

The Alabama Municipal JOURNAL

April 2012

Volume 69, Number 10

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On the Cover:

The League's Annual Convention will be held at the Birmingham-Jefferson Convention Complex (BJCC) May 19-22. **Online registration for this event closes April 27th!** Visit www.alalm.org to register. Scan the special QR code on the cover with your smart phone for a Quick Convention Guide!

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A Message from the Editor



Next month League staff will convene with municipal officials, clerks, personnel administrators, attorneys, guests and other municipal employees for the League's Annual Convention in Birmingham, May 19-22. **The deadline for online pre-registration is April 27.** After April 27, delegates must register at the Convention Registration Desk in the BJCC. To register online, visit www.alalm.org and click the convention link in the center tapestry of the homepage.

This year's program is filled with timely topics. A Convention Quick Guide is on page 26 (or you can scan the QR code above or on the cover for a quick download to your smart phone). Governor Bentley has been invited to speak during Saturday's Opening Session and ALM's Quality of Life Award presentations will be made to the 2012 winners: Piedmont, Tarrant and Auburn. The City of Birmingham will host a welcome party following the Opening Session.

A prayer service is scheduled for Sunday morning and the ever-popular roundtable discussions are scheduled for Sunday afternoon followed by the Exhibitors Showcase and Reception in the Expo Hall where Kings of Swing will once again provide toe-tapping tunes throughout the evening. Municipal Clerks and Personnel Administrators will have their own programs on Monday, May 21. The Monday morning general session for officials will be dedicated to elections issues and the Monday concurrent session topics will include: Lagoon Wastewater Treatment/LED Lighting and Ecomagination; Alabama Immigration: How to Keep Your City in Compliance; Sovereign Citizens; Main Street: A Downtown Revitalization Program that Works; Alabama Trails Commission and the Forever Wild Program; and 3 On 3: Risk Management Techniques and Cost Containment Steps to Impact Your Work Comp Costs.

New this year, the Monday luncheon and an ice-cream dessert will be held in the Expo Hall allowing more time for delegates and guests to visit with this year's tradeshow vendors. Exhibitor door prize drawings will also take place during the luncheon. Following the Monday afternoon Business Session is the annual President's Banquet where officers will be installed and service awards will be presented. Crowd favorite "Three on a String" will perform immediately after the banquet.

The Tuesday morning general session, "After the Storm: Dealing with Natural Disasters," will feature Mayor Walt Maddox of Tuscaloosa and Mayor Ken Sunseri of Haleyville who will share their communities' experiences with last year's unprecedented April 27th tornado outbreak as well as representatives from Design Alabama who will discuss designing after a disaster. The 2012 Annual Convention will close with the ever popular "Ask Your Attorney" panel.

Community Development CMO Scheduled for June 22nd

On June 22nd, the League will be offering a unique community development CMO program, "Environmental Cleanup Is An Economic Development Driver," at Faulkner University in Montgomery that will cover a variety of redevelopment options. Because this session will only be offered once, space will be limited; therefore, please mark your calendars now and then be sure to register as soon as registration is available. Check the League's website at www.alalm.org for updates or contact Cindy Price, CMO Administrator, at 334-262-2566 or via email at cindyp@alalm.org. For more information on the program, read "The President's Report" on page 5.

First Female League President Inducted into Two Alabama Halls of Fame

Nina Miglionico, "Miss Nina", the first woman elected to the Birmingham City Council and the League's first female president (1981-82) was posthumously inducted into the Alabama Women's Hall of Fame last month during its 41st installation ceremony at Alabama's only women's college. Miglionico, who died in 2009 at age 95, earned her law degree from the Alabama School of Law in 1936 and is thought to be the first woman in Alabama to establish her own firm. She practiced law for 73 years and was a fierce advocate of women's rights. She worked for 30 years to end Alabama's practice of excluding women from jury service (a federal court made it happen in 1967) and served on the Birmingham City Council from 1963-1981 where she became the first female Council President. She will be inducted into the Alabama Lawyer's Hall of Fame on May 4th.

Carrie

The President's Report

Councilmember Thomas O. Moore • Demopolis



Special CMO Session on Environmental Cleanup and Economic Development Scheduled for June 22nd

This June 22nd, the League will be offering a unique community development CMO program, “Environmental Cleanup Is An Economic Development Driver,” at Faulkner University in Montgomery. This program will cover a variety of redevelopment options, making it a CMO session you’ll definitely want to attend. Because this session will only be offered once, space will be limited; therefore, please mark your calendars now and then be sure to register as soon as registration is available. Check the League’s website at www.alalm.org for updates.

The development of brownfields and other contaminated properties brings a host of benefits to communities around the country, including new jobs, new sources of energy, increased tax revenues and the beneficial reuse of idle properties. Because local governments are uniquely positioned to foster economic development, the League’s June 22 CMO session is designed to aid you in investigating redevelopment options and making the right choices for your communities. Federal and state agency officials with resources, academics and other professional experts will present real funding opportunities to League members. Workshop participants will learn about: environmentally friendly techniques for reusing contaminated properties; ways to expand and fund energy efficiency; generating sources of renewable energy; workforce training and job creation.

Coordinated by Sustainable Community Development Group (SCDG), the League’s partner in delivering the new Community Development Curriculum of the CMO Program, “Environmental Cleanup Is An Economic Development Driver” is the second of three community development workshops in this Curriculum. SCDG is a not-for-profit leader in sustainable community and economic development technical assistance, project management, research and public policy. Headquartered in Washington, D.C., SCDG provides local, tailored services and training to municipalities across the nation and is a company of internationally respected professional experts whose mission is building the capacity of stakeholders to make sustainable decisions and investments which improve quality of life in their communities.

The League’s June 22nd workshop is provided by SCDG’s Greening of Brownfields Program (GOBP), a sustainable development technical assistance initiative for governmental

officials. Why brownfields? Because tackling them equips local governments to tap into the multiple benefits of cleanup and redevelopment, which, in turn, protects the environment and reuses idle, financially unproductive acreage. In addition, it reduces blight, raises property values and takes development pressures off green spaces and agricultural lands.

The GOBP is supported by a partnership with the US Environmental Protection Agency and is designed to tackle issues in underdeveloped communities by focusing on several key challenges: knowing where the governmental programs are; understanding the ways to combine public and private sector resources; and accessing information and strategies. The June 22nd workshop will cover interagency programs and resources which, in the current economic climate, are essential to governmental officials who are implementing and financing environmental cleanup and redevelopment projects.

SCDG’s President, Deohn Ferris, is the June workshop’s leader and facilitator. She will be assisted by a distinguished multi-disciplinary faculty organized for the event. Invited speakers include Mike Norman, Brownfields Section Chief and Camilla Warren, Acting Brownfields Branch Chief, from US EPA Region IV; Curtis Flakes, Chief, Planning and Environmental Division, Army Corp of Engineers; Mike Baumgartner, Alabama Rural Water Association; John Paradise, Local Government Liaison, Alabama Department of Revenue; Larry Norris, Chief of the Redevelopment Section, Land Division, Alabama Department of Environmental Management; Dave Harris, Planning and Right-Away Manager, FHWA; Hollis Wormsby, Field Office Liaison, HUD and Ronnie Davis, Rural Development, USDA. Invited academic and private sector speakers include experts Don-Terry Veal, PhD, Director of the Center for Governmental Affairs at Auburn University; Barrett Vaughan, PhD, Assistant Professor of Agricultural and Biological Engineering at Tuskegee University; and Bill Morrison, Revenue Innovations LLC.

Ms. Ferris is an environmental lawyer with expertise gained over two decades in the field. Her leadership at the national level is shaping federal sustainable development public policy as well as SCDG’s innovative focus on healthy and environmentally sensitive economic development. She has unique experience working with communities and governments throughout North America and in over a dozen countries traversing five continents. Ms. Ferris’ interdisciplinary career spans government,

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- Former Director of Corrections
Large Florida State Court

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- Court Clerk
Large Municipal Court

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- Judge
Alabama Court

Benefiting the Defendants...

"JCS has helped me understand the bad decisions I have made in my life. Through their guidance I have been given a chance to start over."

- Emma G., Defendant
Florida State Court

"...thank you for getting me into a treatment program. I'm loving my sobriety. It's a wonderful life. It does work One Day At A Time."

- 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

Ken Smith • Executive Director



New Attorney General's Opinion

In the Legal Viewpoint article in the August, 2011 issue of the *Alabama Municipal Journal*, the League reported on two Alabama Supreme Court cases that interpreted the duties, powers and authority of the executive and legislative branches of Alabama's municipal governments. One of these cases, *Scott v. Coachman*, 73 So.3d 607 (Ala. 2011), held that the mayor has the authority to hire most municipal employees. This overturned a long-standing interpretation that allowed the council to remove the mayor's power by ordinance.

Coachman interpreted Section 11-43-81 of the Code, which provides that the mayor has the "power to appoint all officers whose appointment is not otherwise provided for by law." Since at least 1957, the Attorney General had interpreted this phrase to mean that the council could pass an ordinance – a law – to assume the power to appoint employees and officers. *Coachman* overturned this interpretation and stated that unless a state statute authorized a different appointment method, the mayor had the power to appoint all officers and, presumably, employees.

The *Coachman* case, though, left a great many questions unanswered. One of the most significant of these questions involved whether, if the mayor had the sole authority to hire an employee, did this mean that the mayor had the sole power to remove, or fire, that employee? The Code provisions dealing with employee termination are different from those dealing with appointment, leading to the need for a separate analysis.

Following the release of *Coachman*, many municipalities contacted the League and their own attorneys, seeking advice. Unfortunately, the Court provided little guidance on this issue and interpretations varied. Recently, however, the Attorney General's Office released an Opinion, 2012-039, that addresses the relationship between the mayor and council when terminating municipal employees and officers.

It is crucial to remember that under Alabama law, councils and mayors must work together and reach compromises. The working relationship between the mayor and the city council is the primary factor in the success of any municipal government. Elected city officials must recognize that they have dedicated themselves for the next four years to accomplishing a common goal – providing the city or town with the best municipal government possible. To achieve this goal, the mayor and the council must maintain a harmonious working relationship.

This is especially true in the management of the municipal government itself. The council serves as the legislative and policy-

making body for a municipal government. The mayor serves as chief executive officer, handling the daily functioning of the city or town. Gray areas exist in who is responsible for each area. What works in one municipality may not work in another. Working through these gray areas can help a municipal government arrive at new solutions to issues.

There will be disagreements. Disagreement is not only inevitable, it can be healthy. Negotiating opposing viewpoints can often lead to unexpected solutions. City officials must learn that when an opposing view is taken by someone else in government, it is merely a different opinion on the best way to represent the citizens of the municipality.

Opinion 2012-039

The following questions were presented in Opinion 2012-039:

- (1) Is a city council authorized to fire employees pursuant to Section 11-43-160 of the Code of Alabama?
- (2) Does the term "officer" identify only those city employees specified under Sections 11-43-3 and 11-43-5 of the Code?
- (3) What does the word "officer" mean in Section 11-43-1, et seq. of the Code?

Section 11-43-160 provides that:

"(a) (1) Any person appointed to office in any city or town may, for cause, after a hearing, be removed by the officer making the appointment.

"(2) The council of the municipality may remove, by a two-thirds vote of all those elected to the council, any person in the several departments for incompetency, malfeasance, misfeasance, or nonfeasance in office and for conduct detrimental to good order or discipline, including habitual neglect of duty."

Subsection (a), then, makes it clear that whoever appoints a person to an "office" has the power to remove that person. Subsection (b), though, states that the council may remove, by

1. Although Section 11-43-3 applies only to municipalities with populations over 6,000, Section 11-43-4 similarly allows municipalities with populations under 6,000 to designate officers of the city or town by ordinance.

a two-thirds vote “any person in the several departments” of the city for any of the listed reasons.

The Attorney General stated that the term “officer” is not synonymous with the word “employee.” Therefore, Section 11-43-160 does not authorize the council to remove “employees.” Rather, this provision only allows the council to remove “officers.” Thus, the question then becomes, who are considered “officers” of the city or town?

One possibility, as recognized by Question (2), is that the term “officer” as used in 11-43-160 means those persons the council is authorized to appoint pursuant to Sections 11-43-3 and 11-43-5 of the Code. Under *Coachman*, the council may only appoint individuals whose appointment is provided for by state law. Sections 11-43-3 and 11-43-5 of the Code specifically list certain positions that the council has the authority to fill. The Attorney General notes that these Sections “are instances in which the city council may elect or provide for the position of the city clerk, city treasurer, tax assessor, tax collector, chief of police and chief of the fire department.” This interpretation would mean that the council may remove only these “officers” while the mayor has the authority to remove anyone else working for the municipality.

This was the tentative conclusion the League reached in the August article. We concluded that the Code of Alabama clearly authorized the council to appoint the clerk, treasurer, tax assessor, tax collector, chief of police, fire chief, municipal judge and city manager. “Arguably,” we stated, “all other positions are appointed (and therefore removed) by the mayor unless there is state law that provides otherwise.”

The Attorney General, though, reached a different conclusion in Opinion 2012-039. The specific language of Sections 11-43-3 and 11-43-4, don’t limit the council’s appointment power only to listed “offices.” Instead, the Attorney General noted that “Section 11-43-3 authorizes a city council to elect any officer whose election is required by ordinance, to prescribe the duties, to fix salaries and to set the terms of office for these officers.”¹ Therefore, the Attorney General concluded that the legislature has created a method for the council to appoint other positions than those listed above and designate them as “officers,” which would give them authority to also remove those individuals pursuant to Section 11-43-160.

The Attorney General, though, stated that there are limitations on the council’s power to designate certain positions as officers. Using the definition in Black’s Law Dictionary, the Attorney General concluded that:

“. . . any office created by a city council must be assigned specific duties and hold a position of authority. Paramount to the authority of an officer is the ability to discharge some portion of the sovereign power. The Supreme Court of Alabama, in defining the term “office” stated the following:

“We apprehend that the term “office” implies a delegation of a portion of the sovereign power, and the possession of it by the person filling the office; and the exercise of such power, within legal limits, constitutes the correct discharge of the duties of such office. The power thus delegated and possessed may be

a portion belonging sometimes to one of the three great departments, and sometimes to another; still, it is a legal power, which may be rightfully exercised, and, in its effects, will bind the rights of others, and be subject to revision and correction only according to the standing laws of the state. An employment, merely, has none of these distinguishing features.” *State v. Stone*, 240 Ala. 677, 680, 200 So. 756, 758 (1941).

An employee, instead, is someone who “works within the service of another person (the employer) under an express or implied contract for hire. . . . (A)n officer must have responsibilities and hold a position that is superior to that of an employee Accordingly, an officer is limited to a person that exercises some level of authority, presumably over employees, and performs some discretionary, policy-making functions.”

Some Conclusions

So what does all this mean?

According to *Coachman*, the mayor has the power to appoint anyone whose appointment “is not otherwise provided for by (state) law.” State law clearly provides that the council shall appoint certain positions, such as clerk and treasurer. State law also allows the council to create “offices” by ordinance and, therefore, fill those positions. However, not every position within the municipality can be designated as an office. In order to hold an office, a person must exercise some “level of authority, presumably over employees” and perform discretionary, policy-making functions. If so, the council may pass an ordinance making these positions officers of the municipality. If the council designates certain positions as officers of the city or town, then the council would have authority, under Section 11-43-160 (a) to remove individuals serving in those positions.

Of course, it is important to recognize drawbacks before designating a position as an “office.” Section 11-43-46 provides that the term of service for any officer cannot exceed that of the mayor. So, at the end of the term of office of the mayor, a vacancy exists in all municipal offices and the incoming council would be required to fill those vacancies.

Further in *Stone*, quoted above, the Alabama Supreme Court stated that a position must exercise “a portion of the sovereign power.” In *Tyson v. Jones*, 60 So.3d 831 (Ala. 2010) the Alabama Supreme Court stated that “Constitutionally, the term ‘public office’ implies an authority to exercise some portion of the sovereign power, either by enacting, executing or administering the laws.”

Generally, “sovereign power” recognizes the delegation of authority to act from the state legislature. Although the phrase is not clearly defined by courts or state law, it implies at least some measure of ability to act independently and without direct control.

Employees, by contrast, are subject to control and authority from a superior. Thus, those who exercise sovereign power generally act without a great degree of supervision and with fairly wide latitude.

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The Legal Viewpoint

By Lori Lein
General Counsel



Absentee Voting

With municipal elections looming large on the horizon, it is important for municipal officials, candidates and others involved in this process to understand how absentee voting works under Alabama Law. This article is presented as an overview of absentee voting. It is written as a service to those persons involved in municipal elections but is not a substitute for the Code of Alabama, 1975. It is provided as a guide and is not intended as a authoritative statement of the law as it relates to absentee voting.

General Provisions

Chapter 46 of Title 11 of the Code of Alabama governs municipal elections; however, it makes very limited reference to provisions for absentee voting. Section 11-46-57, Code of Alabama 1975, provides that the town clerk, city clerk or other officer performing the duties of the clerk, as the case may be, shall perform the duties of absentee elections manager as provided in Chapter 11 of Title 17, Code of Alabama 1975. For performing these duties, the municipal governing body may compensate the clerk, or other officer performing the duties of the clerk, in whatever manner and amount it deems appropriate. If the clerk is a candidate in the upcoming election, the municipal governing body shall appoint a qualified elector of the municipality to handle the duties of the clerk with regard to absentee ballots. Section 17-11-15, Code of Alabama 1975.

Section 11-46-27(d) of the Code of Alabama 1975, provides for the appointment of additional election officials for handling absentee ballots on election day. Specifically, it provides that in municipalities with populations of 10,000 or more, there shall be appointed three managers, two clerks, and a returning officer, who shall meet when the polls close on election day in the clerk's office for the purpose of receiving, counting and returning the ballots cast by absentee voters. In municipalities with populations of less than 10,000, the governing body *may* appoint additional election officials as provided above. If a municipality chooses to appoint extra officials for this purpose, it must adopt an ordinance at least 6 months prior to the election stating that at the time other election officials are appointed, additional officials will be appointed who shall meet on the day of the election at the place and hour designated by the governing body for the purpose of receiving, counting, and returning the absentee ballots cast at the

election. There must be at least three election officials appointed for this purpose. When other officials are appointed, one shall be designated as the inspector.

All other aspects of absentee voting are governed by Title 17 of the Code of Alabama 1975. Sections 17-11-1 through 17-11-19, 17-9-51, and 17-17-24 through 17-17-27, Code of Alabama 1975, govern absentee voting in all primary, general, special and municipal elections in the State of Alabama. Section 17-11-3, Code of Alabama 1975, provides that any qualified elector of this state may apply for and vote an absentee ballot by mail or by hand delivery provided he or she applies not less than five (5) days prior to the election and if the applicant meets one of the following requirements:

“(1) The person will be out of the municipality on election day.

“(2) The person has any physical illness or infirmity which prevents his or her attendance at the polls, whether he or she is within or without the county on the day of the election.

“(3) The person works on a shift which has at least 10 hours which coincide with the hours the polls are open at his or her regular polling place.

“(4) The person is enrolled as a student at an educational institution located outside the county of his or her personal residence attendance at which prevents his or her attendance at the polls.

“(5) The person is a member of, or spouse or dependent of a member of, the armed forces of the United States or is similarly qualified to vote absentee pursuant to the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff.

“(6) The person has been appointed as an election officer or named as a poll watcher at a polling place other than his or her regular polling place.”

Also, any registered elector who requires emergency treatment by a licensed physician within five days of an election may apply for an emergency absentee ballot for the election and



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may vote by returning the ballot no later than 12:00 noon on the day the election is held. The attendant physician shall describe and certify the circumstances as constituting an emergency on a special form designed by the Secretary of State and provided by his or her office to local absentee election managers. The special form shall be attached to the application. Section 17-11-3, Code of Alabama 1975.

In addition, any registered elector may vote by an emergency absentee ballot if he or she is required by his or her employer under unforeseen circumstances to be out of the county on an emergency business trip on election day. Under such circumstances, the applicant must apply for an emergency absentee ballot at the office of the absentee election manager no later than the close of the business day one day prior to the election. The applicant must complete and file an application form designed by the Secretary of State for emergency absentee voters. The law requires that the form contain an affidavit which the applicant must sign or swear to acknowledging that he or she was not aware of the out of county business requirement prior to five days before the election. An applicant who meets these requirements may vote by emergency absentee ballot. After voting the ballot at the office of the absentee election manager, the voter must deliver the ballot to the manager in person. Section 17-11-3, Code of Alabama 1975. Persons detained in a detention facility in Alabama who are qualified to vote may apply for and cast an absentee ballot pursuant to the provision that allows a person who has a physical illness or infirmity that prevents his or her attendance at the polls on election day to vote absentee. AGO 2001-052.

Application to Vote Absentee

A person who desires to vote absentee may vote absentee provided he or she makes application in writing not less than five days prior to the election to the municipal clerk or the person designated to serve instead of the clerk. Section 17-11-3, Code of Alabama 1975. The application shall be in a form prescribed by the Secretary of State and shall be used throughout the state. Handwritten applications can also be accepted at any time prior to the five-day deadline. The application must contain sufficient information to identify the applicant. The application must contain the following: the applicant's name, residence address, or such other information necessary to verify that such applicant is a registered voter.

Separate applications for absentee ballots are required for elections which are more than 30 days apart except as to individuals voting pursuant to the federal Uniformed and Overseas Absentee Voting Act (under UOAVA), 42 U.S.C. 1973ff.¹ Other voters who wish to receive an absentee ballot for a run-off election must submit a new application for an absentee ballot for that election. AGO 2000-188.

An applicant who is a member of the United States Armed Forces, including members of the Alabama National Guard and

1. In the opinion of the Attorney General, the requirements of UOAVA do not apply to municipal elections. AGO 2008-107. Further, we are of the opinion that Act 2011-619, which relates to electronic voting for overseas military, does not apply to municipal elections for the same reasons given in AGO 2008-107.

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Reserves, or an applicant who is the spouse of any member of the armed forces may make application for an absentee ballot by filling out the federal postcard application form authorized by the Federal Voting Assistance Act of 1955. Section 17-11-3, Code of Alabama 1975. A federal Postcard Application for Registration and Absentee Ballot may be treated as both an application for registration to vote and as an application for an absentee ballot. AGO 1983-064 (to the Hon. John L. Moore, November 3, 1982).

Any applicant may have assistance in filling out the application, but each application must be manually signed by the applicant. If the applicant signs by mark, the name of the witness of his or her signature must be signed on the application as well. The application may be sent to the clerk by U. S. mail or delivered personally. The absentee election manager may not accept multiple applications which are mailed in one envelope. AGO 1982-551 (to the Hon. Don Siegelman, September 10, 1982). Section 17-11-4, Code of Alabama 1975 provides that an application for an emergency absentee ballot may be forwarded to the absentee election manager by the applicant or his or her designee. However, an application other than an application for an emergency absentee ballot cannot be returned by a person other than the applicant. Section 17-11-4, Code of Alabama 1975.

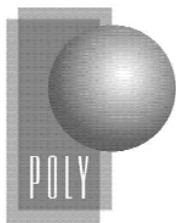
Ballots

Not more than seven days after the last day to qualify as a candidate in a municipal election, or in the case of a runoff municipal election, not more than fourteen days after the first election, or in the case of a municipal election held for a purpose other than the election of municipal officers, not more than seven days after the giving of notice of the election, the officer charged

with the printing and distribution of the official ballots and election supplies must deliver to the absentee election manager a sufficient number of absentee ballots, envelopes and other necessary election supplies. If the absentee election manager is a candidate with opposition in the election, he or she must, upon receipt of such ballots, envelopes and supplies, deliver them to the person authorized to act in his or her stead. Section 17-11-12, Code of Alabama 1975. The official ballots for absentee voters must be in the same form as the official regular ballot, except the words "Official Absentee Ballot" is to be printed on them. Section 17-11-6, Code of Alabama 1975.

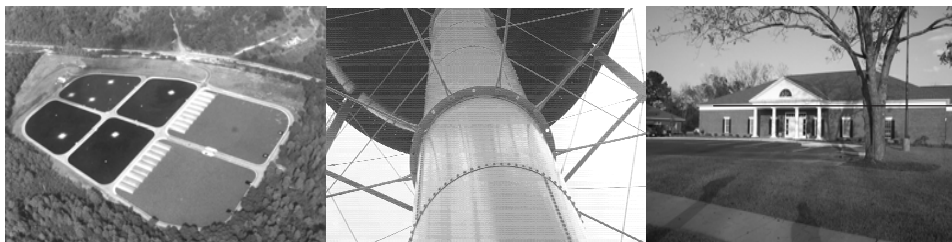
Upon receipt of the application for an absentee ballot, if the applicant's name appears on the list of qualified voters in the election to be held or, if the voter makes an affidavit for a provisional ballot, the absentee election manager is required to furnish the absentee ballot to the applicant by forwarding it by U.S. mail to the applicant's or voter's residence address. Upon the written request of the voter, the ballot may be mailed to the address where the voter regularly receives mail or by handing the absentee ballot to the voter in person or in the case of emergency voting, his or her designee in person. Section 17-11-5, Code of Alabama 1975. Absentee ballots must be mailed to a voter's residence address as shown on the voters' list or, if requested by the voter, to an address where the voter regularly receives mail. AGO 2000-156; AGO 2000-193.

If the absentee election manager has reasonable cause to believe that the applicant has given a fraudulent address on the application for the absentee ballot, the election manager is required to turn over the ballot application to the district attorney for any action which may be necessary. The absentee election manager



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further may require additional proof of a voter's eligibility to vote absentee when there is evidence of continuous absentee voting. Section 17-11-5, Code of Alabama 1975.

The absentee election manager is required to mail any absentee ballot requested to be mailed no later than the next business day after an application has been received unless the absentee ballots have not been delivered to the absentee election manager. If the absentee ballots have not been delivered, the absentee election manager must hold all requests until the ballots are delivered and then respond by placing ballots in the mail no later than the next business day. Section 17-11-5, Code of Alabama 1975.

If a voter who requested an absentee ballot signs an affidavit stating that the voter did not receive the ballot, the absentee election manager may provide the voter with a replacement absentee ballot. The affidavit and documentation by the absentee election manager should be attached to the voter's application for an absentee ballot. If one voter casts multiple ballots, none of those ballots should be opened or counted. In addition, a person who applied for an absentee ballot and claims that he did not receive the ballot or that it was lost and who is able to go the polling place on election day is entitled to vote by provisional ballot at the polling place. See AGO 2000-244.²

An absentee voter is furnished with an absentee ballot together with two envelopes for returning the marked ballot. The voter must also receive instructions for correcting mistakes in completing ballots or obtaining a replacement ballot. An absentee voter can mark his or her ballot at any place he or she desires including

2. This Opinion concerned challenged balloting but due to the fact that challenged balloting has been repealed, the voter should now be permitted to vote a provisional ballot.

the office of the municipal clerk or other persons designated as absentee ballot manager. AGO to the Hon. D. L. Cockrell, January 21, 1976. After marking the ballot, the voter should seal the ballot in the plain envelope provided, place the plain envelope inside the affidavit envelope, complete the affidavit, have his or her signature on the affidavit witnessed by either a notary public or other officer authorized to acknowledge oaths or by two witnesses 18 years of age or older, and shall forward it by U. S. mail to the clerk or hand it to the clerk in person. Section 17-11-9, Code of Alabama 1975. Absentee ballots that are not witnessed or notarized should not be opened or counted. AGO 2000-180. The clerk should not accept a ballot unless it is hand delivered by the voter or mailed. AGO 1980-551 (to the Hon. James E. Floyd, September 12, 1980). The Alabama Supreme court has held that absentee ballots retrieved from a United States Post Office without a postmark could not be counted in mayoral election. *Washington v. Hill*, 960 So.2d 643 (Ala. 2006).

The absentee election manager is charged with determining whether an applicant for an absentee ballot must provide identification³ or re-identify. For identification purposes, a third envelope of a different color and sufficient size to enclose the first and second envelopes must be provided to the applicant along with instructions for including a proper form of identification. For absentee applicants required to re-identify because they do not appear in the voting place for which they seek to vote but do appear in another voting place within the state voter registration list, the absentee election manager must provide the voter a third envelope of different color and sufficient size to enclose the first

3. This language is used in the Code of Alabama, but all voters must produce identification.



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and second envelopes along with a voter re-identification form, a provisional voter affirmation, and instructions for casting a provisional ballot. The ballot shall be treated as a provisional ballot and the term "Provisional" shall be marked on the second or affidavit envelope prior to transmitting the ballot to the voter. In *Townson v. Stonicher*, 933 So.2d 1062 (Ala. 2005), the Alabama Supreme Court held that the votes of absentee voters who failed to submit proper identification with their ballots could not be counted. In *Washington v. Hill*, 960 So.2d 643 (Ala. 2006), the court held that identification requirements of the statute governing absentee ballots would not be set aside to remedy an elections manager's failure to notify voters of their errors in time for remediation.

Upon receipt of the absentee ballot, the absentee election manager is required to record its receipt on the absentee list and to safely keep the ballot without breaking the seal of the affidavit envelope. The absentee election manager is required by Section 17-11-10, Code of Alabama 1975, to safely keep the absentee ballots. The city council does not have the authority to impose specific procedures for the safekeeping of the absentee ballots. AGO 2004-214.

List of Persons Voting Absentee

The official list of qualified voters must be furnished to the absentee election manager at least 35 days before the election. Any supplemental list of qualified electors shall also be provided to the absentee election manager as soon as the list becomes available. Section 17-11-5, Code of Alabama 1975. Applicants for an absentee ballot who do not appear on the state voter registration list are not entitled to an absentee ballot. 17-11-9, Code of Alabama 1975.

The absentee election manager must underscore on the list of qualified voters the name of the applicant and write immediately beside the applicant's name the word "absentee." See Section 17-11-5, Code of Alabama 1975. On the list of absentee voters, the manager must also enroll the name, residence and polling place of the applicant and the date the application was received. This list should be posted daily on the regular bulletin board or other public place at city hall. Another copy of the list must be maintained in the clerk's office for 60 days after the election and then filed with the probate judge. Pursuant to Section 17-11-5, Code of Alabama 1975, a person's name should be stricken from the list of qualified voters when that person applies for an absentee ballot in a municipal election. AGO 2000-231.⁴

The absentee election manager is required, before the polls open at any election, to deliver to the election officers of each polling place, a list showing the name and address of every person whose name appears on the list of qualified voters for such polling place who applied for an absentee ballot in the election. The name of an applicant for absentee ballot shall be identified on the list of qualified voters and that person cannot be allowed to vote again, except by provisional ballot. Section 17-11-5(c), Code of Alabama 1975. See also, Section 11-46-58, Code of Alabama 1975 (requiring that Chapter 11 of Title 17 be followed with respect to marking, enrolling, posting, and delivering lists showing names and addresses of applicants for absentee ballots.)

4. This Opinion uses the word "stricken;" however it does not use the word in a literal sense. The underlining and notation requirements of 17-11-5 serve to strike the voter's name from the list.

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Election Day

Absentee ballots may be returned up to and including the day of the election. No absentee ballot received by mail can be opened or counted unless it is postmarked as of a date prior to election day and received by noon the day of the election. Absentee ballots may be returned by hand delivery if delivered to the absentee election manager not later than the close of business⁵ on the day prior to the election. Ballots delivered by the medical emergency designee may be returned by noon on election day. Section 17-11-18, Code of Alabama 1975. A procedure proposed to count timely received absentee ballots that were discovered by election officials on a day after the other absentee ballots were counted is appropriate under state law according to the Attorney General. See AGO 2003-028 and AGO 2003-029.

Beginning at noon on election day, the absentee election manager delivers the sealed affidavit envelopes containing absentee ballots to the election officials provided pursuant to Section 17-11-10, Code of Alabama 1975. The election officials must call the name of each voter casting an absentee ballot, with poll watchers present as may be provided under the law of Alabama, and then open each affidavit envelope to review the affidavit to determine if the signature of the voter has been appropriately witnessed. If the witnessing of the signature and the information in the affidavit establish that the voter is entitled to vote by absentee ballot, then the election officials certify the findings, open each affidavit

5. Unless a municipality has set hours of operation, we recommend staying open until 5:00 p.m. as the law previously provided for.

envelope, and deposit the plain envelope containing the absentee ballot into a sealed ballot box. The Supreme Court has indicated that an affidavit is in substantial compliance if it contains the voter's signature, two witnesses or a notary, the reasons for voting absentee, and the voter's residence. See, e.g., *Eubanks v. Hale*, 772 So.2d 1113 (Ala. 1999).

No poll worker or other election official should open an affidavit envelope if the affidavit is unsigned by the voter (and unmarked), and no ballot envelope or ballot should be removed or counted. Further, no poll worker or other election official should open an affidavit envelope if the voter's affidavit signature (or mark) is not witnessed by the signatures of two witnesses or a notary public (or other officer authorized to acknowledge oaths) and no ballot envelope or ballot should be removed or counted. Section 17-11-10, Code of Alabama 1975.

Upon the closing of the polls, the absentee ballots are counted and otherwise handled in all respects as if said absentee voter were present and voting in person. Section 17-11-10, Code of Alabama 1975. Any person authorized to appoint poll watchers may have a single watcher present at the counting of the absentee ballots. It is unlawful for any election official or other person to publish or make known to anyone the results of the count of absentee votes before the polls close. Section 17-11-11(a), Code of Alabama 1975. In municipalities of less than 10,000 inhabitants, the return mail envelopes containing the ballots shall be delivered by the absentee election manager to the election official of the precinct of the respective voters where they shall be counted and otherwise

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handled as if the absentee voter were present and voting in person unless the city has adopted a procedure as provided in Section 11-46- at least 6 months prior to the election. Section 17-11-10, Code of Alabama 1975.

Penalties

Any person who willfully changes an absentee voter's ballot to the extent that it does not reflect the voter's true ballot, or any person who willfully votes more than once by absentee in the same election, or any person who willfully votes for another voter or falsifies absentee ballot applications or verification documents so as to vote absentee, or any person who solicits, encourages, urges, or otherwise promotes illegal absentee voting shall, upon conviction, be guilty of a Class C felony. Any person who willfully aids any person unlawfully to vote an absentee ballot, any person who knowingly and unlawfully votes an absentee ballot, and any voter who votes both an absentee and a regular ballot at any election shall be similarly punished. Section 17-17-24, Code of Alabama 1975.

Except for provisional absentee ballots that have not been verified by seven days after the election, any election official who fails to count a legal vote cast by absentee ballot shall be guilty of a Class C felony and punished as provided by law. Section 17-17-27, Code of Alabama 1975. Absentee votes cast for a deceased candidate should be counted in determining the total votes cast for the election and are not to be attributed to the replacement candidate. Voters who have cast an absentee ballot for a deceased, disqualified, or otherwise ineligible person are not authorized by Alabama Law to cast a new ballot. AGO 2003-022.



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After the Election

Anyone supplying any absentee affidavit envelopes, absentee ballots, or other absentee election materials to a municipality in connection with a municipal election is required, at the time of the shipment or delivery of the same, to provide to the municipality, and to the Secretary of State, an itemized and signed statement showing a description and the quantity of each item so shipped or delivered. At the conclusion of the election, the absentee election manager is charged with returning all unused absentee election materials to the Secretary of State along with an itemized, signed statement showing the description and quantity of each item of absentee election material not utilized by the municipality in the election. Further, any unused absentee election materials must be maintained for the period of time prescribed by law and, in no event, less than eighteen (18) months. Section 17-11-19, Code of Alabama 1975.

For More Information

For more information on municipal elections in general, please review the publication "Procedures for Holding Elections in Mayor-Council Municipalities" (2012 ed.) prepared and published by the Alabama League of Municipalities. This publication is only available electronically and a copy can be downloaded at: <http://www.alalm.org/PDF%20pages/Legal/2012ElectionsManualONLINE.pdf>

Other election resources are available from the Alabama Secretary of State's office and the Alabama Attorney General's office. ■

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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

Courts: Despite a defendant's fleeing on bond for years after his sentencing, the trial court did not have authority to order concurrent sentences to be served consecutively. Generally, a trial court retains jurisdiction to modify a sentence for only 30 days after that sentence is pronounced. *Stevenson v. State*, 75 So.3d 1215 (Ala.Crim.App.2010)

Eminent Domain: A previous judgment for the state in a condemnation action did not preclude, as *res judicata*, a property owner's later claims against a city for trespass, nuisance and negligence arising from alleged damage to the remaining tract of the condemned property, caused by loss of ingress and egress resulting from a drainage ditch built on the condemned portion, since the issue of the city's potential responsibility for invasion

of water to the remaining property was not at issue in the state's condemnation action. *Hillcrest, Ltd. v. City of Mobile*, 76 So.3d 252 (Ala.Civ.App.2010)

UNITED STATES COURT DECISIONS AFFECTING ALABAMA

Criminal Law: The government cannot compel a suspect to decrypt his computer hard drives without granting him full immunity from prosecution where the act of unlocking the drives would itself be testimonial. Use and derivative-use immunity establishes the critical threshold to overcome an individual's invocation of the Fifth Amendment privilege against self-incrimination. No more protection is necessary, and no less protection is sufficient. *In re Grand Jury Subpoena Duces Tecum Dated March 25, 2011*, --- F.3d ----, 2012 WL 579433 (11th Cir.2012)

Miranda: Questioning a prisoner about criminal activity that occurred outside the correctional facility does not necessarily convert a noncustodial situation to one in which *Miranda* applies. When a prisoner is questioned, the determination of custody for purposes of *Miranda* should focus on all of the features of the interrogation; these include the language that is used in summoning the prisoner to the interview and the manner in which the interrogation is conducted. *Howes v. Fields*, --- S.Ct. ----, 2012 WL 538280 (U.S.2012)

Tort Liability: A civil rights claimant must satisfy a high threshold in order to overcome a claim of qualified immunity for a Fourth Amendment violation by an officer executing a warranted search. The fact that a neutral magistrate has issued a warrant authorizing an allegedly unconstitutional search or seizure does not end the inquiry, for qualified immunity purposes, into the objective reasonableness of an officer's conduct in executing the warrant. An officer may still not be protected by qualified immunity, despite the fact that the warrant was issued by a neutral magistrate, if it is obvious that no reasonably competent officer would have concluded that a warrant should issue. *Messerschmidt v. Millender*, --- S.Ct. ----, 2012 WL 555206 (U.S.2012)

DECISIONS FROM OTHER JURISDICTIONS

Civil Rights: Aliens legally within the United States may challenge the constitutionality of federal and state actions and even aliens who are in the United States illegally may bring constitutional challenges. When determining the constitutional rights of aliens outside the United States, a court applies a "functional approach" rather than a bright-line rule. *Ibrahim v. Department of Homeland Sec.*, --- F.3d ----, 2012 WL 390126 (9th Cir.2012)

Criminal Law: The obstruction-of-justice provision of the Sarbanes-Oxley Act makes it a federal crime to destroy documents before the commencement of a federal investigation

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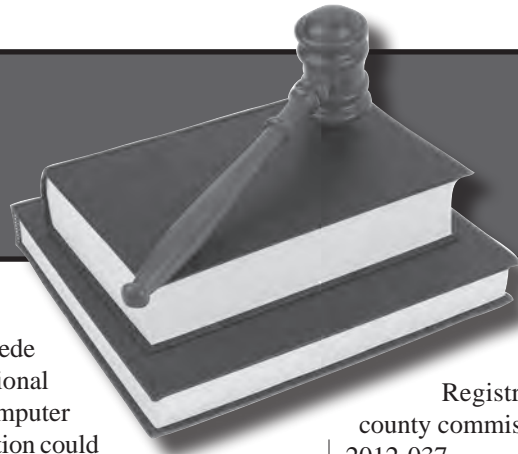
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when it is done with intent to impede a foreseeable investigation. Intentional deletion of information from a computer to avoid a possible federal investigation could be sufficient to support a defendant's obstruction of justice conviction. *U.S. v. Kernell*, --- F.3d ---, 2012 WL 255765 (6th Cir.2012)

Family Medical Leave Act: The Family and Medical Leave Act allows for individual liability against supervisors at public agencies. An individual is subject to FMLA liability when he or she exercises supervisory authority over the complaining employee and was responsible in whole or part for the alleged violation while acting in the employer's interest. *Haybarger v. Lawrence County Adult Probation and Parole*, --- F.3d ---, 2012 WL 265996 (3rd Cir.2012)

ATTORNEY GENERAL'S OPINIONS

Boards: A public park and recreation board, created pursuant to sections 11-60-1 through 11-60-20 of the Code of Alabama, is a public corporation, and as such, the Board may only be removed by impeachment. The provisions of section 11-43-160 of the Code of Alabama do not apply to members of an incorporated public park and recreation board. AGO 2012-035

Boards: A public park and recreation board cannot sell or close a recreational facility for which it does not hold legal title. Although the Council may have the authority to reassign property that it owns, a municipality may not compel an independent public park and recreation board to operate its facilities at or during certain hours or certain times. Section 11-60-8 of the Code of Alabama authorizes a park and recreation board to maintain and/or manage the programs or projects of the board. AGO 2012-035

Building Codes: The Alabama Manufactured Housing Commission and the Alabama Licensing Board for General Contractors have concurrent jurisdiction to regulate the installation of nonresidential, prefabricated buildings and storm shelters that are permanently attached to real property where the cost of the undertaking is \$50,000 or more. AGO 2012-036

Contracts: A sheriff may not provide law enforcement services in an adjacent county unless an agreement to provide reciprocal services has been entered into by both counties and is executed as provided for in sections 11-102-2 and 11-102-3 of the Code of Alabama. The sheriffs and county commissions of both counties must consent and be parties to the agreement. AGO 2012-034

Elections: The county commission, the board of registrars, and the probate judge should work together to determine who is best suited to be responsible for the street files and precinct maintenance for the county and for any municipalities within the county, subject to the oversight and guidance of the Secretary of

State as set forth in the Alabama HAVA Project Statewide Security Policy for the Alabama Voter Registration and Election Management System. The county commission must designate these roles in writing. AGO 2012-037

Nuisances: Except as otherwise provided by law, a municipality may assess reasonable attorney's fees and clerical costs as part of the costs of demolition of an unsafe structure where the statute relied upon allows the governing body to fix the costs which it finds were reasonably incurred in the demolition. AGO 2012-032 ■

FAQ

Are municipalities authorized to enter into contracts with other municipalities or counties for the joint exercise of powers or services?

Except as otherwise provided or prohibited by law, any county or municipality of the State of Alabama may enter into a written contract with one or more counties or municipalities for the joint exercise of any power or service that state or local law authorizes each of the contracting entities to exercise individually. The joint contract may provide for the power or service to be exercised by one or more entities on behalf of the others or jointly by the entities. Section 11-102-1, Code of Alabama 1975.

Any such contract must be in writing and cannot exceed three years. See Sections 11-102-2 and 11-102-4, Code of Alabama 1975. Approval of the contract by a municipal governing body must be by adoption of an ordinance of general and permanent operation. Section 11-102-3, Code of Alabama 1975. The joint exercise authority provided for in Chapter 102, Title 11 of the Code of Alabama, does not include the power to tax or levy taxes, the power to zone real property, the power to exercise planning authority, or any contract for the collection, transportation, storage or disposal of solid waste. See Sections 11-102-5 and 11-102-8, Code of Alabama 1975.

Except as otherwise provided by law and as limited by the contract, any entity which contracts to perform or exercise any service or power pursuant to Chapter 102, Title 11 of the Code of Alabama, shall have the full power and authority to act within the jurisdiction of all contracting entities to the extent necessary to carry out the purposes of the contract. Each municipality or county which is a party to the contract must adopt all ordinances, resolutions or policies necessary to authorize the other contracting entities to carry out their contractual duties and responsibilities. Section 11-102-7, Code of Alabama 1975. ■

Driving Emergency Vehicles Should be Limited to Authorized Emergency Personnel

by Will Strength, ARM-P • Loss Control Representative • AMIC/MWCF

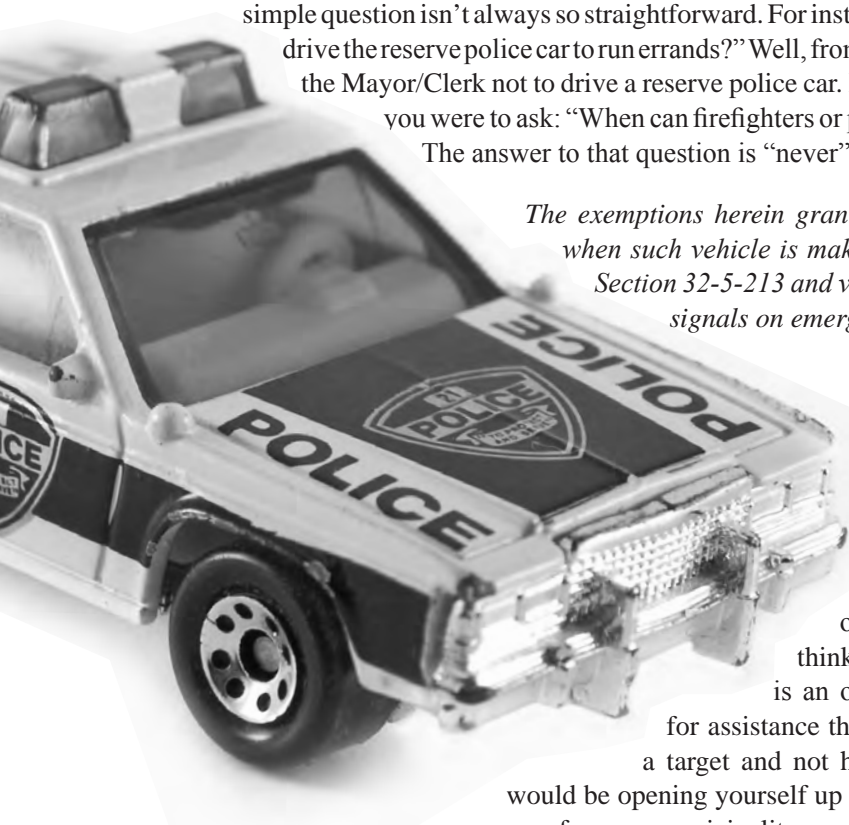
Driving emergency vehicles can be extremely dangerous and is, therefore, an enormous liability exposure for both the driver and your municipality. Emergency vehicles should only be driven by *qualified* personnel.

If you've ever driven an emergency vehicle you've probably heard (or you *should* have heard): "Drive with due regard for the safety of all others." If you're researching laws concerning operations of emergency vehicles you'll most likely come across this statement (or something similar) multiple times: "The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others."

Why is it that this statement is constantly repeated in driver training classes, in ALA CODE § 32-5A-115 or, hopefully, in your municipalities' "driver guidelines"? Quite simply, it's because driving emergency vehicles can be dangerous and is an enormous liability exposure for the driver as well as your city or town. Driving Code 3, as it is called, is a very serious task and should only be performed by competent, mature, *qualified* personnel.

What about driving these same vehicles in everyday, non-emergency conditions? Are there specific laws that address this type of driving? Of course there are federal, state and local laws that *all* drivers are expected to follow; however, sometimes an answer to a simple question isn't always so straightforward. For instance, a question I'm often asked is: "Can the Mayor or Clerk drive the reserve police car to run errands?" Well, from a risk management prospective I would strongly encourage the Mayor/Clerk not to drive a reserve police car. However, from a legal standpoint this isn't as clear cut as if you were to ask: "When can firefighters or police officers operate with emergency lights and no siren?" The answer to that question is "never" because ALA CODE § 32-5A-7 clearly states:

The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of an audible signal meeting the requirements of Section 32-5-213 and visual requirements of any laws of this state requiring visual signals on emergency vehicles.



So ... can the Mayor or Clerk drive the reserve police car to run errands? Well, the answer isn't that simple nor is it what I want to stress because it's only one example of a long list of questions illustrating why every municipality should implement its own vehicle guidelines or policy. My reasoning for encouraging you not to drive a police car or emergency vehicle unless you are an actual police officer or emergency personnel is that the public will likely think that whoever is driving the police car/emergency vehicle is an officer or qualified personnel. A citizen may look to you for assistance that you can't provide – or, even worse, you could become a target and not have the means or the training to protect yourself. You would be opening yourself up to considerable safety exposure as well enormous liability exposure for your municipality.

To reduce possible liability exposures and the potential for injury, all cities and towns should consider having written vehicle operating guidelines that not only cover emergency vehicles but also offer guidelines for all vehicle types and all drivers. The Alabama League encourages you to implement guidelines that address important issues such as minimum age requirements for emergency vehicle operators; volunteers and personally owned vehicles; disciplinary actions for driving violations; restrictions on inexperienced drivers; and documented preventative maintenance programs. If you need assistance or sample vehicle operation guidelines, please contact your AMIC/MWCF loss control representative. ■

Points to remember regarding emergency vehicles and emergency lighting:

- The only vehicles that can legally use emergency lights are authorized emergency vehicles. These include police cars, ambulances and fire trucks.
- In order for any other vehicle (i.e. POV) to be considered an authorized emergency vehicle, that vehicle must be so designated by the Director of Public Safety or a police chief of an incorporated municipality.
- Police vehicles may use red and/or blue lights. No vehicle other than a police vehicle can use a blue light.
- Fire department and other authorized emergency vehicles, including ambulances, shall only use red emergency lights.
- Alabama law says that in order to request the right of way, you must be using both visual and audible warning devices.
- Every police and fire department vehicle and every ambulance used for emergency calls shall be equipped with a siren, bell, ululating multi-toned horns or other electronic siren type device approved by the Director of Public Safety.
- All drivers of emergency vehicles have a duty to drive with due regard for the safety of all persons on the highway.

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industry and the public interest. As an official with US EPA, she directed nationally significant enforcement cases. She served as environmental counsel to the American Insurance Association, the nation's largest insurance trade association, and was the first African American senior environmental policy director at the National Wildlife Federation where she led national campaigns on hazardous waste cleanup, genetic engineering and clean water legislation.

Her work ranges from managing the Exxon Valdez natural resources litigation, publishing a national biotechnology newsletter (*The Gene Exchange*) and training judges and lawyers from nations in Southeast Asia to advising nongovernmental organizations at the World Conference Against Racism in Durban, South Africa; the World Social Forum in Porto Alegre Brazil; and the World Summit on Sustainable Development in Johannesburg, South Africa. Ms. Ferris launched two groundbreaking initiatives at the nexus of civil rights, health and the environment: the Environmental Justice Project for the Lawyers' Committee for Civil Rights, the first pioneered by a major civil rights group; and the Washington Office on Environmental Justice, an international grassroots coalition.

In addition, she led the national campaign that resulted in the 1994 Presidential Executive Order on Environmental Justice, the US EPA National Environmental Justice (EJ) Advisory Council and the federal Inter-Agency EJ Workgroup. Since then, Executive Order 12898, a landmark in fields of civil rights, environment and health, remains the principal federal governance on achieving environmental justice. Her public service includes appointments to the National Institute for Environmental Health Sciences Advisory Committee; the US Department of Energy (DOE) Citizens' Monitoring and Technical Assessment Fund Advisory Committee; the national Community Involvement Fund funded by DOE; the federal US EPA Advisory Committee that drafted the national environmental due diligence regulation; and she was on the select review team of panelists for US EPA's 2007, 2008 and 2010 National Smart Growth Awards.

For more information regarding this special June 22nd CMO, visit the League's website at www.alalm.org or contact the League's CMO Coordinator, Cindy Price, at 334-262-2566 or via email at cindyp@alalm.org. *This is definitely a workshop you will want to attend!* ■



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The Court of Civil Appeals discussed the distinction between employees and officers in *Burdette v. State Dept. of Revenue*, 487 So.2d 944 (Ala. Civ. App. 1986), stating that “An individual, to be an officer, must exercise his duties in his own right and not by permission and under the supervision and control of another.”

In *Burdette*, the plaintiff sued the state Department of Revenue, contending that the individuals who assessed him for taxes acted without authority because they failed to take an oath as “state officers.”

The court disagreed, finding that filing liens and holding administrative hearings “were only of an administrative or ministerial nature” and that a “ministerial duty may be validly performed by an assistant or deputy ... These assistants or employees are not given authority to exercise in their own right any part of the power and authority conferred upon the Department. They may act only with the permission and under the supervision and control of the commissioner.”

According to this ruling, then, those who exercise only administrative duties under the control and supervision of a supervisor may not be classified as officers. They would be considered employees, even if the council wanted to designate these positions as “officers.”

Of course, it isn’t clear which positions are officers and which are employees. Further, one municipality may provide duties and responsibilities to a particular position that make that position an office, while another limits someone with the same title to ministerial functions.

In the end, what *Coachman* and Opinion 2012-039 make clear is that municipal officials must find ways to work together to solve the problems they face. Cooperation and open dialogue between the mayor, the council and among councilmembers themselves is crucial to the successful operation of any municipal government in Alabama. ■

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2012 Convention Quick Guide

Birmingham-Jefferson Convention Complex (BJCC) • May 19 - 22, 2012

Meetings and/or events are subject to change.
Registration and meeting rooms are located in the BJCC unless otherwise noted.
CMO credits can be earned. See Convention program for details.

Saturday, May 19

10 a.m. - 5 p.m. Registration • East Exhibit Lobby
11 a.m. Resolutions Committee Meeting • East Meeting Room E-F
1 p.m. AMIC Annual Meeting • East Meeting Room E-F
3:00 - 5:00 p.m. **OPENING SESSION • East Ballroom**
Gov. Robert Bentley (invited) • ALM President Thomas Moore • Quality of Life Awards
6 p.m. City of Birmingham Welcome Party

Sunday, May 20

7:30 a.m. Annual Municipal Golf Tournament • Ballantrae Golf Club, Pelham
10 a.m. Prayer Service • Birmingham Ballrooms 1 & 5 of the Birmingham Sheraton Hotel
1 - 5 p.m. Registration • East Exhibit Lobby
1:30 - 4:30 p.m. Roundtable Discussions by Population (see program for locations)
4:30 - 6 p.m. ABC-LEO Reception • East Meeting Room M
5:30 - 7 p.m. Exhibitors Showcase and Reception* • East Exhibition 2-3

*Municipal flags will be displayed at the entrance to the EXPO hall during the Showcase and Reception. Municipal Marketplace vendor prize drawings will be featured in the EXPO Hall during the Sunday evening reception. Officials must be present to win!

Monday, May 21

8 a.m.- 5 p.m. Registration • East Exhibit Lobby
8:30 - 9:30 a.m. Clerks Breakfast and Business Meeting • East Meeting Room O
8:30 a.m.- 5 p.m. Alabama Association of Public Personnel Administrators • East Meeting Room D
9:30 a.m.- 5 p.m. Municipal Clerks Conference • East Meeting Room N
8:30 a.m.- 10:30 a.m. **GENERAL SESSION: Municipal Elections • East Ballroom**
10:30 a.m.- 2:45 p.m. Exhibits Open • East Exhibition 2-3
11 a.m.- Noon Concurrent Sessions (see program for topics and locations)
12:15 p.m.- 2:15 p.m. Luncheon and Ice Cream in the EXPO Hall* • East Exhibition 2-3
***NEW THIS YEAR!** The Monday luncheon and an ice-cream dessert will be served in the EXPO Hall. Exhibitor prize drawings will take place at this time.
2:30 p.m.- 3:30 p.m. Concurrent Sessions (see program for topics and locations)
3:45 p.m.- 5:30 p.m. **ANNUAL BUSINESS SESSION • East Ballroom B**
6 p.m. Reception • Birmingham Ballroom Prefunction of the Birmingham Sheraton Hotel
7:15 p.m. President's Banquet • Birmingham Ballroom of the Birmingham Sheraton Hotel
Entertainment: "Three on a String" • Birmingham Ballroom of the Birmingham Sheraton Hotel

Tuesday, May 22

Business Casual
8 a.m. - Noon Registration • East Exhibit Lobby
8:30 -10:30 a.m. **GENERAL SESSION: After the Storm: Dealing with Disasters • East Ballroom B**
10:30 a.m.-Noon Ask Your Attorney Panel • East Ballroom B
Noon Adjourn

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