

The Alabama Municipal JOURNAL

March 2010

Volume 67, Number 9



Town of Berry Wastewater Wetlands
By Mayor Roy Dobbs

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Editor: CARRIE BANKS

Staff Writers: TRACY L. ROBERTS, KEN SMITH

Graphic Design: LAURA WHATLEY

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On the Cover:

"Finale"

Town of Berry Wastewater Wetlands By Mayor Roy Dobbs, Berry 2nd Runner up: ALM Photo Contest

In 1989, the Town of Berry placed a new wastewater system in operation. The plant proved to be unrealistic and unreliable for the amount of wastewater and storm water coming through the collection system. In 1992, a new administration began seriously looking at a long-term solution that would address the problem. From 1992-2000, Berry attempted to shore up the collection system and make the Biolac system work, however, to no avail. In 2000, the town began laying the groundwork for funding construction of a new system comprised of a holding pond and a series of wetlands to be built to naturally treat waste water. In 2009 the project was completed and the system is working fine.

A Message from the Editor



This month, in honor of the League's 75th Anniversary, we're featuring the League's Legal Department (see the President's Report beginning next page) as well as an article that ran in the July/August 1938 issue of the *Alabama Municipal News* highlighting efforts of municipal officials to organize prior to the League's creation in 1935. (This is the *actual* article scanned from the original document, which is very fragile because the paper stock is 70+ year-old newspaper.) While extremely time consuming, the historical research Perry and I have been doing on this fine organization (for several commemorative 75th Anniversary projects) has been fascinating. Thankfully, the League has bound copies on file of nearly all its monthly publications since 1937 – when the first issue of the *Alabama Municipal News* (the precursor to the magazine you're now reading) was distributed.

Annual Convention Will Celebrate 75th Anniversary

Be sure to mark your calendars for the **League's Annual Convention May 15-18 in Mobile**, at which we will be celebrating the League's anniversary. **NOTE:** registration forms will **NOT BE MAILED** this year. Instead, you can register online at www.alalm.org (click on the red link near the top of the home page that says: **ALM Convention – Register Here**). Online registration is quick, simple and extremely convenient. Contact Cindy Price at 334-262-2566 or via email at cindyp@alalm.org with any questions regarding registration and please make every effort to attend this year's convention! Distinguished Service Awards (20, 30 or 40 years in municipal office) information must be received by League Headquarters **before March 20, 2010** (appropriate forms are also online at www.alalm.org). Awards will be presented during the President's Luncheon on May 18.

Congratulations!

Congratulations **Mayor Roy Dobbs** of Berry whose "Finale," photo was selected as the 2nd Runner Up in the League's 2010 Photo Contest and is the cover art for this issue of the *Journal*. I recently had the opportunity to chat with Mayor Dobbs about the Town of Berry's frustrating, but ultimately successful, efforts to build a sustainable wastewater system. By creating a series of wetland lagoons, Berry overcame significant wastewater challenges in an environmentally sound manner. That article is on page 26 with photos supplied by Mayor Dobbs.

March 11th marks one of the most important and significant events of my life – my nuptials. For 15 years Craig has been my quiet voice, my calming breath, my alternate viewpoint. Admittedly, there are times when he makes me a little crazy; however, most days I credit him (and thank him) for keeping me sane. He and I are an efficient and effective team – even when we agree to disagree. We've had many adventures over our 15-year marriage and look forward to many more. Another key aspect to our partnership is that we both understand and respect the importance of solitude. When I contemplate my relationship with Craig, I often think of a passage on marriage from Kahlil Gibran's poetry, which is as beautiful and meaningful to me today as when I first read it my junior year of college:

*Give your hearts, but not into each other's keeping.
For only the hand of Life can contain your hearts.
And stand together yet not too near together:
For the pillars of the temple stand apart,
And the oak tree and the cypress grow not in each other's shadow.*

Carrie

The President's Report

Roy H. Dobbs
Mayor of Berry



A Brief History of the League's Legal Department

A small group of municipal officials representing approximately 28 cities and towns met in Montgomery in May of 1935 and formed the Alabama League of Municipalities. As you are probably well aware by now, the League celebrates its 75th anniversary this year – the highlight of this year's convention May 15-18.

Throughout the League's history, there have been many substantial changes in both the laws affecting municipalities and the League's legal department. We thought it would be interesting to review some of the major cases affecting cities and towns during the past 75 years as well as a history of those city attorneys who served the Alabama municipalities well in their positions. This article recounts the significant legal developments over the last three-quarters of a century. As always, bear in mind that attempting to narrow the many cases and developments to a select few is subjective and necessarily means that some important cases may have been omitted for space purposes. The job of city attorney is not an easy one, but a municipality cannot properly function without a local attorney to guide them. City Government is extremely complex in today's society and elected officials need sound legal assistance to meet the needs of modern-day city government.

Looking back at the first half of the 20th Century, Governor Bibb Graves was a city attorney for Montgomery prior to his days as Governor – and as Governor, he was extremely instrumental in helping the League establish in 1935 by suggesting Ed Reid as a potential director for the new organization and by offering office space in the Capitol until more suitable space could be secured. John Caddell, City Attorney of Decatur, was a close correspondent with the League at this time. He served on the League's 1937 legislative committee. His firm also won the 1948 case of *City of Decatur v. Robinson*, 36 So.2d 673 (1948), in which the State Supreme Court upheld the use of parking meters by cities.

Other names that come up in the late 1930s are Charles Wiggins, City Attorney of Jasper; Roy Smith, City Attorney

of Phenix City; Harry Seale of Mobile; and S. H. Sprott of Tuscaloosa. W.J. Wynn of Birmingham, handled a number of important municipal cases including the 1937 case of *City of Birmingham v. Hood-McPherson Realty Co.*, 172 So.118 (1937), in which the State Supreme Court held that municipalities could license businesses in the exercise of their police power as well as for revenue raising purposes. His assistant, J. H. Willis, later became a city attorney for Birmingham. There was W.C. Beebe of Bay Minette who worked closely with the League as both a city attorney and as a member of the State House of Representatives. He advocated removing the State from the ad valorem business. Nearly 75 years later, in 2010, we still see efforts in that area. Pelham Merrill was city attorney for Heflin prior to becoming a justice on the State Supreme Court. Attorney General Thomas S. "Buster" Lawson, whose father was mayor of Greensboro, appointed James F. Mathews as the first assistant attorney general assigned to write municipal opinions. Later, while serving on the Supreme Court, he authored many opinions important to municipal government. Over the years, many assistant attorney generals, including Paul Gish, David Whetstone, Jim Solomon, Jr., Carol Jean Smith and Brenda Smith, have written opinions important to municipal governments.

Albert Rains served as city attorney for Gadsden and as counsel for the Alabama League of Municipalities during the organization's early years. He later served as a League floor leader in the State House of Representatives and then moved to the U.S. House where he was a leader in the field of housing legislation.

A. A. Smith represented the Town of Coffeeville in *Sconyers v. Town of Coffee Springs*, 160 So. 552 (1935), in which the Supreme Court upheld the authority of cities and towns to adopt state offenses by reference. B.W. Simmons of Opp handled *Opp v. Donaldson*, 163 So. 332 (1935), a 1935 case which held municipalities must abide by the debt limit. Mr. Simmons was a League counsel in the early 1940s,

continued on page 16



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- Judge
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Benefiting the Defendants...

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- Emma G., Defendant
Florida State Court

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- Danny B., Defendant
Marshall County, Alabama

"Thank you for everything. Even though you did not have to do it, you did it anyway and it was much appreciated. You kept me out of jail."

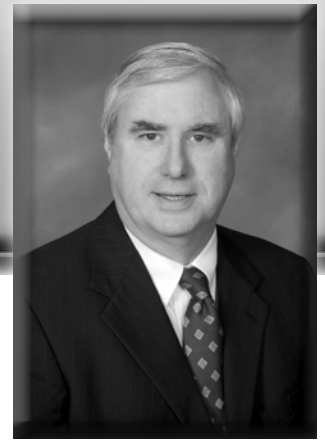
- Craig A., Defendant
Foley, Alabama

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Municipal Overview

Perry C. Roquemore, Jr.
Executive Director



2010 Census

The message is spreading across Alabama – the Census is coming soon and when it does, there is a lot at stake. The Constitution mandates that a count of America’s population be done every 10 years. Census population totals determine how many U.S. representatives each state has, and failure to count every resident could mean losing representation in Washington, D.C. Census figures also determine the amount of federal funding communities receive for programs like Medicaid, the school lunch program, education programs, highway planning and construction and community development block grants.

The importance of every Alabamian participating in the 2010 Census was not lost on U.S. Rep. Artur Davis. Davis, who represents Alabama’s 7th District, hosted Census Summits in Birmingham and Selma in January. He explained to the audience in Selma that \$400 billion in federal grant money is distributed every year to state and local governments based on the information gathered during the census. That amount averages down to about \$1,300 a person each year.

“Every time a form is not filled out, it is the equivalent of money being returned,” Davis said. “Every blank form is equal to a \$1,300 check to the government. That is a lot of money to leave on the table.”

Darryl Lee, senior partnership specialist for the U.S. Census Bureau, said the bureau’s goal is to “count everyone, count them once and count them in the right place.”

The Census Bureau began last month sending census questionnaires to residents throughout the country. Forms should be filled out and mailed back by April 1. If the forms are not mailed back, Census Bureau workers will pay residents a visit to get the necessary information.

“We will knock and knock and knock,” Lee said. “We need to get this information.”

He stressed the ease of filling out the questionnaire. Although longer, more time-consuming forms were used in the past, the Census 2010 forms consist of just 10 questions. Those questions ask for name, gender, age, race, ethnicity, relationship and whether the resident owns or rents the home. Lee also stressed the confidentiality of the questionnaires. Though the collected data is used for statistical purposes, Census Bureau employees are prohibited by law from releasing a person’s information to anyone – from local law enforcement to the President of the United States – for more than 70 years. Violation of that law can mean jail time and a \$250,000 fine.

The Census Bureau will set up “Be Counted” sites and “Questionnaire Assistance Centers” in various communities to assist anyone who did not get a questionnaire in the mail, or has trouble understanding the questionnaire. The questionnaire is also offered in 59 languages.

Panelists at the Selma event urged those in attendance to help spread the word on the importance of census participation. “Our democracy is best served when all of its citizens enjoy a sense of participation,” said D’Linell Finley, an expert in minority politics from Auburn University Montgomery. “When you ignore this kind of information, you cripple your own community.”

For more information, visit the 2010 Census Web site at www.census.gov/2010. ■



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The League - - For Service

BY HON. M. L. ROBERTSON, Speaker Pro Tem
Alabama House of Representatives

It was inevitable that the continued increase in urban population and the growing importance of the municipality as a unit of government should in time bring about some organization among those intrusted with the welfare of the various cities and towns, and although Alabama was not the first to develop such an organization, her progress at this time compares very favorably with that of any other state in the Union.

Although a feeble attempt to organize city officials was made about twenty-five years ago, it remained for the good year 1926 to see the founding of an organization which seems to grow stronger with age, and to be meeting very consistently the requirements for such an organization.

In 1926, Anniston had as its Mayor a robust, healthy, six-foot enthusiastic official who, early in his administration, found that he did not know all that should be known about municipal government, and he conceived the idea that an organization of the heads of the various city and town governments could become a real force in the state on behalf of better cities for better people to reside in. That official's name was Sidney J. Reaves and at that time no more indefatigable and no more interested an official could be found. He was deeply interested in giving his city the type of government it deserved.

At that time, M. W. Pratt was Mayor of the City of Fairfield, a suburb of Birmingham, who also had become interested in the idea of organization and an agreement was perfected between Pratt and Reaves whereby the latter would furnish the officials and the former the city for the meeting place to perfect the first organization. So, in June of that year nearly one hundred municipal officials met in Fairfield, most of whom were met in Birmingham and carried to Fairfield in Automobiles, and the citizens of Fairfield took the visiting officials into their homes and cared for them without cost during the days of the convention.

After a couple of days spent in speechmaking, handshaking and logrolling, a committee brought in a constitution and by-laws, calling the organization the Alabama Association of Mayors and City Commissioners, the membership being confined to those who held the highest official position in their respective municipalities, although associate members, confined to minor employees, would be received with no voting power.

Naturally, Sidney J. Reaves was elected the first president of the organization, and the writer, who at that time was Mayor of Cullman, was elected secretary-treasurer, a place he has retained up to the present time.

Before the convention adjourned, many good talks were made along the lines of the need of an organization of this type. Among the pressing needs discussed were: the demand for uniformity in traffic laws among the various cities; more effective means of collecting taxes, the crying need for

better recognition of the municipalities at the hands of the state governing powers, the distribution of information of a general nature to all cities and towns, the need for revision of the bond laws of the

state affecting cities and towns; the demand for more revenue for cities to meet ever-growing demands of citizens; the need of a clearinghouse for news of interest to the cities; longer terms for officials; need for fellowship among those engaged in a common undertaking and many more problems of equal importance.

It will be of interest to recall just who, among Alabama's municipal officials, were present for the organization meeting, Montgomery sent its popular Mayor W. A. Gunter; Mobile sent Mayor George Crawford, who has since drowned; Birmingham's able and fearless Jimmie Jones was present as were his fine associates—Bill Dickson and John Taylor. Selma's Mayor T. J. Rowell and Russellville's Mayor W. W. Ramsey were also in attendance. The latter was later president of the League and is now a member of the State Tax Commission. It will

be interesting to know that neither Commissioner Ramsey or the writer ever missed a meeting of the League.

Among those who were loyal and devoted to the League in its early days were Mayor Will Weir of Gadsden, Mayor Harry Hartwell of Mobile, Mayor M. F. Northrop of Fairhope, Mayor P. M. Mathews of Bessemer, Judge L. L. Herzberg, Commissioner of Gadsden then and now Associate State Highway Commissioner; Mayor George P. Haslam of Piedmont, Mayor H. H. Howard of Sylacauga, Mayor Sam H. Oliver of Lafayette and Mayor A. B. Hooper of Albertsville. Mayor Henry K. Dickinson of Opelika and Mayor Bill Eastep of Florence should also be mentioned. Many of these prominent figures in municipal circles of a decade ago have since passed of the field of active service with their local governments.

It was at Selma convention in 1928 that it was decided the organization should be changed from one of the officials to one of the units of government themselves. This decision was reached due to the fact that the two-year term of office for mayors made it impossible to have a regular attendance and a sufficient number of seasoned officials to keep the organization alive. The writer offered the amendment to change the name of the organization to the Alabama League of Municipalities, keeping in effect the constitution and by-laws, except as for dues.

The high spot in the life of the League was reached at the meeting in Montgomery in 1935. Although the League had previously affiliated with the American Municipal Association, keeping in touch with current municipal developments, it was at this meeting that the national organization came to the rescue of the League by agreeing to contribute toward the salary of an all-time executive director, for

(Continued on Next Page)



M. L. ROBERTSON

In honor of the League's 75th Anniversary, we are highlighting pieces of the League's history each month this year. The article to the left is from the July-August 1938 issue of the Alabama Municipal News.

Continued next page.

The League—For Service

(Continued from Page Three)

which the League had been striving from its inception. With the help of AMA, it was possible to secure the services of Ed E. Reid, then serving as Secretary to the Speaker of the Alabama House of Representatives and Consultant to the Legislative Recess Committee on Homestead Exemption and Ad Valorem Taxation. His services for the League members have been exceedingly valuable and his part in the developing the organization has been large and useful.

The 1935 meeting in Montgomery was also notable in being one of the best attended the League has ever had, an achievement due in large part to the activity of President W. W. Ramsey and to the fact that the federal emergency agencies were beginning to apportion funds to local units of government for public improvement purposes. Representatives of the agencies were on the convention program.

Some of the accomplishment of the League are direct, many more indirect. At the Anniston convention in 1927 the League went on record as favoring four-year terms for mayors in cities, instead of the two-year term then prevailing, which idea the next legislation enacted into law, and in 1935, the convention endorsed a resolution asking for the same term of office for mayors and other governing officials of towns of less than 2,000 population. The writer introduced a bill, supported by the League, to equalize the terms of towns' and cities' officials and that bill became a law in the 1935 Session of the Legislature.

Another piece of legislation the League worked for and which Commissioner John Taylor of Birmingham made his main objective when he became head of the League was a uniform drivers' license law.

The adoption of special municipal gasoline taxes in practically every municipality in the state is a result of the dissemination of information and model ordinances by the League. Although a hard fight has been made to relieve the cities and towns of the state gasoline tax levied on gasoline used for muni-

cipal purposes, no success has yet been met.

As outstanding activities of the League during the three years the present able executive secretary has been in charge of the program of the organization, one senses a gradual elevation of the standard of municipal government, due largely to the dissemination of valuable information and data on improved administration techniques; the distribution of model ordinances, the furnishing of information relative to the federal WPA and PWA program; personal contact with municipal officials; the publishing of a monthly magazine filled with news of interest to all officials.

As a direct result of the efforts of the League, officials of our municipalities are giving more time and attention to their work as public servants, especially in the smaller towns. Municipal government is gaining increased recognition from the state and federal officials and governing bodies, more friends outside the municipal government have been developed.

In conclusion, I would say that one of the finest contributions to the public affairs of Alabama made by the League is that of convincing the citizenry that the most important single level of government in the state today is municipal government. The people have been induced to feel that municipal government has a right to exist and serve.

The City of Bessemer's government is now housed in an attractive remodeled building the result of a WPA project. The project was the second to be completed this year under the WPA program, the first being the fire department quarters which underwent extensive repairs earlier in the year.

* * * *

The City of Greenville is preparing an application to be submitted to PWA for funds to build a \$100,000 electric distribution system to be municipally operated. A. U. Avera is the city's engineer for the proposed project. The city is also contemplating making additions to the waterworks system by enlarging the water storage equipment.





The Legal Viewpoint

By Ken Smith
Deputy Director/ General Counsel



How to Conduct a Non-Candidate Special Municipal Election

Alabama municipalities hold special municipal elections for many reasons. A few examples include whether to raise ad valorem taxes, whether to have a local option election on the sale of alcoholic beverages or whether to annex property.

Alabama law provides very little guidance regarding the procedures that control how these elections are scheduled and conducted. While it is impossible to provide definitive guidance on all special elections due to the numerous types of special elections authorized under Alabama laws, many of which are applicable only to certain municipalities, we can provide a general overview of the major concerns and issues municipalities face when holding these elections.

What is a Special Election?

Alabama law provides for two types of municipal elections. Section 11-46-21, Code of Alabama, 1975, references both “regular” municipal elections and “special” municipal elections. The regular election is held for the election of the mayor and council that will govern the municipality. It is also known as the “general” municipal election. Thus, a special election is, by definition, one that is not the regular municipal election.

When can Special Elections be held?

When determining whether to hold a special municipal election, it is important to remember that Alabama is a Dillon Rule state. This means that municipalities in Alabama can only exercise the powers they are given by the state legislature; this includes only holding elections for authorized purposes.

As noted above, there are many circumstances where the legislature has granted municipalities the power to hold an election. Just as clearly, though, there are situations where municipalities cannot hold an election. Unless the Alabama legislature has granted a municipality the power to hold an election in a specific situation, the Dillon Rule prohibits a municipality from conducting an election to determine the

will of the voters.

This is largely because both case law and the Alabama Constitution prohibit legislative bodies from delegating their legislative power. Section 212 of the Alabama Constitution of 1901 specifically provides that “[t]he power to levy taxes shall not be delegated to individuals or private corporations or associations.” And, in *Folsom v. Wynn*, 631 So.2d 890, 894 (Ala.1993), the Alabama Supreme Court stated that “[i]t is settled law that the Legislature may not constitutionally delegate its powers, whether the general power to make law or the powers encompassed within that general power. . . .”

As noted in an Attorney General’s Opinion to Hon. Wade H. Baxley, May 8 1980 (AGO 80-347), “[t]he Board of Commissioners (municipal governing body) should be responsive, insofar as possible, to the needs and desires of those who elect them and this may be done in providing for public input at meetings of the Board of Commissioners, but the legislature has not seen fit to authorize the shifting of this obligation to the voters and thus expenditure of funds for a referendum (on a leash law ordinance) is not authorized.”

Other Opinions on this subject include:

- A city may not allocate and spend funds in order to hold a non-binding city-wide referendum on the question of a sales tax increase. AGO to Hon. George A. Monk, February 16, 1982.
- A city is not authorized to pay a portion of the expense of a county wide referendum to consider a county sales tax. AGO to Hon. Richard F. Calhoun, March 11, 1986.
- A city may not allocate and spend funds in order to hold a city-wide referendum on whether to adopt a dog leash law. AGO to Hon. Wade H. Baxley, May 8, 1980.
- A city council may not make zoning subject to a referendum of the residents. AGO 91-00262.

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- Absent legislative authority, the probate judge is not authorized to include an advisory referendum on the November 4, 2008, general election ballot. AGO 2008-122.
- The probate judge has no authority to include a municipal advisory referendum on the June primary election ballot. AGO 2006-075.

Further, a city may not sponsor and hold a non-binding referendum using city employees and officials to work on the election, even if the cost of the referendum is paid for with private funds. AGO 94-00001. On the other hand, a private group may conduct a non-binding referendum for a municipality, but the municipality may not participate other than as private citizens and the council cannot agree to be bound by the referendum. AGO 97-00257. In other words, no public funds, employees or equipment can be used to hold a referendum, although nothing prohibits a private group from holding its own referendum and submitting the results to the council. The council, though, cannot agree ahead of time to be bound by the results of the referendum.

What rules apply to Special Elections?

Again, as noted above, there are few general provisions in Alabama law that specifically refer to special municipal elections. As a starting point for determining how best to

proceed in each instance, remember that in order to call for a special election, you must have legislative authorization. Therefore, the first place to look to see what rules apply is to the legislation that allows you to call the election. Often, these legislative acts include instructions concerning how the election must be called and conducted. As a general rule, you must follow the provisions of these Acts in calling for, and in holding, the special election, even if they conflict with other provisions of the election law.

For example, Section 11-43-21 of the Code provides that special municipal elections must be held “on the second or fourth Tuesday of any month.” However, Section 28-2A-1 states that a wet/dry referendum “shall be held at the time of the primary, general, county-wide or municipal election next succeeding the date of the filing” of the petition. In 2010, following an amendment to the wet/dry election laws, the timing of the wet/dry petition for a vote on this issue required calling an election at the time of the state primary, which is scheduled for June 1, 2010 – the FIRST Tuesday of the month, which is a direct conflict with Section 11-43-21. However, under basic rules of statutory construction, the more specific provision controls, which in this case would be Section 28-2A-1.

In situations where the Act authorizing a special election does not explain how to hold the election, you have to look to the rules and regulations applicable to holding the general

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municipal election for guidance. Chapter 46 of Title 11 of the Code of Alabama, along with many provisions in Title 17, provides a great deal of detailed guidance as to how elections must be conducted. Unless there is a conflict with the specific legislative act that allows the municipality to call for the special election, you have to follow the provisions in these general election laws. A full discussion of general election laws is, of course, beyond the scope of this article, but municipal officials must be aware of these general provisions when trying to determine how to call and conduct a special election.

In fact, many legislative acts that provide for special elections specifically provide that the elections must be conducted under general election laws. This includes, for example, provisions regarding the use of absentee ballots. Despite some earlier opinions to the contrary, in AGO 99-00027 the Attorney General ruled that voting by absentee ballots must be allowed in annexation elections because the absentee ballot laws state that they are to be used in “any primary, general, special, or municipal election” and because annexation election statutes provide that the election must follow general election laws.

The Elections Calendar

One of the most crucial – and often difficult – aspects of holding a municipal election is creating a calendar for holding the election. General state election law provisions provide specific time frames for when certain events must take place during the election cycle.

Usually, the best method for creating the election calendar is to start from the date of the election and count backwards the number of days required for an action to take place. In other words, if a statute provides that you must do something “five days before the election,” the best way to determine this is to start from the date of the election and count backwards five days. This is the procedure the League uses to create the elections calendar for the general municipal elections every four years.

Section 1-1-4, Code of Alabama, 1975, states that the “[t]ime within which any act is provided by law to be done must be computed by excluding the first day and including the last.” So, when creating the calendar, count election day as Day One, but don’t count the last day. A word of advice can help here – what works best in this situation is to start from election day, count the day before the election as Day One, then count the number of days before that, using the last day you count as the day the particular action must take place. The result of counting this way is the same as “excluding the first day and including the last.”¹

Section 1-1-4 also provides that: “However, if the last day is Sunday, or a legal holiday as defined in Section 1-3-8,

or a day on which the office in which the act must be done shall close as permitted by any law of this state, the last day also must be excluded, and the next succeeding secular or working day shall be counted as the last day within which the act may be done. In designating the hours of the day, the time used shall be that of the ninetieth degree of longitude west of Greenwich, otherwise known as central standard time; provided, that whenever daylight saving time shall be in effect within the state, the time used shall be that known as central daylight time.”

These factors are also often important to consider when creating the calendar. As you work on the calendar, it is important to remove yourself from other distractions and **take your time**. Creating the calendar can be a tedious and time-consuming task, and unfortunately, there are no shortcuts. Mistakes at this point in the process can cost you not only lost time and money, but may even result in having to throw out the results of your election and start over.

Another important factor to keep in mind is that special elections are often required to be held within a short time frame after the election is called. This creates a situation where the time frames required between specific events in the election cycle cannot be accurately followed. The only advice in this situation is to do the best you can. As a general rule, you cannot skip one of the steps in order to comply, but you may have to shorten the time frame for certain events to meet the time schedule set out in the law that permits you to call for the special election.

Preclearance

Preclearance of the Act that allows you to hold the special election does not eliminate the requirement that you preclear the date of your special election with the U.S. Justice Department in Washington, D.C. Some election dates may have to be modified due to the tight time schedule required for calling the special election. If you have had to change any of the election dates to fit the specific time frames of your election process as discussed above, you should submit those changes as well for preclearance. An article on the preclearance process can be found in the League publication *Selected Readings for the Municipal Official*.

Creating an Elections Calendar

To help aid municipal officials and employees in the creation of the election calendar, here is an overview of the time frames for most events under general law. **It is important to remember that these dates refer to the time frame set out in general election laws and may be different under the law allowing the special election in question. Therefore, you must verify these dates against the provisions of the law that authorize holding the**

continued next page

election. It is also your responsibility to verify that the dates listed below are correct and that there have been no changes in law affecting the suggested dates.

Unless otherwise noted, citations are to the Code of Alabama, 1975. Calculations are to calendar days unless otherwise noted. In most cases, the dates printed in this publication represent the final deadline for performing the listed duties. The League urges officials and candidates to accomplish these duties well in advance of the deadline.

Electronic Voting Rule: Ordinance establishing the use of electronic vote counters must be adopted. No deadline is set, but the ordinance must be adopted far enough in advance to meet other election deadlines. Section 17-7-21. The ordinance adopting the specific voting machine that will be used must be precleared by the Justice Department.

Six Months Before the Election: Section 11-46-27 provides that municipalities with populations of less than 10,000 according to the most recent decennial census may adopt a permanent ordinance establishing a procedure for the appointment of additional election officials to receive, count, and return the absentee ballots cast at the election. This ordinance must be adopted at least six months prior to the election. If the municipality has an ordinance in place establishing this procedure, it does not have to adopt a new ordinance. If it wishes to repeal an existing ordinance, the ordinance must also be repealed six months before the election.

Three Months Before the Election: Section 11-46-23 states that changes in the district lines must be made at least three months prior to the election. This is also the last day for the council to change the location of designated voting places or to add additional voting places.

Within 60 Days Before the Election: First day to conduct a training school for officials who will conduct an election using electronic voting machines. Section 17-8-9. No election official shall serve in any election in which an electronic voting machine is used, unless he or she shall have received such instruction within 60 days prior to the election and is fully qualified to perform the duties in connection with the electronic voting machine, and has received a certificate from the authorized instructor to that effect. This does not prevent the appointment of an uninstructed person as an election official to fill a vacancy among the election officials.

56 Days Before the Election: Most special election laws provide specific notice provisions. If silent, general municipal election law provides that the mayor gives notice of the election on the first Tuesday in July. Section 11-46-22(a). The first Tuesday in July is 56 days before the day of the general municipal election.

49 Days Before the Election: In non-candidate special elections, the mayor (or other person assigned to this duty)

must deliver absentee ballots and supplies to the clerk no later than seven days after the notice of the election is given. Section 17-11-12. **NOTE:** Section 11-46-32 requires the mayor to provide absentee supplies no later than 21 days before the election. The provision in Title 17 is a more recently adopted provision and should be followed instead.

42 Days Before the Election: State law provides that the mayor must file a list of qualified voters with the clerk on the third Tuesday in July before a regular municipal election. Section 11-46-36. Although this provision specifically refers to the regular municipal election, the League recommends complying with it as closely as possible for special elections as well.

35 Days Before the Election: Mayor must file a list of qualified voters with the absentee election manager. Section 17-11-5.

30 Days Before the Election: If voting machines are used in the election, last day to place a voting machine on display. Section 11-46-31. If electronic voting devices are used in the election, last day for sample ballot or vote card to be placed on display. Section 11-46-31.

15 Days Before the Election: Last day for the council to appoint election officials. **NOTE:** The clerk must notify the persons chosen as election officials and must hold an election school for them. The clerk must notify the officials at least 48 hours before the school is scheduled. Sections 11-46-27 and 11-46-30.

14 Days Before the Election: Electronic Voting Rull – First day to test electronic vote counters. The test must be conducted as close as practicable to the date of the election. The test is open to the public. Public notice of the test must be given. Rule 307-X-1-.04.

10 Days Before the Election: Last day for the mayor to publish lists of the election officers and the voting places to which they are assigned. Section 11-46-27.

5 Days Before the Election: Last day for a voter to apply for a regular absentee ballot. Section 17-11-3(a). Last day to publish the list of qualified voters. Section 11-46-36.

Electronic Voting Rule – Last day to conduct a training school for officials who will conduct an election using electronic voting machines. Section 17-8-9.

Last Friday Before the Election: Last day for an absentee voter who is required to provide identification but failed to include it with the ballot to submit this identification by 5:00 p.m. to prevent the ballot from becoming a provisional ballot. 17-10-2(c)(1)(a).

1 Day Before the Election: Last day for a voter to apply for an emergency absentee ballot if he or she is required by his or her employer to be out of the country on election day. Application must be filed before the close of business. Section 17-11-3(d).

The clerk, along with two watchers, must inspect and seal voting machines which will be used in the election. Section 11-46-33.

If an absentee ballot is returned by mail, it must be postmarked by August 25 **and** received by noon the day of the election. The deadline for hand-delivery of absentee ballots is 5:00 p.m. on August 25 (except for ballots returned by an emergency medical designee. Section 17-11-18.

Election Day: Poll watchers are not permitted in non-candidate elections. AGO 99-00256. Section 11-46-28 provides that the polls be open from 7:00 a.m. to 7:00 p.m.

Electronic Voting Rule – Precinct counters must be tested according to the manufacturer’s instructions to ensure that they are set at zero and prepared for voting. Rule 307-X-1-11. Deadline for returning absentee ballots by mail or an emergency absentee ballot for a registered voter who requires emergency treatment by a licensed physician within 5 days of the election is 12:00 noon on Election Day. Section 17-11-18. Election officials must meet at their respective polling places at least 30 minutes before polls open. Section 11-46-28; Electronic Rule 307-X-1-11. The clerk must ensure that all ballots, boxes and supplies are provided at each polling place, or if machines are used, that proper supplies are provided at each polling place. Section 11-46-33.

1 Day After the Election: Deadline for the absentee election manager to notify voters whose absentee ballots have become provisional due to the inspector’s personal knowledge that voter was not eligible to vote. Section 17-10-2(c)(3)(b). Municipal clerk must deliver the written affirmations of the provisional voters, inspector challenge statements, and all voter reidentification forms in a sealed envelope addressed to the board of registrars no later than noon. Section 17-10-2(d).

Friday Following the Election: Last day for an absentee voter who was required to provide identification but failed to provide it before the election to submit identification to the board of registrars in order to have the vote counted. 17-10-2(c)(1)(c).

First Tuesday After the Election: The council must canvass the election results before 12:00 Noon. Section 11-46-46 and 11-46-55. **ANYONE WITH STANDING TO CONTEST THE ELECTION MAY REQUEST A RECOUNT WITHIN FORTY-EIGHT HOURS OF THE OFFICIAL CANVASS OF THE ELECTION RESULTS.** Section 11-46-55.1. **NOTE:** The Board of Registrars has until noon that day to return provisional balloting results. The League recommends certifying the results as close to noon as possible that day unless the board has already returned the provisional voting results.

Five Days After Election Results Are Certified: Last day someone may contest the results of the election. Section

11-46-69. All political advertisements must be clearly marked with a statement that the communication is a paid political advertisement. This statement must contain information which adequately identifies the person or committee that paid for or authorized the ad. Section 17-5-12.

DISCLAIMER: This election calendar is provided as a service to municipal officials and employees to assist them in preparing an election calendar for their own special municipal elections that do not involve candidates. This calendar MUST BE MODIFIED to fit the unique circumstances and needs of the user. Use of this calendar is at the sole risk of the user. It is the responsibility of the candidate or official to verify the correctness of dates associated with the election. The Alabama League of Municipalities, its employees and officers disclaim any responsibility or liability for errors or for failure to verify compliance with applicable laws. ■

1. Note that there are websites offering date-to-date time calculators that show the number of days between two dates. While these are helpful, if you use one, be sure to double-check the dates these sites provide by counting the days for yourself.

2010 : Year of Alabama’s Small Towns and Downtowns

*Information collected by the
Alabama Tourism Department*

March Events

- 3/01 Year of Small Towns & Downtowns, Lanett, AL
- 3/06 Celebrate Chelsea, Chelsea, AL
- 3/13 Festival of Art at Waterfront Park, Orange Beach, AL
- 3/26 Dedication of Government Plaza, Tuscaloosa, AL
- 3/27 Talladega’s 175th Birthday Celebration

Legal History — continued from page 5

served on the League Executive Committee and later served as a supernumerary Supreme Court Justice.

From 1945 to 1955, Lawrence K. “Snag” Andrews served as League General Counsel. He handled *Evers v. City of Dadeville*, 61 So.2d 78 (1952), the Supreme Court case which upheld the gross receipts license tax in the nature of a sales tax. In addition, he was an attorney for Union Springs and League floor leader in the State Senate. He passed more legislation for the League and its member municipalities than any other legislator. His brother, George, was a U. S. Congressman.

Handy Ellis, City Attorney for Columbiana, went on to become Lt. Governor. Hugh Merrill, City Attorney of Anniston, a member of the League Legislative Committee, later became Speaker of the House in 1941. Rankin Fite, City Attorney of Hamilton, also went on to become Speaker of the House. L. J. Lawson, Greensboro City Attorney, helped the League in the State Senate. Robert B. Harwood served as Attorney General in 1942 and was later on the Supreme Court. As Attorney General, he supported legislation to allow municipal officials to obtain opinions from that office. He also wrote an opinion that allowed counties to spend gas tax funds on city streets.

It is interesting to note that the first Interim Committee on Municipal Government in 1943 had four very outstanding lawyers among its membership – Albert Rains, W.C. Beebe, Finis E. St John, Jr., and Frank Johnson of Haleyville. George Wallace, the City Attorney for Clayton in the early 40’s was also a League floor leader in the House before becoming a circuit judge. The Wallace Act was named for him. Guy Hardwicke of Dothan helped the League tremendously in the State Senate and later as Lt. Governor.

Frank Livingston of Tuscaloosa served six years as League President – the longest term served by any League President. His brother, Ed, was Chief Justice of the State Supreme Court. Ira Pruitt, city attorney for Livingston and York, also helped the League as a member of the State House and Senate. Armistead Selden, once Greensboro City Attorney, went on to become a member of Congress and Ambassador to New Zealand. Pat Vacca, city Attorney and City Judge for Tarrant, served many years in the House and Senate. He was responsible for the passage of many court-related pieces of legislation.

Mac Breckenridge of Birmingham handled many important municipal cases. One of these, *Tuxedo Homes, Inc. v. Green*, 63 So.2d 812 (1953), held that mere approval by a city of a subdivision plat is not acceptance of a dedication of proposed streets and other public places shown thereon.

Karl Harrison was attorney for 10 municipalities in and around Shelby County. He also helped the League in the legislature. There was also Albert Boutwell who helped the League as Senator and Lt. Governor. He later became mayor of Birmingham, which he stated was the toughest job he ever held. Another great friend of the League was Larry Dumas. He served as a city attorney and was a strong ally of the League in the State Senate. Larry offered free counsel to the League on many issues related to bond financing.

In 1956, Drayton Hamilton became attorney for the League. He served until John Watkins was hired as the League’s full-time Staff Attorney later that year. Watkins became director of the League in 1965 following the death of the League’s first director, Ed Reid (who was hired when the League organized in 1935). At that time, Drayton rejoined the League as General Counsel and served in that position until his death in 1990.

In 1957 the Supreme Court issued an extremely important decision in the case of *Estes v. City of Gadsden*, 94 So.2d 744 (1957). This case upheld the authority for a city occupational tax – a tax that has significantly helped several of the League’s member cities and towns. Drayton Hamilton and longtime city attorney Walter Knabe of Montgomery handled many cases affecting cities at the Supreme Court. One of the important cases of 1958 was the *Al Means v. City of Montgomery*, 104 So.2d 816 (1958), which further gave judicial authority for city sales taxes.

There were several attorneys who assisted municipalities in the Legislature and should be mentioned: Rep. Jon Cates, City Attorney of Heflin; Sen. Dennis Porter, City Attorney of Chatom; Sen. Bob Gilchrist of Decatur; and Rep. Phil Smith of Talladega, a municipal judge and attorney.

Sen. Pat Lindsay, city attorney for Butler, obtained passage of legislation to allow small cities to hire a deputy sheriff as a police officer and to abolish municipal election primaries, a cost-saver for cities. Sen. Joe Goodwin of Montgomery was a strong League supporter in both the House and the Senate. He helped municipalities obtain a share of the State gasoline tax, as did Rep. Fred Lybrand. Sen. Bill McDermott was instrumental in obtaining passage of several League bills including a bill to increase the municipal debt limit. Sen. Gene McClain, a League floor leader, passed bills to allow unanimous consent annexation, a true sales tax and election law amendments. Sen. Joe Langham, who served as chairman of the League’s legislative committee and as Mayor of Mobile, helped the League tremendously in the State Senate.

J. Cecil Gardner, who now practices law in Mobile,

was League staff attorney in 1969 and 1970. He, along with Fred Collins, a longtime attorney for Mobile, won *Wheat v. Ramsey*, 224 So.2d 649 (1969), where the court upheld the city's police powers, especially in the health and sanitation areas. Perry Roquemore became League Staff Attorney in 1974. He became League Director in 1986 following John Watkins' retirement.

In the 1970's, the League received help from such lawyer legislators as Sen. Wendell Mitchell, Luverne City Judge and attorney, who helped pass legislation amending municipal election laws; Sen. Finis St. John, III of Cullman, who helped pass our tort liability limitation statute; Rep. Rick Manley of Demopolis, who helped reestablish our interim committee after a 20 year absence; Sen. J Richmond Pearson of Birmingham, who passed our legislation to establish classes of cities by population; Sen. Jim Smith, who obtained passage of a bill to require a fiscal note on all legislation affecting counties and municipalities financially; and Sen. Frank Ellis of Columbiana, who passed a bill removing the requirement of residency for clerks.

One of the most significant court decisions over the past 75 years was the 1975 case of *Jackson v. City of Florence*, 320 So.2d 68 (1975) in which the State Supreme Court abolished our doctrine of governmental immunity. Arnold Teks, veteran Florence City Attorney, handled this case. Even though he was unsuccessful, he did an admirable job with a horrible set of facts and a court ready to change 60 years of precedent. Another landmark case was *Hueytown v. Burge*, 342 So.2d 339 (1977), in which the Supreme court required cities to show a reasonable effort to relate taxes in the police jurisdiction to the cost of providing services to the area.

In 1973, the League fought hard to keep the municipal courts in the Judicial Article, and was successful. The year 1978 saw two important cases-*Peddycoart v. City of Birmingham*, 354 So.2d 808 (1978), which outlawed general bills of local application, and *Jones v. Town of Coosada*, 356 So.2d 168 (1978), which held that the mayor of a city of less than 12,000 population has only one vote. The year 1979 saw the *Miglionico v. Birmingham News*, 378 So.2d 677 (1979), a case which clarified the State sunshine or open meetings law.

Mac Breckenridge and Drayton Hamilton worked diligently on the 1982 case of *Tutwiler Drug Co. v. City of Birmingham*, 418 So.2d 102 (1982), which held that a mayor and council members are immune from liability for negligence and abuse of discretion when acting in their legislative capacities. A.J. Coleman did a fine job on *Alabama Farm Bureau Mutual Casualty Insurance Co. v. Hartselle*, 460 So.2d 1219 (1984), where the Supreme Court severely limited the power of a municipality to collect insurance licenses from insurance companies. A.J. has been a great friend of the League for many years.

In 1985, in *City of Tuskegee v. Lacey*, 486 So.2d 393 (Ala. 1985), Fred Gray, Jr. and Walter McGowan were successful in having the Alabama Supreme Court rule that municipalities could annex non-contiguous territory by annexing a public right-of-way. This "long-lasso" established a connection between the existing municipal corporate limits and the property being annexed. In 1987, in *City of Fultondale v. City of Birmingham*, 507 So.2d 489 (Ala. 1987), the Alabama Supreme Court reversed *Lacey*, and overruled the use of a long-lasso to annex non-contiguous territory.

In 1986, Ken Smith was hired as League Staff Attorney when Perry Roquemore became the League's third executive director. Also in 1986, the Federal District Court for the Middle District of Alabama released a case that would have profound long-term effect on the manner in which local government elections are held in Alabama. *Dillard v. Crenshaw County*, 640 F.Supp. 1347 (M.D.Ala.1986), challenged the at-large election system in place in 192 local jurisdictions in Alabama. The court found that the existing election system violated federal laws against election discrimination. The court required most of these governments to adopt a system of single member district elections.

Municipalities have authority under Section 11-51-91, Code of Alabama, 1975, to collect license fees from businesses operating the police jurisdiction. These funds must be spent back in the police jurisdiction by providing services to the area. In 1988, in *Ex parte State of Alabama (Department of Revenue v. Reynolds Metals Co.)*, 541 So.2d 524 (Ala. 1988), the Alabama Supreme Court ruled that municipalities don't have to demonstrate that license taxes were spent to provide services to the specific businesses which paid the license. Instead, the municipality only has to show that the funds were spent providing services to the police jurisdiction as an area.

Municipal taxing authority has been challenged in a number of significant court decisions. In 1989, in *City of Tuscaloosa v. Tuscaloosa Vending Co.*, 545 So. 2d 13 (Ala. 1989), the Court held that a municipality can impose on businesses located within its corporate limits a license fee based upon the gross receipts of those businesses despite the fact that some of those receipts are derived from transactions conducted outside the city's corporate limits. The fact that the business is located in the municipality or its police jurisdiction establishes sufficient nexus for the collection of the gross receipts license tax.

Following the death of League General Council Drayton Hamilton in 1990, Robert Black was chosen for that position, which he held for nearly 16 years until 2006 when Ken Smith became General Counsel.

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In 1991, in *Blankenship v. City of Hoover*, 590 So.2d 245 (Ala.1991), the Alabama Supreme Court held that municipalities may require a person seeking access to public records to fill out an application and give a reason for seeking the record. The Court also specifically held that W-2 forms need not be made available to the public since the forms may contain information which is more private than public in nature.

In 1991, Joseph Kettler was hired as the League's Assistant Staff Attorney and served in that position until his untimely death from colon cancer in 2000. In 1992, the Alabama League of Municipalities established the Alabama Association of Municipal Attorneys (AAMA). Robert Ennis, city attorney for Tuscaloosa, was elected as the first president of AAMA. Other attorneys who have served as president of AAMA are: Manley Cummins, Spanish Fort; Milford "Sonny" Bass, Birmingham; Len White, Dothan; Wanda Cochran, Mobile; Tim Nunnally, Tuscaloosa; Mary "Cissy" Cates, Huntsville; Roger Kirby, Gadsden; and Ronny Penn, Opp.

Also in 1992, in *Yates v. Town of Vincent*, 611 So.2d 1040 (Ala. 1992), in a case involving the responsibility for maintenance of roads within annexed territory, the Alabama Supreme Court held that the county remains responsible unless the municipality agrees to assume responsibility by following the process set out in Sections 11-49-80 and 11-49-81, Code of Alabama, 1975. James Shaw represented Vincent in this case. These Code provisions were later amended to require municipalities to assume responsibility for maintenance of streets and roads in territory annexed after July 7, 1995.

Section 94, Alabama Constitution, 1901, prohibits public entities from giving money or items of value to private individuals or entities. In *Slawson v. Alabama Forestry Commission*, 631 So.2d 953 (Ala.1994), the Alabama Supreme Court held that expenditures that serve a "public purpose" do not violate Section 94.

In 1994, the Alabama Supreme Court held in *Beavers v. Walker County*, 645 So.2d 1365 (Ala. 1994), that the state competitive bid law, specifically Section 41-16-51(a), requires bidding contracts which grant exclusive contracts. In this case, the Court held that an agreement entered into between the county commission, a solid waste authority, and BFI granted an exclusive franchise, and was not competitively bid, and therefore, was void.

In *Benson v. City of Birmingham*, 659 So.2d 82 (Ala. 1995), the Alabama Supreme Court held that a municipality does not have to make a motion to limit a judgment against it to the \$100,000 damages cap. Also, the Court interpreted Section 11-47-24, Code of Alabama, 1975, to require municipalities to indemnify employees for all negligent actions performed in the course of their official duties.

The Court, though, also ruled that the \$100,000 damages cap limits recovery in indemnification cases as well. Rep. Demetrius Newton, Birmingham city attorney and long-time friend of the League, was the lead attorney for Birmingham in this case.

In *City of Birmingham v. City of Vestavia Hills*, 654 So.2d 532, 536 (Ala.1995), the Alabama Supreme Court upheld the authority of the Legislature to annex non-contiguous property.

In 1997, the Alabama Supreme Court released a number of cases important to municipalities. One of the more significant rulings involved the police jurisdiction. In *City of Prattville v. Joyner*, 698 So.2d 122 (Ala. 1997), the Alabama Supreme Court held that equitable estoppels does not require a municipality to continue providing services in the police jurisdiction. George Howell, city attorney, represented Prattville in this case.

On the negative side, in *Yelverton's, Inc. v. Jefferson County*, 742 So.2d 1216 (Ala. Civ. App. 1997), the Court held that local governments must parallel state regulations in the collection of sales and use taxes, and are therefore restricted by an Alabama Department of Revenue regulation that defined "nexus" for certain sales.

In 1999, the Court released a major case in favor of municipalities that involved both the police jurisdiction and sales taxes. In a case involving a number of jurisdictions, *City of Hoover v. Oliver & Wright Motors, Inc.*, 730 So.2d 608 (Ala. 1999), the Alabama Supreme Court upheld the right of municipalities to levy sales and use taxes in their police jurisdiction and indicated that municipalities don't have to spend these funds providing services in the police jurisdiction. Two years later, in *State Dept. of Revenue v. Taft Coal Sales and Associates, Inc.*, 801 So.2d 838 (Ala. Civ.App. 2001), the court made this ruling clear.

In 2000, Erin Stark Brown was hired as staff attorney. She served in that position until 2001. Also in 2001, in *Baptist Health Systems v. City of Midfield*, 792 So.2d 1095 (Ala. 2001), the Court held that state law does not make municipalities responsible for the medical expenses incurred as a result of the hospitalization of an inmate incarcerated in the jail. Jim Porter represented Midfield. Lori Lein was hired as staff attorney in 2001 and presently serves as Deputy General Counsel. Mary Ellen Wyatt became staff attorney in 2002 and served until 2006. Tracy Roberts was hired in 2006 and now serves as Assistant General Counsel.

In 2003, in a negative case involving the \$100,000 statutory tort damages cap, the Court held that the cap does not apply to claims for property damage against a municipality. *City of Prattville v. Corley*, 892 So.2d 845 (Ala. 2003). In a more positive ruling in 2004, the Court held that a city does not undertake a legally enforceable duty to provide skillful fire protection by creating a volunteer fire

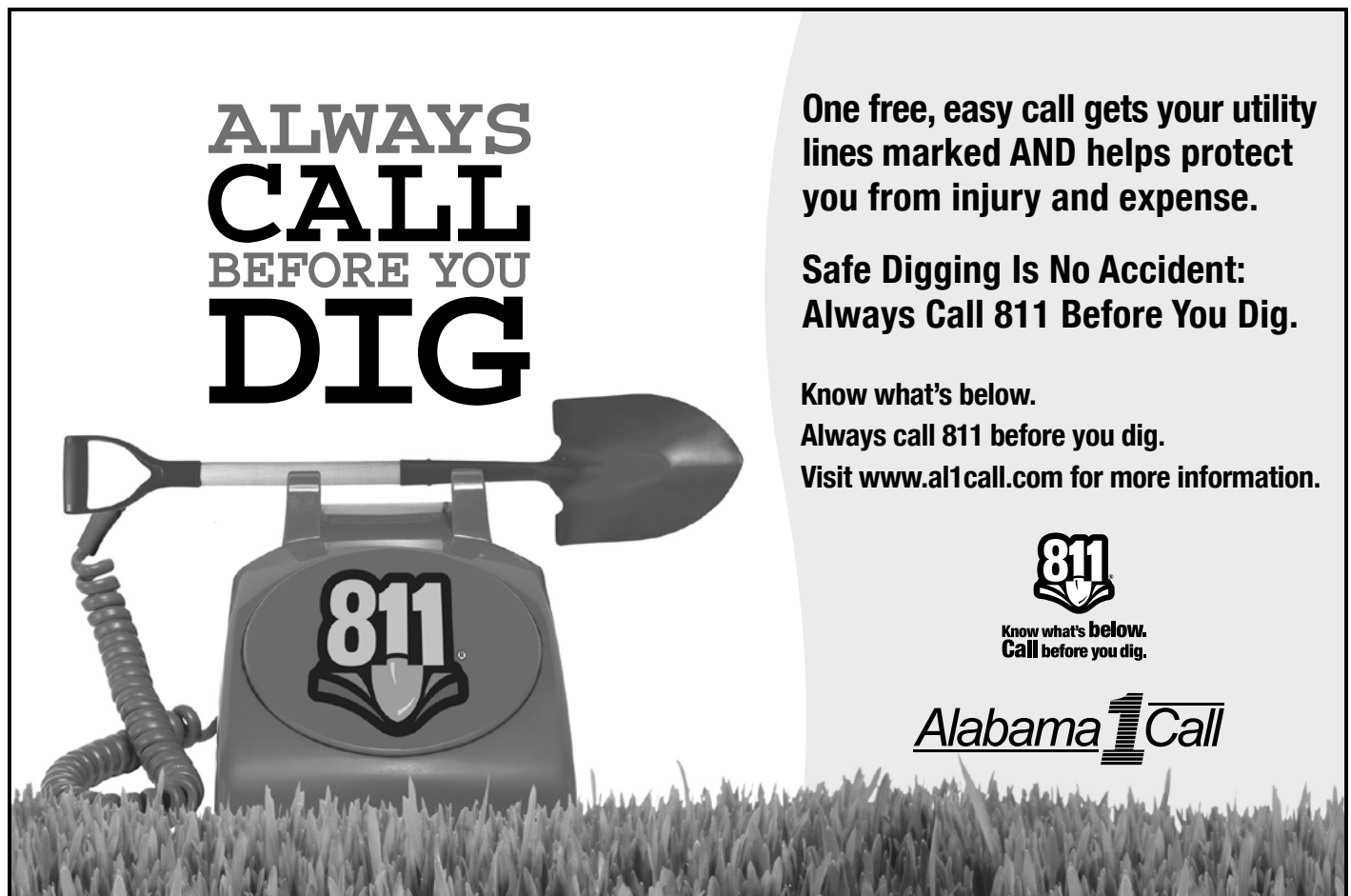
department. Further, if volunteer firefighters are found to be immune under the Volunteer Service Act, there can be no vicarious tort liability on the part of the city. *Hollis v. City of Brighton*, 885 So.2d 135 (Ala. 2004). Also in 2006, in *Blackwood v. City of Hanceville*, 936 So.2d 495 (Ala. 2006), the Court made a major change in the way municipal liability and immunity should be determined, effectively eliminating the discriminatory function test it had used in municipal cases for years in favor of the “state agent” immunity standard it had adopted in *Ex parte Cranman*, 792 So.2d 392 (2000).

A year later, in 2007, the Court of Civil Appeals examined the police jurisdiction in *Town of Killen v. Clemmons*, 963 So.2d 670 (Ala.Civ.App.2007) Dan Boone represented Killen. The court held that the statutory provision limiting license-taxing authority to the municipality whose corporate limits are nearest to the subject business logically applies, by its plain language, only when two or more municipalities actually attempt to levy a license tax on the same business within the overlapping police jurisdictions. Thus, a municipality could require a business license from a gas station which is closer to another municipality where the two municipalities had entered into an agreement in which

one had waived its right to impose or collect any fees or taxes in its portion of the overlapping police jurisdiction. Also in 2007, the League reformed the Alabama Municipal Judges Association. Madelene Hollingsworth, Tuscaloosa, then president of AMJA, continued to serve until 2008, when Sonny Rodenhouse, Huntsville, was elected president.

Finally, in 2009, in *Ex parte CITY OF MOBILE (In re: Dickson Campers, Inc. v. City of Mobile)* --- So.3d ---, 2009 WL 2840791 (Ala.), the Alabama Supreme Court held that an estimation of the amount spent providing services in the police jurisdiction doesn’t have to be done on a business by business basis, nor by using any particular method.

There have been many other cases affecting cities and towns in Alabama over the last 75 years. The League itself has filed amicus curiae (friend of the court) briefs in almost 90 cases during this time. While space will not permit a complete review of the many important cases and individuals who served Alabama’s municipalities over the past 75 years, the League urges each attorney, judge and prosecutor to work diligently for his or her municipality and its interests in the future – and to strive to match the accomplishments of your predecessors. ■



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LEGAL CLEARINGHOUSE

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

ALABAMA COURT DECISIONS

Fire Protection: A deputy state fire marshal was authorized by statute to administer an oath to an arson suspect such that the suspect was not tricked or deceived into giving statements when the marshal told him he was under oath, and advised him that making a false statement under oath was perjury, which was a true statement, and therefore, statements that the suspect gave to the fire marshal were not subject to suppression in the arson trial. *Dison v. State*, 21 So.3d 1273 (Ala.Crim.App.2009)

Licenses and Business Regulations: An unlicensed construction company owner was statutorily barred from maintaining a breach-of-contract action against a homeowner for payment on a contract. *Milloy v. Woods*, 23 So.3d 48 (Ala.Civ.App.2009)

Searches and Seizures: Constructive possession of contraband may be shown by proof of dominion and control over a vehicle containing contraband. A controlled substance may be jointly possessed, and possession may be established by circumstantial as well as direct evidence. *Laakkonen v. State*, 21 So.3d 1261 (Ala.Crim.App.2008)

UNITED STATES COURT DECISIONS AFFECTING ALABAMA

Elections: The U.S. Supreme Court ruled that the government may not, under the First Amendment, suppress political speech on the basis of the speaker's corporate identity. This decision overruled long standing limits on corporate and union spending in federal election campaigns and calls into question similar provisions enacted by nearly half the states. *Citizens United v. Federal Election Com'n*, --- S.Ct. ----, 2010 WL 183856 (U.S.2010)

Public Records: The section of the Driver's Privacy Protection Act (DPPA) providing that states "shall not knowingly disclose or otherwise make available to any

person or entity" drivers' personal information generally prohibits states from disclosing personal information or using personal information in a manner that, although not disclosed, would otherwise make it available to any person or entity. *Rine v. Imagitas, Inc.*, 590 F.3d 1215 (11th Cir.2009)

DECISIONS FROM OTHER JURISDICTIONS

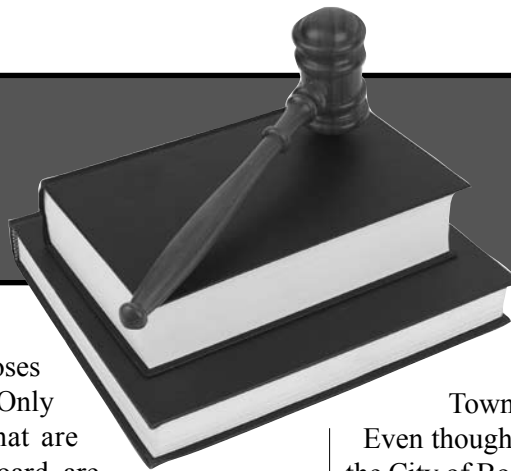
Tort Liability – Civil Rights: A police officer who allegedly discriminated on the basis of race in failing to investigate and make an arrest in a drunk-driving automobile accident was not entitled to qualified immunity in victim's civil rights action. Unlike prosecutors, who enjoy absolute immunity, police officers are entitled only to qualified immunity in §1983 cases. While a police officers' discretion in deciding who to arrest is certainly broad, it cannot be exercised in a racially discriminatory fashion. There is a right under the equal protection clause of the United States Constitution to have police services administered in a nondiscriminatory manner, a right that is violated when a state actor denies such protection to disfavored persons. *Elliot-Park v. Manglona*, --- F.3d ----, 2010 WL 92482 (9th Cir.2010)

ATTORNEY GENERAL'S OPINIONS

Arrests: A law enforcement officer can make a custodial misdemeanor arrest for fleeing or attempting to elude a law enforcement officer if the officer witnesses the offense. AGO 2010-032

Corrections Fund: A County Commission may provide office space to an evening reporting center at a comprehensive youth service center if the Commission determines that a public purpose is served. If the evening reporting center is in the county seat and is designated as a courthouse annex by the Commission, a City may use Corrections Fund monies for the operation and maintenance of the evening reporting center. AGO 2010-030

Elections: Members of the County Board of Registrars are entitled to compensation for five working days each week for days actually worked, but those days must be worked during normal courthouse hours Monday through Friday, except for special registration sessions held away from the courthouse. Members of the board are entitled to holiday compensation if a legal holiday falls on one of the



working days and the county closes the courthouse for that holiday. Only special registration sessions that are approved by a majority of the board, are open to the public, and are properly advertised qualify as special registration sessions in which a board member may receive compensation and travel expenses. Registrars must provide documentation, as requested, to the county commission and/or to the State Comptroller to receive compensation and travel expenses from the county and the state. AGO 2010-026

Fire Protection: Because fire districts may be created as firefighting districts or firefighting and medical services districts, the types of calls to which the Volunteer Fire Department must respond depends on the type of district created in its bylaws. Such a Volunteer Fire Department is responsible for responding to all fire calls within its district. AGO 2010-027

Licenses and Business Regulations: In instances where other exemptions are not applicable, off-duty sworn peace officers are required to obtain a state license and/or certification from the Alabama Security Regulatory Board (Board). The Alabama Security Regulatory Act is codified at Section 34-27C-1, *et seq.*, of the Code of Alabama. This Board was created to regulate security guards, armed security guards, and the companies that employ such persons. Pursuant to section 34-27C-18(b) of the Code of Alabama, a City may not continue to regulate security officers who work for companies that are exempt from state regulation. AGO 2010-028

Licenses and Business Regulations: A Water, Sewer, and Fire Protection Authority established pursuant to section 11-88-1 of the Code of Alabama, is not exempt from paying for construction permits and review fees imposed by the municipality for projects that provide water and sewer services for the residents of the municipality. The Authority is obligated to acquire permits and adhere to the permitting process of the municipality, even if the projects meet State Building Codes and are engineered and inspected by a state licensed engineering firm. AGO 2010-035

Police Power: In the absence of express statutory authority, an administrative agency may not adopt regulations imposing criminal sanctions. Any such regulation would be unenforceable. AGO 2010-025

Sales Tax: The City of Boaz, located in Marshall County recently annexed the Town of Mountainboro, located in Etowah County.

Even though the Town of Mountainboro was annexed by the City of Boaz, the area is still located in Etowah County. Consequently, the Etowah County Commission may still administer and collect a sales tax from areas within the former Town of Mountainboro that are located in Etowah County. AGO 2010-031

Sales Tax: Section 40-9-25.2 of the Code of Alabama exempts Habitat for Humanity Organizations and West Alabama Youth Services, Inc. (WAYS) from “paying state, county, and municipal sales and use taxes” as well as exempting “all property owned and used by the organization” from state, county, and local ad valorem taxation. Accordingly sales made to these organizations and sales made by these organizations are exempt from sales and use tax. AGO 2010-038

continued next page

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Clearinghouse — continued from previous page

ETHICS COMMISSION ADVISORY OPINIONS

AO No. 2009-12: A former municipal employee, who worked on a loan/grant involving an apartment housing development, may accept employment with a business, where that business has a minor ownership interest in the limited partnership that received the loan/grant and manages the apartment development that was the subject of the grant, where her involvement was merely ministerial in checking to see that the requirements of the application and expenditures were in accordance with set-out guidelines. For a period of two years after leaving the City of Montgomery, the former municipal employee may not represent clients, including her own business or Summit Sherwood Apartments, Ltd., before the City of Montgomery.

AO No. 2010-01: The former Chairman of the Birmingham-Jefferson County Transit Authority may not be hired as Executive Director of the Birmingham-Jefferson County Transit Authority upon his resignation,

as he played a substantial role in the hiring process prior to his resignation. The former Chairman of the Birmingham-Jefferson County Transit Authority may not lobby current Board members seeking their support for his hiring. While third persons may lobby the Board on his behalf, based on his prior involvement in the hiring process, he may not accept the position without violating the Ethics Law.

AO No. 2010-03: The Mayor of the City of Evergreen, who is involved in an election contest, may not vote, attempt to influence or otherwise participate with the City Council on matters relating to a challenge to the Trial Court's Order changing the City's election procedure, as the result from the Supreme Court may directly affect his election contest. The Mayor of the City of Evergreen may vote to approve fees and expenses associated with the City's challenge to the Trial Court's Order changing the City's election procedure, as this matter is easily separated from, and has no relation to, or impact on his election contest.

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Remember to enjoy some good old-fashioned Southern cuisine along the way. Sample local favorites like the barbecue chicken with white sauce at Big Bob Gibson BBQ in Decatur, the orange rolls at the All Steak in Cullman, banana pudding at Sisters in Troy, and the royal red shrimp at King Neptune's in Gulf Shores.

If you've never visited Alabama then this is the perfect year to make your first trip and experience Sweet Home Alabama.

Check the Great Alabama Homecoming calendar at www.alabamahomecoming.com and start packing!



Hazard Assessment and Response Management (HARM) Course

By: Shannon Arledge, CDP Public Affairs

Note: As the citizens of Haiti have witnessed firsthand the horrific affects of a devastating earthquake, countries throughout the world have united a response effort to assist Haiti in recovering from this major disaster. Courses provided at the Center for Domestic Preparedness focus on response and recovery, and prepare emergency response providers for both small and large-scale disasters. The training is cost free for state, local and tribal response personnel.

Hands-on training that provides both mental and physical challenges to emergency responders is difficult to duplicate. Few training courses require students to demonstrate solid response skills, while providing parameters and developing plans for a hazardous materials or weapons of mass destruction (WMD) response.

The Hazard Assessment and Response Management (HARM) course is the first course of its kind at the Center for Domestic Preparedness (CDP), located in Anniston, Ala. The HARM course provides response personnel with a scenario, but the students determine the tempo, and plan their response. "All CDP courses have instructors directly involved with training," explained Rick Dickson, assistant director of training delivery. "In HARM our instructors step back, let the students make the decisions. Sometimes the students meet with difficulty; other times they succeed immediately; ultimately, the information and learning tools they gain are invaluable," he added.

"This course is about as real as it gets for WMD or hazardous materials training."

Course prerequisites include ICS 100 and 200, as well as successful completion of one of the following CDP courses in the previous 36 months: WMD Technical Emergency Response Training, WMD HazMat Technician, or WMD Hands-On-Training (8 or 16 Hour). The goal of the HARM course is to provide the responders with a realistic operational WMD environment in which the students operate within the incident command system, and decide procedures, equipment, and tactical approach to an emergency event.

"We were forced to work in a unified command," said Sue McManus, Memphis, Tenn., Fire Department. "If we had a real incident we would work with multiple agencies and jurisdictions," she added. "Most agencies do not practice like this, and should. Any real event will be similar to this experience."

This three-day course consists of up to 45 responders from multiple disciplines and multiple jurisdictions, with different levels of training and experience. The students appoint their incident commander and determine response elements based on the number of students and response background of each person.

Day One

The teams choose their equipment, determine their level of competency, and conduct individual and collective refresher

training in preparation for their mission.

"This was a great learning event," said LeLand Hopkins, Memphis, Tenn., Fire Department. "There were students who knew more than others, but that worked to our advantage," he added. "Some people's strengths can plug holes in other's weaknesses. Today was an excellent blend."

Day Two

The response element must conduct life safety actions, determine the toxicity within the complex, mitigate the threat, and identify and contain any toxic spills.

"We came here with general knowledge from previous courses," said James Johnson, Arlington, Va., hazardous materials technician. "We had to put into play what we have learned, both here at the CDP and from our technical knowledge based on our occupation," he stressed. "We were able to demonstrate our competency and show we could respond to a disastrous event."

Day Three

The teams mitigate and contain CBRNE material consisting of nerve agents. The HARM course incorporates the CDP's toxic agent facility that allows for hands-on training using actual nerve agents. "This was a great training experience," said Hector Cinton, Portsmouth, Va., U.S. Coast Guard. "I'm better prepared. You never know when you'll be in a hazardous situation and possibly required to collect evidence or work on a decontamination line. This course has increased my versatility."

"The final day of training allows the students to continue mitigation and hazardous materials containment at our toxic agent facility," said Dickson. "These responders have a familiarity from previous nerve agent training, but today they make entry into a toxic agent environment, locate the threat using the tools they have chosen, and render the location safe. All the while our instructors maintain a comfortable distance, note observations, provide critical feedback, and ensure the student responders operate safely."

CDP courses range from one to five days in length and feature interdisciplinary resident and nonresident training courses that promote greater understanding among 10 diverse responder disciplines: Emergency Management, Emergency Medical Services, Fire Service, Governmental Administrative, Hazardous Materials, Healthcare, Law Enforcement, Public Health, Public Safety Communications, and Public Works. The CDP is a component of the Federal Emergency Management Agency's National Preparedness Directorate in the Department of Homeland Security. The Anniston training center is the nation's only federally-chartered Weapons of Mass Destruction (WMD) training facility for civilian responders. Learn more about the CDP at <http://cdp.dhs.gov>. ■



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From Wastewater to Wetlands: The Town of Berry's Arduous Journey

By: Carrie Banks, Communications Director, Alabama League of Municipalities

In 1989, the Town of Berry placed a new, Biolac “package” wastewater system in operation. Unfortunately, the plant proved to be unrealistic and unreliable for the amount of wastewater and storm water coming through the collection system. In 1992, a new administration began seriously looking at a long-term solution to address the problem.

“We needed to do something that wouldn’t require lots of labor, chemicals and maintenance,” Mayor Roy Dobbs said. “We were under an order from the Alabama Department of Environmental Management (ADEM) to upgrade the old system (to meet Berry’s needs). We did everything ADEM asked us to do, and it still wouldn’t work. It became be a harassment of headaches to survive and stay under the radar of regulatory issues while trying to provide service to the citizens of the community”

Dobbs said an appropriation from Senator Shelby and Representative Aderholt, as well as Community Development Block Grants and low-interest loans through the State Revolving Loan Fund, helped the town eventually install what is now a 100-acre, nearly maintenance free wetlands area with 11 lagoons.

“What we have now is fantastic,” Dobbs said. “We bought the land – which had to be very specific because of Berry’s elevation. It was pasture land we used to create wetlands because we needed to be able to feed the wastewater without pumping stations. (Berry is a small community of just over 1,200 and doesn’t generate much waste to begin with.)

“It’s really incredible – it’s attractive and it’s natural. We have aerators that will aerate the water if necessary. There’s very little mechanical operation. The water cascades slowly through cattails and vegetation in a natural process for purification.”

The project, a more than 15-year process, was finally completed in 2009 at a cost of nearly \$1.5 million. The new system has been online for just under a year with no complications thus far.

“We can hold a lot of water in all those collection areas,” Dobbs said. “And there’s no industry waste – only household waste – so there’s nothing that will generate a problem. Several professors from the University of West Alabama visited the new collection site wetlands and were tremendously surprised and pleased to see it.”

Advice for Other Municipalities

Dobbs advises small towns and cities to look long and hard at alternative measures for waste disposal before building a localized system. “Getting a wastewater system installed in your community isn’t the biggest issue; it’s the maintenance and ongoing issues that you must think about,” he said. “It’s tremendously expensive with a minimal return. You really lose money. If you can go to a neighboring municipality that already has sufficient capacity and a large enough system, then transport your waste via your collection system to them and let them treat it.

“I sure don’t want other communities to flounder around when Berry’s already plowed that field.”

Mayor Dobbs is more than happy to serve as a resource for sister municipalities currently facing similar issues. Feel free to contact him at 205-689-4562 with your questions.



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