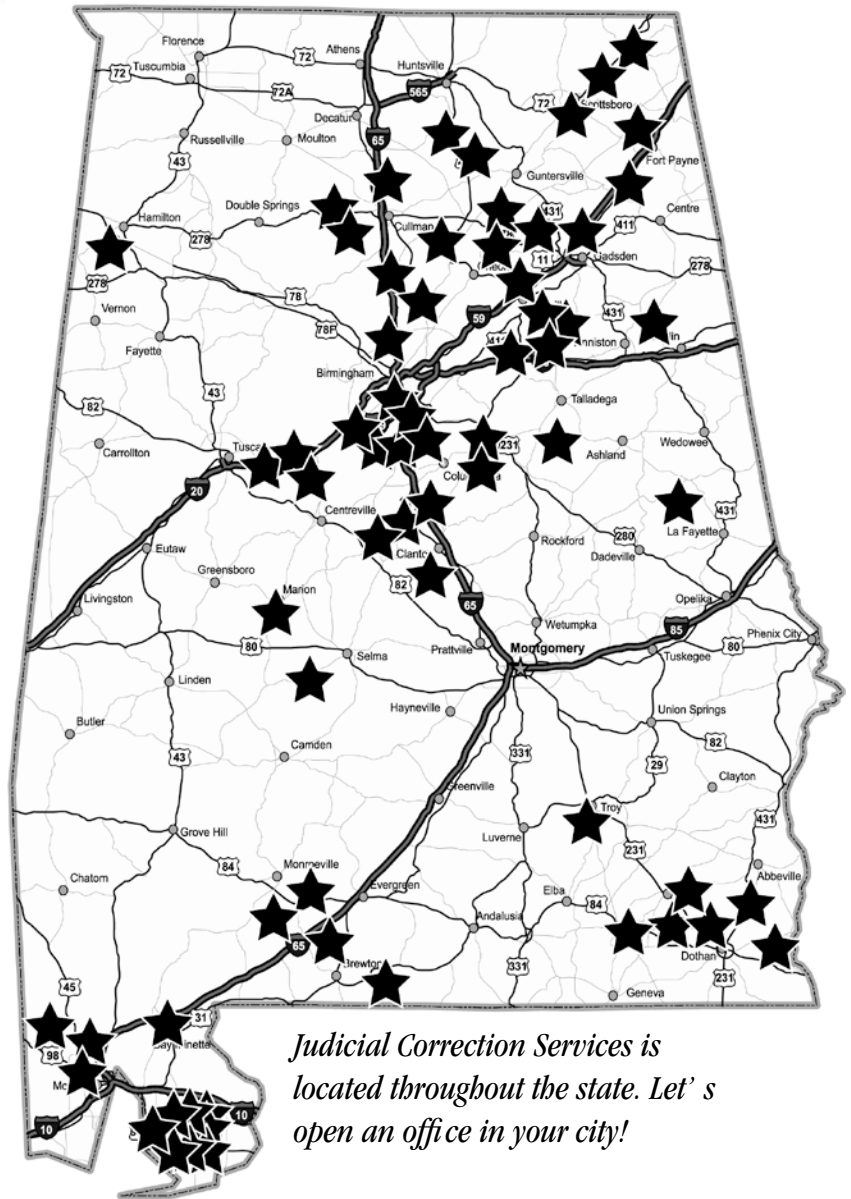
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2010 Municipal Photo Contest



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!

Showcase your
Municipality

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 of 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:

Photographers retain the copyright to their photographs. By entering the Alabama League of Municipalities (ALM) photo contest, photographers agree to have their submitted photograph displayed on any ALM publication as well as the ALM website without any fee or other form of compensation, and also agree that the photo may be used, with photo credit, on the website for the National League of Cities (NLC) and within NLC's publications. 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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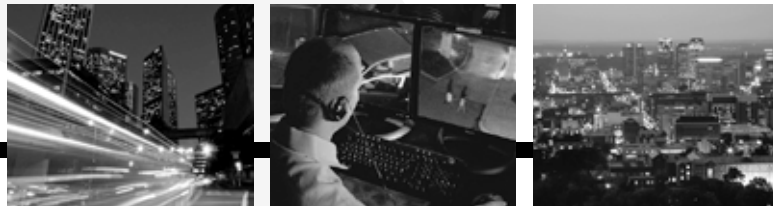
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concerns and strengthen your skills as a leader?

- The ability to ask your questions about what is happening in federal programs and agencies that will impact your city from people who work closely with White House and Congressional staff members on the issues that matter to you as a local leader?
- The chance to learn about and sign up for programs — like prescription drug discount programs and purchasing alliances — that can save your city hard cash?
- The opportunity to compare costs and services among hundreds of vendors who serve the needs of cities?

Your ideal meeting already exists; it's the 2009 Congress of Cities & Exposition. The 2009 Congress of Cities & Exposition includes:

- More than 4,000 participants including more than 2,000 elected and appointed officials and city staff who will converge in San Antonio, Texas from November 10-14.
- More than 30 workshops on topics critical to municipalities with some workshops directed at policy makers and others created especially for those who implement programs. Workshop topics will include: (date and titles subject to change)

Thursday, November 12:

- An educated choice: school district partnerships that pay off for cities
- Climate action: putting you city on the map
- Democracy online: new technologies for citizen engagement
- Doing more with less: getting better results for children and families
- Downtown revitalization: a key to sustaining your city's economy
- Everything old is new again: strategies for reinventing your local economy
- Future of public sector pensions
- Generating local revenue for transportation
- Green jobs: preparing for the new economy
- Leading and communicating in a time of crisis
- Predictive and intelligent policing
- Surface transportation reauthorization
- The rise of media resources for immigrant communities

Friday, November 13:

- Green affordable housing
- Green building practices
- Health care reform and cities
- Helping your city cope during the fiscal crisis
- Increasing access to alternative forms of transportation
- Innovations in workforce development

- Local strategies to promote innovation and entrepreneurship
- More than meets the eye: bringing investment into previously overlooked markets
- Product stewardship
- Promising approaches to prevent youth and gang violence
- Sustainable water infrastructure
- Top plays of the day: great ideas for children, youth and families
- Veterans healthy homing

Saturday, November 14:

- Increasing government efficiency through technology
- Local foods
- Practical strategies for attracting local investment
- Transit-oriented development
- More than 20 Leadership Training Institute seminars offering in-depth professional development and skills training.

NLC staff will be available at the member services booth in the exposition hall, in workshops as speakers and throughout the conference to answer questions about what is happening across the nation and on Capitol Hill that impacts cities and an NLC Member Services booth will be located in the exposition hall where you can sign your city up for critical programs and services that will save your city money. In addition, an Exposition Hall with more than 200 vendors in the exposition hall offering services and products that support cities will be featured..

To register or for more information about the 2009 Congress of Cities and Exposition, visit www.nlccongressofcities.org.

Bottom line: The best municipal official is the well-trained municipal official. Invest in the future of your municipalities by making sure that your city or town officials and employees are adequately trained to meet the challenging times that lie ahead at city hall. ■

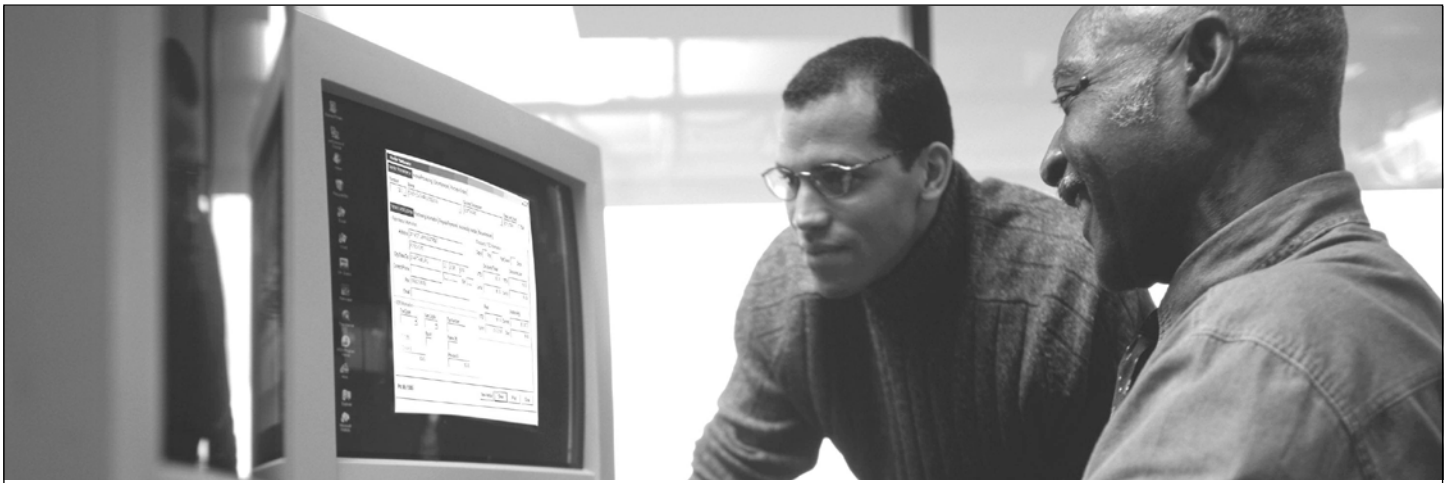


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The Legal Viewpoint

Why We Fight

by Don Knight
Assistant City Attorney, Dallas, TX

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Many of you may recognize *Why We Fight* as a series of seven World War II propaganda films, directed mostly by Frank Capra. Or, perhaps, you saw the 2005 documentary by the same name. This column isn't about the use of the military but, rather, why so many talented attorneys choose to represent local governments. I recently posed the following question to the IMLA (International Municipal Lawyers Association)/MCC (Municipal Code Corporation) (e-mail) list: *What do you get out of representing a local government that you wouldn't get from representing private clients?* The responses were outstanding. This is the sort of thing you need to laminate and keep at your desk for emergency use, when you're wondering why in the world you decided to become a municipal attorney.

Chicken Soup for the Municipal Attorney

Roger Nowadzky, City Attorney of Marshalltown, Iowa, related that he had experienced a "reverse career pyramid," starting government work with the federal government, and then progressing to state government, the League of Iowa Municipalities, the largest city in Iowa, to a medium-sized Iowa city, Marshalltown. Roger continues:

But the crowning glory is that I have been allowed, for the last several years while still serving as City Attorney of Marshalltown, to represent another community in our county, St. Anthony, which is one of the smallest cities in our state – a town of 102 people. When I would attend a city council meeting for this community, my billing amounted to everyone in

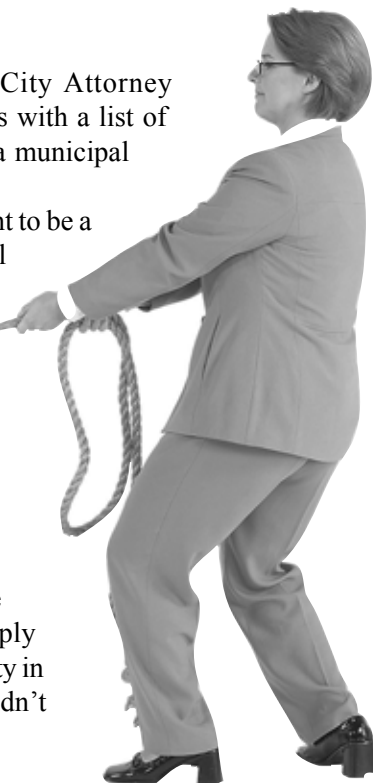
town paying me the equivalent of a Mc Donald's Happy Meal. They had a steak (or maybe a burger) in me, and I in them. But serving that small town has given me the greatest satisfaction. I have discovered that Thomas Jefferson was right: "The government closest to the people, is the best." I think he was saying municipal government is the most accountable and the most reflective of the people's wishes, as well. I particularly appreciate it when the municipal government is non-partisan – there is no Democratic or Republican way to fill a pothole. By the way, I haven't sent a bill for legal services to this small town in five years. The satisfaction – of somehow making a difference – is why I am a city attorney. "That is why I fight."

Lynn Nunns, an Assistant City Attorney for Carrollton, Texas, provided us with a list of her reasons why she likes being a municipal lawyer:

1. I like politics, but don't want to be a politician. By being a municipal government lawyer, I can see how things work and
2. I like the challenge of being a lawyer. Simply working for a municipality in another position wouldn't be interesting to me.



the policy behind them, without having to be out front selling the policy as my own.



3. I like the stories. It is amazing the trouble that people get themselves into! (And how creative they are at getting themselves out of it!)
4. Overall, I like the citizens. I like hearing their sides of the story. I can't always help them, but I often can sympathize. Municipalities are the units of government closest to the citizens, and we should give them their (tax dollars) money's worth.
5. I believe in accountability, and with the media always around, those of us who work for city government are accountable to our citizens for our actions.
6. I like working with people who share my beliefs about the public and our co-workers.
7. I hate scrounging up clients to bill, and keeping track of billable hours.

Lynn's list prompted Julie Glass, Assistant City Attorney for Shreveport, Louisiana, to comment:

Playing off of Lynn's No. 1 ("I like politics, but don't want to be a politician"), I've always said being an Assistant City Attorney is like standing on the field on the 50-yard-line of the political game. Usually, you aren't the one that gets tackled, although occasionally the players may run over you in their zeal.

John "Kelly" Addy, Deputy City Attorney, City of Billings, Montana, has experience at several levels of government, as well as private practice, and he's a big fan of local government:

I came to municipal law after four years as an Army lawyer, 20 years as a private practitioner, and, in that last 20 years, eight years as a state legislator. While I was in the legislature, I found myself championing local government because my city did a great job of providing the services people used every day: police, fire, streets, water and sewer, and parks, and I saw that they did it with resources that required them to be diligent and accountable. Other levels of government talk about services, but cities either provide them or they don't, no matter what the bumper sticker of the day is.

In municipal practice, I don't have to spend a huge chunk of my time running an office, ordering paper clips, finding a location, or billing clients – I spend my time practicing law, which is what I went to law school to learn to do and what I love to do. In municipal practice, I have found the best corps of fellow employees that I have known anywhere, focused on providing a service and making life safer and better than it was yesterday, not as good as it will be tomorrow. No self-promotion, just service.

Finally, I have the best clients in the world. They are goal-oriented; they are not driven by liberal or conservative ideology; and they will ask me for a legal opinion and understand that my advice is intended to protect and promote the interests the residents of our community and themselves. They are professionals who do not have an axe to grind, only a job to do, a calling to serve.

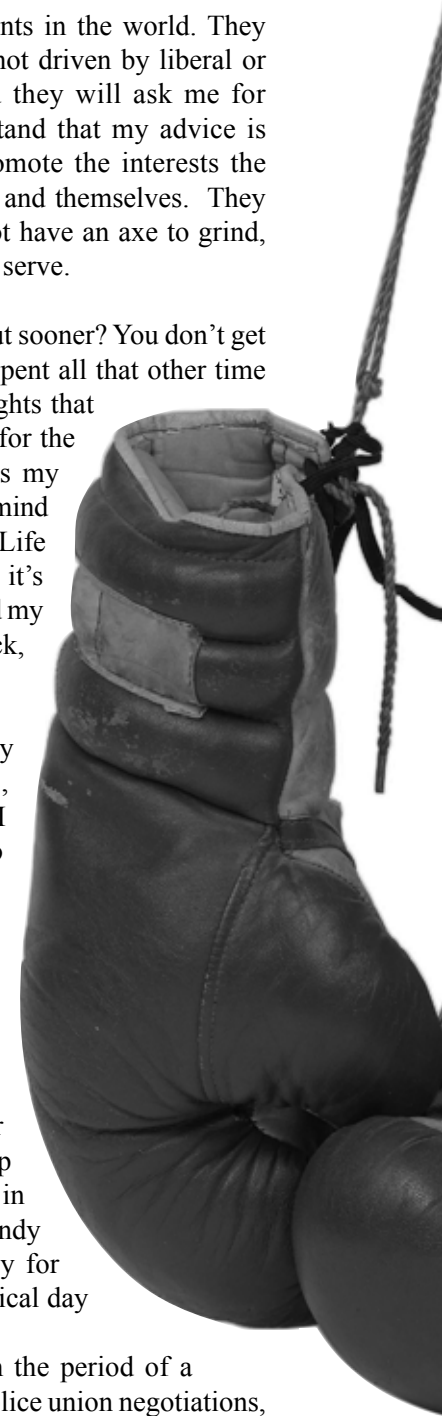
So why didn't I figure this out sooner? You don't get any do-overs, but I think I spent all that other time gaining experience and insights that have uniquely prepared me for the challenges that come across my desk today, and constantly remind me that this is a great place. Life is good, and if I do my job, it's going to get better, for me and my neighbors. I'm a lucky duck, and I'm grateful for it.

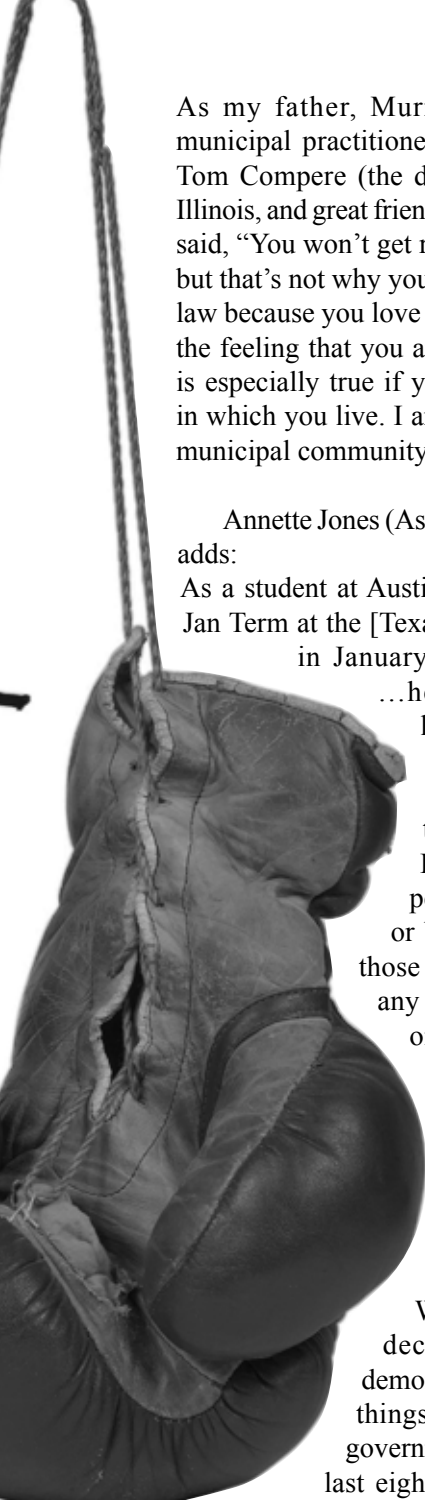
Alan C. Wayland, City Attorney for New Braunfels, Texas, says "everyday I feel like I have the opportunity and ability to make the community where I live a better place. I think this is the essence of why anyone wants to be a public servant." Alexandra Sosnkowski, who works for Hood River, Oregon, writes, "I like getting to work with people – City staff. We work together for the common good and stand up for each other. You don't get that in private practice the same way." Andy Quittner, Assistant City Attorney for San Marcos, Texas, relates a typical day in the life of a city attorney:

[W]here else would you, in the period of a single day, get to opine on police union negotiations, complex utility agreements, animal regulations, try and figure out what a TxDOT engineer really means in a minute order, and discuss the finer points of double jeopardy (as applied to municipal/county court complaints) – and the day hasn't ended yet!! It's enough to make your head swim – but you gotta love it!!

More Chicken Soup for the Municipal Attorney

Anne C. Linn, Attorney for the City of Waukegan (Building, Zoning and Code Compliance) is a second-generation municipal attorney:





As my father, Murray Conzelman (a 50-year municipal practitioner) and my long-time mentor, Tom Compere (the dean of municipal lawyers in Illinois, and great friend to all in the old NIMLO) both said, “You won’t get rich being a municipal lawyer, but that’s not why you do it. You practice municipal law because you love the variety, the challenge, and the feeling that you are making a difference.” This is especially true if you practice in the same town in which you live. I am so proud to be a part of the municipal community.

Annette Jones (Assistant City Attorney, Waco, Texas) adds:

As a student at Austin College, I participated in a Jan Term at the [Texas] Constitutional Convention in January 1974... Hawkins Menefee ...helped to set up the month long internships. At the end of that, he sent everyone a letter. ...[that] made reference to a statement of Theodore Roosevelt. Essentially, good people must enter government or be content to be governed by those who do. I believe that. And any time I get a little depressed or irritated, I remember that letter. From the time I left Austin College to go to Baylor Law School, I never wanted to go into private practice. I wanted to go into government service.

We have lived through several decades of certain politicians demonizing government. Yet, when things are at their worst, it is the government that people turn to. The last eight years have really created a situation where it is difficult for people to believe in government. These people seem to view government that only exists to serve their personal interests, not the good of the whole country, or the whole community. I believe that government can serve people and provide for the betterment of the community as a whole.

Robert Spence (Staggs & Spence, LLC, Tuscaloosa, Alabama) wants you to know that it isn’t just the American Civil Liberties Union (ACLU) that safeguards civil liberties:

At the [International Association of Chiefs of Police] meeting last year, a retired North Carolina lawyer spoke movingly about one of her mentors early in her career. He lamented that the ACLU was credited with safeguarding civil liberties in America. In his view, the true champions of civil liberties were the lawyers who actually provided legal advice to law enforcement. They were the ones who saw to it that the officers knew and followed the law. I’m an adherent of this view, and I have to say that I believe the officers I represent believe that, too. They are dedicated to protecting the citizens in their communities, but they want to do so in a way that upholds the principles of the Constitution. I love the fact that I get to help them do that.

Frank Bartolone, Senior Specialist Attorney for South Florida Water Management District, sums it up succinctly:

As a college Latin major ... I found that the writings of Cicero had a profound impact on where my life was headed. One of my favorite quotes and one which has inspired me for almost 30 years as a local government lawyer is: *Salus populi suprema est lex.* (The people’s good is the highest law.) That about says it all for me.

Marcus W. Norris (City Attorney, Amarillo, Texas) gives the perspective of a reformed commercial litigator:

For seven years, I was in a private law firm doing both plaintiff and defense commercial litigation in San Antonio. By the seventh year, I was very cynical about the law. I felt like it was simply a wealth transfer system between business owners in the community, who always wanted to complain about the fee. (Private practice was not totally negative, as I learned much from a wonderful mentor about practicing law. The disciplines, outlooks, and methods I learned there have contributed to my success as a municipal attorney.)

When I entered municipal law, I took a 50% pay cut ... I have now been in municipal law over 16 years and have never once regretted the move. To my delight, not every legal assignment is determined solely by money, as it was in private practice. Instead, constitutional principles or public policy often determine the direction of our legal work. Moreover, I feel like I am on the inside of what is happening in my city so I have a meaningful opportunity to use my knowledge and abilities to help solve problems in my community and to make my city government more responsive. Besides, what other lawyer can

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Why We Fight ————— continued from page 15

occasionally go ride in a fire truck or police car as part of his field research on city personnel needs and concerns? Most days, I feel very good about my job when I go home.

Lauren O'Connor (Assistant City Attorney, San Antonio, Texas) likes representing clients whose job requires them to focus on the common good:

When representing individuals, it is generally all about that person's self interests. While there is nothing wrong with that (after all, it's the lawyer's job), there is something much more satisfying in working with people on a daily basis whose sole interest is in benefiting the public at large, and my fair city.

Steve Kemp (City Attorney, Peoria, Arizona) shares a purpose that we can all relate to:

[I]n 25 years of practice, I have represented both private and public clients. For me, public service has been about participating in and building a community. The work that I have done as a local government lawyer has led to an innovative outside storage ordinance in a rural Arizona county, a joint-use agreements for retention and parks that permitted parks to be built years ahead of schedule. I mention these not because I desire any credit [but] rather, as examples of how our work as a local government lawyer can directly impact the lives of the people who live in the communities that we serve. Our profession allows us to say that we leave our communities after our service in a better place than we found them.

Lynn Gordon, who represents the City of St. Petersburg, Florida, knows it is important to remember who your client is.

I love my municipal work because of the challenge and variety. Although much of what I do involves collections, foreclosures, and bankruptcy, I do it all because it's in the best interest of my client, the City. I treat my municipal client the same way I would treat a client if I were in private practice. I often remind my departments that we have to consider what is in the City's best interest. Some of what I do may adversely impact a citizen (getting a judgment against someone or foreclosing a mortgage), but for the greater good, I must do what is sometimes a most unpleasant task. At the end of the day, most days, I leave work feeling satisfied, not because I accomplished everything on my to do list that day, but because I know I represented my client to the very best of my ability, while still being as fair as I can to those on the other side, because those on the other side are the citizens of the City I represent.

I'm going to let a fellow Texan put it in terms anyone can understand. Mary Ann Powell, the First Assistant City Attorney for the City of College Station, Texas, says, "As in the old westerns on TV, I tell people I get to wear the white cowboy hat."

A Good Reminder

I don't know about you, but reading these contributions helps remind me why I do what I do. So I think I'll take my advice from last time and keep this list handy for those days when I start to forget. ■

Congratulations to the following municipal clerks for recently completing the educational requirements of the Certification Training Institute for Municipal Clerks!



Susan Luster Gilmore, City Clerk, Adamsville; Wayne Jones, Town Clerk/Treasurer, Westover; Marsha Yates, Deputy Clerk, Pelham; Sharron Humphrey, Town Clerk, Triana; Phyllis Webb, City Clerk/Treasurer, Albertville; and Doris Killam, Town Clerk, Flomaton



Joy Marler, Town Clerk, Vincent; Patty Mayne, Assistant City Clerk, Southside; Dineki McCaa, Acting City Clerk, Aliceville; Vickie Lewis, Assistant City Clerk, Calera; and Angie Scarberry, Town Clerk, Skyline

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

Employees: A city ordinance authorized a five percent pay increase for any police officer placed in a “special assignment capacity” by the chief of police. On administrative appeal from the personnel committee’s decision to deny the police officers’ request for special duty pay relative to traffic-flow services, the city council mistakenly treated the officers’ pay grievance as an attempt to contest the validity of the ordinance, which was not permitted as matter of law, rather than as an attempt to enforce the ordinance, which was permitted. Thus, it was legal error for the council to foreclose determination on grievance by categorizing it as challenge to validity of ordinance. *Fox v. City of Huntsville*, 9 So.3d 1229 (Ala.2008)

Searches and Seizures: Interrogation relating to one’s identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure. An officer needed no probable cause to initially approach a defendant in his parked car. The officer approached a parked automobile in the course of investigating a crime, and the mere approach and questioning of persons in a parked vehicle did not constitute a seizure. Under appropriate circumstances, a police officer may approach and stop a person for the purpose of investigating a crime even though the officer has no reason to believe that the person stopped has committed the crime which is being investigated. *Doucette v. State*, 10 So.3d 117 (Ala.Crim.App.2008)

Tort Liability: A police officer had probable cause to arrest a man for third-degree domestic violence. A civil rights action under §1983 for impermissible arrest is barred if probable cause existed at the time of the arrest. The officer need not have enough evidence or information to support a conviction, in order to have probable cause for arrest. *City of Birmingham v. Major*, 9 So.3d 470 (Ala.2008)

UNITED STATES COURT DECISIONS AFFECTING ALABAMA

Courts: Defendants have a right to cross-examine the analysts who conduct and report on forensic laboratory tests. The Court concluded that the lab results reports are clearly “testimonial” in nature and, therefore, subject to the restrictions set out in *Crawford v. Washington*, 541 U.S. 36 (2004), requiring prosecutors to either have the declarant testify or show that the declarant is unavailable and that the accused has a prior opportunity for cross-examination. *Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527 (U.S.2009)

Employees: A city’s refusal to certify the results of a firefighter promotion examination, based on city’s belief that doing so could have a disparate impact on minority firefighters because white candidates had outperformed minority candidates, was a violation of Title VII’s disparate-treatment prohibition absent some valid defense. However well intentioned or benevolent the city’s motivation might have seemed, the city made its employment decision because of race. *Ricci v. DeStefano*, 129 S.Ct. 2658 (U.S.2009)

Schools: The strip search of a 13-year-old middle school student, which was ordered by an assistant principal who thought that the female student was carrying non-dangerous drugs in violation of school policy, violated the student’s Fourth Amendment rights. *Safford Unified School District No. 1 v. Redding*, 129 S.Ct. 2633 (U.S.2009)

Schools: The Educational Opportunities Act’s (EEOA), requirement that States take appropriate action to remove language barriers did not require the equalization of results between native and nonnative speakers on tests administered in English. By simply requiring a State to take appropriate action to overcome language barriers in order to comply with the EEOA without specifying particular actions that a State must take, Congress intended to leave state and local educational authorities a substantial amount of latitude in choosing the programs and techniques they would use to meet their obligations under the EEOA. *Horne v. Flores*, 129 S.Ct. 2579 (U.S.2009)

DECISIONS FROM OTHER JURISDICTIONS

Americans with Disabilities Act: Claims alleging that a city’s curbs, sidewalks, and parking lots discriminate against wheelchair users in violation of Title II of the Americans with Disabilities Act are actionable and accrue when the improvements are completed, not when the plaintiff encounters them. In addition, the burden of proof as to the date of accrual is on the city. *Frame v. City of Arlington*,



Tracy L. Roberts
Assistant General Counsel

Texas, --- F.3d ---,
2009 WL 1930045 (5th
Cir.2009)

Conflicts of Interest: When a private citizen is charged with aiding and abetting or conspiracy to commit honest services mail fraud by a public official, in connection with a scheme to conceal the official's conflicts of interest, the prosecution must prove that the defendant knew that the public official was required by law to disclose the conflict of interest. Without the knowledge that the failure to disclose the conflict of interest is illegal, the defendant's specific intent to defraud the public may not be established. The government must prove the following three elements for a defendant to be found guilty of honest services mail fraud: (1) the defendant's knowing and willful participation in a scheme or artifice to defraud, (2) with the specific intent to defraud, and (3) the use of the mails or interstate wire communications in furtherance of the scheme. *U.S. v. Carbo*, 572 F.3d 112 (3rd Cir.2009)

Telephones: Text messages to cell phones are "calls" for purposes of the Telephone Consumer Protection Act and unsolicited commercial texts can be a violation of that law. *Satterfield v. Simon & Schuster Inc.*, 569 F.3d 946 (9th Cir.2009)

ATTORNEY GENERAL'S OPINIONS

Alcoholic Beverages: A municipal governing body may not call for a special election and have that special election considered the election next succeeding the filing of the wet/dry petition. A municipal wet/dry referendum must be held at the same time as one of the elections enumerated in Section 28-2A-1 of the Code of Alabama. Section 28-2A-1(f) of the Code of Alabama does not authorize a municipal governing body to set a special election for a wet/dry referendum. It only allows the municipal governing body to determine which election date next succeeding the filing of the wet/dry petition will be used for holding the wet/dry referendum. AGO 2009-089

Appropriations: Under Section 94.01 of the Alabama Constitution, a town may borrow money and grant public funds to a private corporation or other private entity to aide the corporation with the expense of installing a center turn lane for the purpose of promoting economic development in the town, if the town determines a public purpose will be served. Local Constitutional Amendments may also authorize the expenditure of funds by the town. If public

funds are transferred to a private entity, such funds are not subject to Alabama's laws regarding competitive bidding or public works bidding. AGO 2009-086

City Manager: Under the City Manager Act of 1953, as amended, the mayor of Anniston serves as a member and presiding officer of the city council and as the chief executive officer of the city. The mayor of Anniston has the same voting privileges as the other members of the council. The mayor shares executive power with the Anniston city manager. The city manager retains the powers stated in Sections 4.01 through 4.06 of Act 404 (1953). The mayor has the powers stated in Section 3.06 of Act 2000-388. AGO 2009-088. NOTE: This Opinion interprets an Act that applies only to the City of Anniston.

Police – Coroners: The appropriate method to move bodies and the facility to store them until bodies can be transported to the state forensics laboratory are determinations that must be made by the coroner, who should consult with

continued next page



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the district attorney in making those determinations and comply with applicable rules of Department of Public Health regarding transportation of bodies. The Coroner may take bids from funeral homes and contract to transport and store bodies until the bodies can be transported to state forensics laboratory. Unless otherwise provided by local law, the coroner is responsible for compensating funeral homes under contract for the cost of transportation and storage of bodies until the bodies can be transported to the state forensics laboratory. These costs should be paid from expenses allocated to the coroner. If funds are insufficient to meet these costs, the coroner and the county commission should work together to determine the best method for providing transportation and storage. AGO 2009-093

Property Forfeiture: A police department must obtain a court order, through the district attorney, to use or destroy condemned guns seized under Section 13A-11-84(b) of the Code of Alabama. The police department may not sell condemned guns or the parts thereof seized under Section 13A-11-84(b). A police department must obtain a court order, through the district attorney, to forfeit property, including guns, seized in violation of the controlled substances law

under Section 20-2-93 of the Code of Alabama. Forfeited property may be used or sold by the department as provided in Section 20-2-93. A police department must obtain a court order, through the district attorney, to destroy property, including guns, seized under Section 20-2-93. All other property may be disposed of as provided in Section 11-47-116 of the Code of Alabama. Proceeds from sales under Sections 11-47-116 and 20-2-93 must be deposited in the municipal general fund. Proceeds from Section 20-2-93 must be used as determined by the police department with approval of the council. AGO 2009-090

Sales Tax: Sections 11-51-200 and 11-51-201 of the Code of Alabama prohibit a municipality from exempting food from the local sales tax as there is no corresponding exemption of food from the state sales tax levy. AGO 2009-092

Schools: All legislatively mandated salary increases for Child Nutrition Program workers for the 1994-1995 fiscal year and forward, except the 2005-2006 fiscal year, must be funded from Other Current Expense ("OCE") in the Foundation Program and shall not be taken from the Child Nutrition Program. AGO 2009-087

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Chatom	Councilmember Cleophus Stephens	Locust Fork	Councilmember Charles A. Gilliland
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Daleville	Councilmember Scott Moore	Muscle Shoals	Councilmember James E. Holland
Daleville	Councilmember Alan Souders	Pinson	Mayor Hoyt Sanders
Evergreen	Mayor Larry Fluker	Pinson	Councilmember Dawn Tanner
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Centre	Councilmember Glenn Chandler	Oneonta	Councilmember Mark Gargus
Cherokee	Mayor Charles K. Landsell, Sr.	Opp	Councilmember Jimmy A. Rogers
Dutton	Mayor Bryan Stewart	Opp	Councilmember Mickey Crew
Gadsden	Councilmember Johnny Cannon	Riverside	Councilmember Jimmy A Hollander
Graysville	Mayor Doug Brewer	Rogersville	Councilmember Anita S. Roberson
Graysville	Councilmember Louella Kelley	Slocomb	Councilmember Magelene Segrest
Greensboro	Councilmember Bobbie A. Curtis	Spanish Fort	Councilmember Mary W. Brabner
Greensboro	Mayor Johnnie B. Washington	Tuscaloosa	Councilmember Bobby E. Howard
Grove Hill	Councilmember James L. Hicks	Union Springs	Councilmember Saint T. Thomas, Jr.
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**APPLICATION DEADLINE:
September 15, 2009!**

DesignAlabama, in partnership with a number of statewide organizations and design professionals, including the Alabama League of Municipalities, the Alabama State Council on the Arts and the Auburn University Center for Architecture and Urban Studies and others, will host the fifth annual DesignAlabama Mayor's Design Summit in February 2010. The Design Summit will take place over two days, **February 17-18, 2010**, at the Marriot Legends Hotel & Conference Center in Prattville, Alabama and will bring together five mayors from across the state, selected through an application process, with design professionals from in and outside Alabama. **The application deadline is September 15, 2009.**

Mayors chosen to attend the conference will find that there is no cost to them except their individual travel expenses. In return for being selected, each mayor will be asked to make brief presentation at the conference highlighting their city and design issue, asking each of them to also come prepared with any maps, photographs, renderings, etc, they already have addressing their design issue. Presentations will then be followed by roundtable discussions among all the mayors and design professionals regarding each community's specific design issue.



Design professionals and speakers already committed for this exciting event include:

Cheryl Morgan from the Auburn University Center for Architecture and Urban Studios; Ann Coulter of Kennedy, Coulter & Rushing of Chattanooga; Bob Wilson of MainStreet Mississippi; Martha Cato from the City of Valley; Elizabeth Brown from the Alabama Historical Commission; Chuck Kelly with Gresham, Smith & Partners; and Michelle Gilliam- Jordan with the City of Huntsville.

To partner with these outstanding design professionals and speakers, DesignAlabama is searching for five Alabama mayors ready to change their communities. For more information or an application, please visit the DesignAlabama website at www.designalabama.org or contact **Gina Clifford at 334-549-4672**. **Again, the application deadline is September 15, 2009.**

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