

The Alabama Municipal JOURNAL

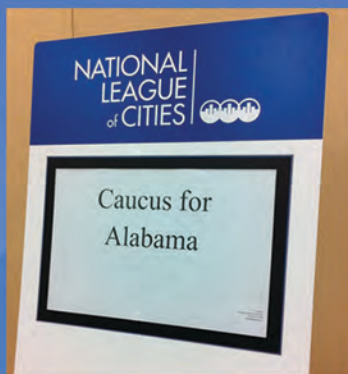
April 2013

Volume 70, Number 9



2013 NLC Congressional City Conference

Washington, D.C.
March 9-13, 2013



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The Alabama Municipal JOURNAL

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On the Cover:

The Alabama League of Municipalities usually has one of the largest delegations in attendance at the National League of Cities' annual Congressional City Conference in Washington, D.C. Cover photos are from the Alabama Caucus meeting held March 10th during the conference. Additional conference photos are on p. 30.

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A Message from the Editor



Montgomery Councilmember Richard Bollinger, who represents my district, was a first time attendee at the NLC Congressional City Conference.

With just over 120 registrants from 34 municipalities, Alabama was well represented at NLC's Congressional City Conference last month in Washington D.C. and, once again, had one of the largest delegate groups from any state. This annual legislative conference hosted by the National League of Cities is an important networking and professional development opportunity for municipal officials. In addition, and perhaps even more importantly, guidance is provided to local governments on how to approach their congressional delegations regarding key legislative issues that would have a significant impact on communities throughout the country.

This year's conference featured a variety of topics including: Building Healthy Communities, Leveraging Federal Resources, How Government Can be Smart About Housing, Reducing Gun Violence in America's Cities and Towns, Building Better Water Infrastructure, Comprehensive Immigration Reform, Protecting Cities in the Federal Budget Debates as well as many others. The League hosted its Alabama Caucus Meeting on Sunday afternoon, March 10, at which time delegates heard a detailed federal legislative update from Carolyn Coleman, NLC's Director of Federal Relations. For more on the critical issues she covered, see Greg Cochran's **Federal Action Alert** article on page 23.

The Opening General Session of the conference featured NLC President Mayor Marie Lopez Rogers of Avondale, Arizona, and Frank Lutz, a bipartisan political pollster, author and communications expert. Lutz offered a lot of data and communications advice through his presentation saying people want fewer hassles and more choices. They want their elected officials to be "straight-shooters" and to be truthful about challenges – not partisan and not political. The attribute constituents want more than anything else is "someone who says what they mean and mean what they say." He also said that "economic growth" is an academic term that is overused and that what people most want is a "healthy economy" – healthy schools, healthy communities, healthy households and healthy families. Economic growth is about business. A healthy economy is about *people*. Lutz asked the audience: "What are you doing to represent and protect and defend" the hard working Americans in your community? He said the language people want from their elected officials when it comes to talking about government and budgets is a *fact-based* approach rather than an *evidence-based* approach: "Evidence means there's a prosecution and defence. Evidence means there's two sides. But a fact is a fact." He urged the audience to always take a fact-based approach. The conference closed with a luncheon featuring Senator John McCain, former Congressman J.C. Watts and a special appearance from Vice President Joe Biden.

For additional information from this year's conference, and to learn more about NLC, visit www.nlc.org. Next year's Congressional City Conference is scheduled for March 8th-12th in Washington, D.C. To learn about the Alabama League's long-standing history with NLC, be sure to read Mayor Bradford's President's Report beginning on page 5.

2013 Annual Convention/Expo and CMO Mini Boot Camp

The League's 2013 Annual Convention and Expo will be held in downtown Montgomery May 18-21. Online registration is available – simply click on the prominent link from our home page at www.alalm.org. A Convention Quick Guide is on page 27 and can also be downloaded from the website. Municipalities interested in participating in the Annual Flag Showcase should visit the website for instructions and deadlines. Also, new this year, the League will be offering a special CMO Mini Boot Camp on Tuesday afternoon immediately following Convention. This program requires a separate registration and an additional fee. See page 25 for details.

I hope you will all join us for the 2013 annual convention in Montgomery! Particularly for newly elected officials, the convention provides excellent networking opportunities as well as round table discussions (by population) for you to share innovative programs and discuss local challenges with your peers. In addition, the concurrent sessions offer timely, professional development topics you will find helpful as you strive to provide quality of life opportunities to your communities.

Carrie

The President's Report

Mayor David Bradford • Muscle Shoals



The Alabama League and NLC: A Long-Standing History

As we all well know, locally elected officials face many challenges throughout the year. Not only are we constantly searching for ways to improve the quality of life for our citizens under difficult financial circumstances, we must also constantly monitor legislative issues at the state and national levels to guard against unfunded mandates as well as other measures that would erode our ability to care for our communities.

Last month I attended the National League of Cities' (NLC) Congressional City Conference in Washington D.C. I was so impressed and proud of our League staff and of our Alabama Delegation. We continue to have one of the largest contingencies at this meeting. I am a firm believer in professional development and networking and the NLC meetings offer plenty of both. In addition, the Congressional City Conference provides municipal officials with the opportunity to meet with our congressional leaders and their staff members, which is extremely important. We also receive updates from NLC on vital national issues affecting municipalities.

This year we must continue to push for passage of the Marketplace Fairness Act for internet sales tax collection as well as work diligently to stop Congress from removing the tax exempt bond status for municipal bonds used for infrastructure, capital equipment and building projects. This year's conference had three of the most recognizable and dynamic speakers in my 13 years of attending: Senator John McCain, Former Congressman J.C. Watts and Vice President Joe Biden.

Our League has a long history with NLC. In fact, in 1935, at a meeting in Montgomery, the Alabama League found its footing through the help of the national organization, which was then known as the American Municipal Association (AMA) and was created by several state municipal leagues in 1924 to strengthen and promote municipalities as centers of opportunity, leadership and governance. During this meeting, Clifford Ham of AMA addressed delegates, impressing upon them the need for an aggressive and sound central organization. To that end, he offered financial aid through the AMA, enabling the Alabama League to hire its first executive director, Ed Reid, a dynamic, 25-year-old who was raised

in Georgiana and was 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.

Since initially organizing in 1935 with financial aid from the AMA and a three-year grant from the Rockefeller Foundation, the Alabama League has been an active member of the AMA and its successor, the National League of Cities. Ed Reid served three terms on the AMA's board of directors and attended many national meetings hosted by AMA throughout his 30-year career with the League. In 1964, the AMA became the National League of Cities.

When staff attorney John Watkins was named executive director after Reid's untimely death from cancer in 1965, he maintained Alabama's strong ties with the national organization, increasing attendance of Alabama's municipal officials at NLC conferences and serving two terms on NLC's board. Participation with NLC grew even stronger under the leadership of the League's third executive director, Perry Roquemore, who was hired as the League's staff attorney in 1974 and named director upon Watkins' retirement in 1986. Roquemore served two terms on NLC's board as well as two terms on the NLC-RISC Board of Directors, a national organization of municipal self-insurance programs developed by NLC. Following his retirement in 2011, General Counsel/Deputy Director Ken Smith was named the League's fourth executive director and is currently serving a two-year term on NLC's board.

From the late 1980s forward, the Alabama League has consistently had one of the largest state delegations at NLC's annual Congress of Cities as well as strong representation during the Congressional City Conference I attended last month and is held each year in Washington, D.C. In addition, several Alabama officials have served two-year terms on NLC's board, including Mayors and League Past Presidents Al DuPont of Tuscaloosa, Jim Nix of Fairhope, Leon Smith of Oxford, Ted Jennings of Brewton, Jim Byard of Prattville; Mayor and League Vice President Jim Robinson of Montgomery; Mayors George Seibels, David Vann and Richard Arrington of Birmingham; and Councilmembers Cynthia McCollum of Madison and Debbie

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- Judge
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- Craig A., Defendant
Foley, Alabama

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Municipal Overview

Ken Smith • Executive Director



Are You a Facilitator, a Rubber Stamper or a Roadblocker?

Webster defines a “Facilitator” as someone who brings about an outcome. This is a person who helps a group of people understand their common objectives and works with them to achieve those goals.

A “Rubberstamper” is someone who essentially approves every action of the body, someone who doesn’t truly contribute to an outcome but instead simply has a ministerial role in achieving that outcome, usually by voting.

A “Roadblocker” is someone who stands in the way of the outcome. This is a person who feels that decisions have to go through them. No decision is too minor that it should be taken without their input – and usually without them having the last word.

These three roles could be defined as the Good, the Bad and the Ugly. Everyone who serves on a board, including a municipal council, serves in one of these roles. The goal, of course, is to have all councilmembers serving as facilitators, helping to move meetings along, contributing worthy advice when they have pertinent information to add, but not preventing council action just to show the power they possess.

Which one are you? And how can you be sure that you are assisting the entity you serve rather than standing in the way or simply filling a seat? One of my honors as Executive Director is to serve on the board of the Alabama Communities of Excellence (ACE). This fine organization assists participating communities in planning and preparing for a more vibrant future. At a recent board meeting, board members received a list of suggestions for proper board member participation. The list is applicable to any board. I thought I’d use this month’s column to provide readers with this list – and a few suggestions of my own – and my thoughts regarding each item.

1. Understand that we’re all working toward the same goal.

This particular statement doesn’t mean that everyone agrees on exactly what the goal is, or even how to obtain it. Rather, it recognizes that there is a specific reason the entity the members serve exists, and that goal should be to serve the needs of that entity.

Of course, reasonable people will and should differ as to the objective of the entity they serve. In the case of a municipality, are you trying to increase population? Build infrastructure? Attract new business? All of these (and many, many more) are legitimate reasons for serving on a municipal council.

This suggestion recognizes that despite differences of opinion, each of us should respect the views of others, even if they differ.

For example, one councilmember may think that enacting a new zoning ordinance is vital to encourage proper growth of the municipality while another opposes the ordinance on the grounds that it interferes with individual use of property.

This difference of opinion does not mean that they are not working toward the same goal. They just have a difference of opinion as to how to obtain that goal. Hopefully, members of a municipal governing body ran for office with the same purpose in mind – helping their municipality and community become the best it can be.

Reaching this objective will mean different things to different people. We have to work together, compromising where necessary, to achieve our own particular objectives that help us obtain the ultimate goal. Which brings us to a couple of related thoughts.

2. Feel free to raise an issue or concern. Your opinion matters. Value the contributions of all members, including your own.

Municipal councils determine their course of action by a vote of the members. Not all entities function this way, of course. The President’s cabinet members may express their views, but ultimately, the President alone makes the decisions. Sometimes he follows the views of cabinet members, sometimes he ignores their input entirely. Cabinet members have no right to complain if the President refuses to even ask for their input. Members who feel that they are being ignored or ineffective have little recourse and often resign.

A municipal council functions differently. Each member must be free to express his or her own view in order to reach consensus. Too often, people refuse to listen to the comments of others because they disagree. Just as often, others are simply too timid to express themselves. Each member has an obligation to comment on matters of public concern before the body. Those who refuse to allow them to speak do themselves and the public that elected them a disservice. Similarly, councilmembers who don’t feel comfortable speaking cheat the public of their valuable input.

3. Don’t take opinions that differ personally, but instead respect and learn from these differences of opinion.

It is no exaggeration to suggest that this should be the first item on the list. We sometimes have difficulty recognizing that others have views that differ from our own. Once we adopt a position and passionately support it, any opposition can seem personal to us. After all, if my position or suggestion is correct, the only reason someone could differ must be personal, right?

Wrong. Each of us brings our own experiences, opinions and, yes, preconceived notions, to any discussion. Persons disagreeing with you may be basing their opinions on incorrect assumptions or information. In that case, logical questioning may correct those misconceptions. On the other hand, your opinion may be faulty. Examine the opposing view to see if it has merit. You may change your mind or a discussion over the difference of opinion may lead you to a compromise position that is better than either of you started with.

It is also important to remember that no one knows everything, not even you. In a council, the majority view wins. The council acts as a body, not as a group of individuals, and by agreeing to serve, you have agreed to accept the views of the body. Which leads to the next thought.

4. Agree to disagree. Once a board decision has been made, commit to it.

Commit to support council decisions even if they aren't yours. In fact, supporting a decision can be especially important when you disagree with it. It is the action of the body you were elected to represent. Attacking it outside the meeting rarely accomplishes anything constructive. And when you doubt this advice, see guideline # 3.

Individuals who refuse to support group decisions can be astoundingly destructive. This encourages others to attack the entity and its decisions. An individual member may start to see himself or herself as a loner and start working at cross purposes to the good of the council. This can undermine an otherwise functioning entity.

Members should examine themselves and their motives. If they continue to oppose a decision after it has been made, are they truly acting in the best interests of the body? Or are they so committed to their own notions and goals that they simply cannot accept that others could reach a different conclusion? And if you are consistently taking positions that differ from those made by the body, perhaps it is time to listen more closely to the views others express at meetings.

5. Ask informed questions. Come to meetings prepared and hold each other accountable.

Learn about issues facing your municipality, then ask questions to learn more. And if you are unclear what issue is being discussed, ask questions to find out. It is important that you understand what decisions are on the table.

Few things side-track a meeting more than diversions onto paths that don't relate to the issue at hand. While it is true that there are no stupid questions, try to keep your questions relevant. When this happens, other members should find ways to gently move the discussion back onto the issue. Notice that I said "gently." Don't attack other members when they don't seem to understand the exact nature of the discussion. After all, the reason a member is confused may be because of the way you've expressed yourself.

6. Don't talk just to hear yourself speak.

There are two aspects to this advice. First, don't ramble. Try to keep your comments succinct and, as indicated above, on point. The second aspect has long been a source of complaint about meetings, but may be even more of an issue in this day of social

continued on page 28



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The Legal Viewpoint

By Lori Lein
General Counsel



Annexation: Expanding Your Corporate Limits

Rapidly growing cities and towns frequently need to extend their municipal boundaries. The extension of municipal boundaries in Alabama and in other states is accomplished through a process known as “annexation.” The four methods of annexation available to Alabama municipalities are examined in this article. On certain rare occasions, a municipality may need to remove property from its corporate limits. This process, which is known as “de-annexation”, is also discussed in this article.

Annexation by Local Legislative Act

One of the most widely used methods of annexation in Alabama is the adoption of special acts by the Legislature. Annexation by local act is prohibited in all but a dozen or so states. The authority for annexation by local act in Alabama is found in Section 104(18) of the Alabama Constitution of 1901. Only the Legislature can annex property without the consent of the property owners or the municipal governing body. AGO 1989-315.

The Legislature of Alabama is not restricted to a positive annexation of territory to the municipalities in the adoption of a local act. Examples reveal legislation which states the annexation shall be complete only after a favorable referendum in the territory to be annexed, that agricultural property shall be exempt from ad valorem taxation by the municipality, that the annexation shall be effective only after a favorable referendum and the adoption of a resolution by the municipality, and that territory annexed shall be exempt from ad valorem taxation for a specified period of time. *See, Opinion of the Justices*, 249 Ala. 312, 31 So.2d 309 (Ala. 1947).

Generally, the Legislature’s power to annex by local act is not subject to attack on the grounds that property owners in the annexed territory are being deprived of their property without due process of law in violation of the 14th Amendment to the U. S. Constitution. *Cedar Rapids v. Cox*, 108 N.W.2d 253 (Iowa 1961); *Hunter v. Pittsburg*, 207 U.S. 161 (1907).

For the valid adoption of a local act to annex territory into a municipality, Section 106 of the Alabama Constitution of 1901, requires that notice of the intention to apply for the passage of such an act shall have been published, without cost to the state, in the county or counties where the matter or thing to be affected is

situated. The notice must state the substance of the proposed law and state that a map showing the territory proposed to be annexed is on file in the office of the probate judge. Section 11-42-6, Code of Alabama 1975.

The notice must be published at least once a week for four consecutive weeks in a newspaper published in such county or counties prior to the introduction of the bill. Proof by affidavit that such notice has been given must be exhibited to each house of the Legislature and spread upon the journal. It has been ruled that a local bill can be introduced immediately after it appears in a required publication for the fourth week. This means that a bill can be introduced 23 days after its first date of publication. Posting is allowed if no newspaper is published in the county affected.

In addition, Section 11-42-6, Code of Alabama 1975, requires all annexation bills to contain an accurate description of the territory proposed to be annexed and a map or plat showing the relationship of the territory to the existing municipal limits. The map is to be attached to the bill and must be filed in the office of the probate judge of the county or counties in which the territory is located. The Alabama Supreme Court has held that the Legislature may annex noncontiguous property to a municipality. *Birmingham v. Vestavia Hills*, 654 So.2d 532 (Ala. 1995).

The League recommends that a municipal governing body discuss the proposed annexation with its state legislators before taking any steps to procure the passage of a local act. Since the measure must be passed by both houses of the Legislature, the assistance and approval of the senator(s) representing the municipality, as well as the representative(s), are necessary. If both the senator(s) and representative(s) approve of the bill, it will most likely be passed under the local courtesy rule without opposition. It is recommended that once a municipality has discussed the proposed annexation with its legislative delegation that it seek approval to work with Legislative Reference Service (LRS) to prepare the annexation bill. All bills introduced in the Alabama Legislature must be prepared through LRS. Having LRS prepare your local annexation bill for advertisement to begin with can help prevent duplicate advertising in the event LRS makes changes to any bill a municipality has already advertised prior to working with LRS. All bill drafting should begin with LRS.

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Often, prior to introduction of a bill, representatives and senators will want a resolution passed by the municipality seeking annexation. The municipal governing body should adopt a resolution providing for the following:

- The public health and good require the annexation of the described territory,
- It is wise, expedient and economical for the annexation to be accomplished by the passage of a local law,
- The mayor is directed to cause notice of the application for passage of such local law to be published for four consecutive weeks in the newspaper published in the county after the bill is prepared by the Alabama Legislative Reference Service,
- The clerk should prepare necessary copies of the local bill for delivery to the local representative with a certificate from the publisher showing the dates of publication, and
- The costs of publishing the bill will be paid by the municipality.

If no newspaper is published within the county, the notice may be posted for two consecutive weeks at five different places in the county prior to introduction of the bill.

Municipal officials should anticipate legislative sessions and cause annexation bills to be prepared by LRS and advertised well in advance of the opening date of the session. Legislation becomes jammed toward the end of the session and if the bill is introduced late it might not receive the required attention. A minimum of five legislative days is required for a bill to pass through both houses, but a municipality should not count on such rapid passage.

As a final word of caution, care should be taken in the preparation of the bill and the published notice to ensure that the territory is properly described. While courts have recognized that slight changes may be made in local bills after their advertisement, it is difficult to predict what a court will consider a material or substantial change. *See, Mobile v. Aborady*, 600 So.2d 1009 (Ala. 1992) and *Tuscaloosa v. Kamp*, 670 So.2d 31 (Ala. 1995). In *Kamp*, the Alabama Supreme Court held that Section 106, Alabama Constitution, 1901, was not violated when the Legislature amended a local annexation bill, after notice was published, by reducing the amount of property being annexed.

Statutory Methods of Annexation

Alabama municipalities have three distinct statutory procedures for annexation. The first procedure is available to all municipalities regardless of size. Sections 11-42-1 through 11-42-6, Code of Alabama 1975. The second method, found at Sections 11-42-20 through 11-42-24, Code of Alabama 1975, was adopted by the state Legislature in 1971 and since 1982 has applied to all cities and towns. A third statutory method may be used by all cities of 25,000 or more in population and is found at Sections 11-42-40 through 11-42-88 of the Code.

1. The General Statute

The provisions set out in Sections 11-42-1 through 11-42-6, Code of Alabama 1975, state that any city or town, by adopting a resolution which is filed in the probate court along with a detailed map, may initiate annexation procedures. Consent of persons owning at least 60 percent of the acreage of the platted or unplatted land must be obtained. At least two qualified electors residing on each quarter of each quarter section must also consent.

The probate judge next orders an election and if a majority of the qualified electors residing in the territory proposed to be annexed vote in favor, the territory is annexed. The Alabama Supreme Court in *Givorns v. Valley*, 598 So.2d 1338 (1992), held that such an annexation election is legal even though individuals who owned property within the annexed area, but resided elsewhere, were not allowed to vote in the election.

The difficulty with the present provisions is obvious: "No platted or unplatted territory shall be included within such boundary unless there are at least two qualified electors residing on each quarter of each quarter section, according to government survey or part thereof, of such platted or unplatted land, who assent thereto in writing by signing said petition, together with the consent of persons, firms or corporations owning at least sixty percent (60%) of the acreage of such platted or unplatted land, such consent to be signified by their signing said petition." There may be a quarter of a quarter section upon which no one resides and, therefore, the securing of two qualified electors is impossible. Further, a single landowner owning 60 percent of the acreage has a veto power.

In 1965, this law was amended by the Legislature at the request of the League to eliminate the necessity of the election if all of the persons affected by the annexation consent to it.

It is not necessary that the petitions allege that the signers have the required qualifications, but such facts must be proved to the probate court. *Oxford v. State*, 257 Ala. 349, 58 So.2d 604 (Ala. 1952). It is also not required that the consenting qualified electors be property owners. The Attorney General has ruled that "owners of 60 percent of the acreage" means a beneficial owner. AGO to Hon. J. C. Grady, June 17, 1958.

The territory to be annexed must be contiguous to the municipality and must not be in the corporate limits of an existing municipality. The Attorney General has ruled that parcels which touch corner to corner are not contiguous within the meaning required by statutes of this nature. AGO to Hon. Clyde Cargile, March 4, 1959 and AGO 1987-168. However, a substantial common boundary between the annexing municipality and the annexed territory is not necessary. *Fultondale v. Birmingham*, 507 So.2d 489 (Ala. 1987). The resolution adopted by the municipality does not have to be published as an ordinance or resolution of general or permanent nature. *Talladega v. Jackson-Tinney Lumber Company*, 209 Ala. 106, 95 So. 455 (Ala. 1923).

Notwithstanding any other provision of law, any Class 6 municipality may annex land or territory pursuant to the provisions of Chapter 42, Title 11, Code of Alabama 1975, provided the land or territory is contiguous to land or territory owned by a public university when the land or territory owned by the university is contiguous to the municipality, notwithstanding that the land or territory to be annexed is not contiguous to the municipality. Nothing in this section shall affect the status of property owned by the university. Section 11-42-30, Code of Alabama 1975.

Annexation petitions filed pursuant to Section 11-42-2 of the Code are not required to be filed with the probate judge, although the probate judge may request proof of residency and qualification as an elector. AGO 1999-246.

2. Annexation by Unanimous Consent

Article 2 of Section 42 of Title 11 (Sections 11-42-20 through 11-42-24) of the Code of Alabama 1975, provide an additional method of annexation which can be used by all Alabama municipalities. It should be noted that hardbound volumes of the Code of Alabama 1975 still have this article titled as only applying to municipalities of 2000 or more population. This section of the Code was amended in 1982 to remove this population restriction but the Alabama Code Commissioners have not updated this change in the title of Article 2. This method of annexation is available to all municipalities regardless of population.

These sections require unanimous consent of all of the property owners in the area proposed to be annexed. It also requires that all such persons sign the petition. An owner of property in the area is "the person in whose name the property is assessed for ad valorem tax purposes in the absence of proof to the contrary." This provision was included to prevent disputes and uncertainty of ownership.

A municipality should require proof of authority if a name appears on the petition and the records show that such person does not assess the property for which he or she signed. Both husband and wife should sign (much property is now held under survivorship deeds); property owned by corporations should be signed for by a qualified officer of the corporation and the signature attested; property owners who are not married should indicate their marital status. An expression to the effect that "John Doe who resides in the area does not object" is not a sufficient manifestation of his position to meet the legal requirements. The Attorney General has ruled that annexation petitions should be

signed by both a life tenant and the holder of the remainder interest. AGO 1993-227.

The state of Alabama is an owner of property within the meaning of the annexation statutes and may consent to the annexation of property it owns, even though the state is exempt from property taxes. The petition for annexation should be signed by the Governor. AGO 1998-009.

The owner of a mineral estate, whose property is assessed for ad valorem taxation, is an owner who must consent to an annexation under the unanimous consent method in Section 11-42-21, Code of Alabama 1975. AGO 1999-048.

The area to be considered for annexation must actually be contiguous to the corporate limits of the municipality. Parcels of property proposed to be annexed into a municipality by this method are not required to be contiguous to each other so long as each parcel is contiguous to the corporate limits and thus, holding a single election covering the various parcels proposed to be annexed is proper. AGO 2003-038.

The area may not be within the corporate limits or police jurisdiction of another municipality. However, the statute provides that, in the event the territory to be annexed by a city or town lies in the police jurisdiction of the annexing city as well as in the police jurisdiction of another city or town, the governing body of each municipality may exercise the annexation authority granted by this law in such overlapping portions of their police jurisdictions to a boundary which is equidistant from the respective corporate limits of each municipality with an overlapping police jurisdiction. A municipality may, by a series of ordinances, annex land to a boundary that is equidistant from its corporate limits and the

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corporate limits of another municipality. *Prichard v. Saraland*, 536 So.2d 1387 (Ala. 1988). A municipality may not use long-lasso annexation to create contiguity with a parcel of property. A property owner must consent to the annexation of a corridor to reach the property. Where annexation of a public right of way is involved, more than just the roadway must be included in the corridor. AGO 1998-170.

The petition, after it is fully signed by all persons owning property in the area, is presented to the city clerk. The petition must contain an accurate description of the property to be annexed. "Accurate description" as used in the act means a legal description – a description that would enable anyone to locate exactly the area encompassed. In addition to the description, the petitioners must attach a map "showing its relationship to the corporate limits of the municipality ..." The Alabama Supreme Court has held that there is no requirement that cities and towns be regular in shape, but the law clearly necessitates that the area to be annexed must be contiguous and homogeneous. *Prattville v. Millbrook*, 621 So.2d 267 (Ala. 1993).

After the petition in proper form is presented to the city clerk, the governing body in a legal meeting may, in its discretion, adopt an ordinance assenting to the annexation. Upon adoption and publication of the ordinance, the area becomes a part of the corporate limits of the municipality on the date of publication of the ordinance. The governing body must file a description of the property annexed in the office of the probate judge of the county.

The expense of preparing the petition should normally be borne by the property owners. The city clerk should verify the facts and the governing body should find that the persons signing the petition constitute all the owners of the property and that it is contiguous to the corporate limits.

A municipality may annex contiguous territory even if the property is only accessible by a road that runs through another municipality. The police jurisdiction of one municipality may not extend into the corporate limits of another municipality. A United States highway is not an interstate as that term is used in Section 32-5A-171, Code of Alabama 1975. AGO 1999-148.

A property owner seeking to annex into a municipality under Sections 11-42-20 through 11-43-22, Code of Alabama 1975 (the unanimous consent method), may submit successive petitions to the council if the first petition was rejected. A council must follow its rules of procedure regarding reconsideration of the matter. AGO 1999-069.

3. The Special Statute

The fourth method of annexation is available to cities with populations of 25,000 or more. Under this procedure, found in Article 3 of Section 42 of Title 11 (Sections 11-42-40 through 11-42-88) of the Code of Alabama 1975, a municipality initiates the proceedings with a resolution. No petition containing written consent of a specified percentage of property owners, or number of electors, is required. However, the statute has some serious drawbacks.

Electors residing in the territory must vote in favor of the election as under the general procedure. If the territory is voted into the municipality, it is exempt from city taxation for a minimum of 10 years. An exception to this stipulation is that after five years

the annexed territory, if it has a population of 20 or more persons per contiguous 10 acres, becomes subject to city taxation. This exception does not apply to individual property which is exempt for a minimum of 10 years.

Persons residing in the annexed territory are not eligible to vote in municipal elections as long as the territory is tax exempt. No person residing on tax-exempt territory is eligible for municipal office.

No person, firm or corporation in tax-exempt territory shall be liable for a privilege license to the municipality except as provided in the statute. This feature probably costs the municipality revenue because prior to annexation the municipality had the authority to license all businesses in its police jurisdiction in an amount not exceeding one-half of the amount charged similar businesses operating in the corporate limits.

In addition to these three statutory methods of annexation, there is authority for any Class 4 municipality organized in accordance with Section 11-44B-1, et seq., Code of Alabama 1975, (Tuscaloosa) to annex certain unincorporated territory which is enclosed within the corporate limits of the municipality. Such territory is commonly referred to as an "island." The League for many years has attempted to have state-wide legislation passed which would allow all municipalities, regardless of Class size to take in property that is completely enclosed within the corporate limits of the municipality. A method for "Island Annexation" continues to be a legislative priority for the League.

De-annexation through Legislative Act

The corporate limits of a municipality may be reduced in one of two ways, (1) through a local legislative act of the state Legislature or (2) pursuant to the procedures set out in Article 7 of Section 42 of Title 11 (Sections 11-42-200 through 11-42-213) of the Code of Alabama 1975.

The procedures described above for annexation through local legislative act would also apply to de-annexation by local legislative act.

Statutory Procedures for De-annexation of Property

If a municipal council wishes to reduce the corporate limits of the municipality, the council must pass a resolution defining the proposed corporate limits. Section 11-42-200, Code of Alabama 1975. Once the resolution is adopted, the mayor or council president must file the following with the probate judge of the respective county: (1) a certified copy of the resolution that defines the proposed corporate limits; (2) a plat or map correctly defining the corporate limits proposed to be established; and (3) the names of all qualified electors residing in the territory proposed to be excluded from the area of such corporation. Section 11-42-201, Code of Alabama 1975.

After the above has been filed with the probate judge, the probate judge shall call a hearing at which those individuals residing in the area to be excluded may appear before the judge of probate and show cause as to why the proposed reduction of corporate limits should not take place. Section 11-42-202, Code of Alabama 1975. All persons residing in the affected area should be notified by the probate judge. The date of the hearing must be no less than 10 days from the filing of the resolution and not more than

30 days from the filing. If no one appears at the hearing to object to the reduction, the judge of probate shall order the corporate limits reduced as outlined in the council resolution and map or plat. Section 11-42-203, Code of Alabama 1975. The order shall be recorded in the minutes and the map or plat shall be recorded in the probate office. Residents who appear at the hearing and protest the reduction must show reasonable cause as to why the reduction should not take place. Section 11-42-204, Code of Alabama 1975.

If the judge of probate determines that reasonable cause is shown, he or she shall order that an election be held by the qualified electors of the municipality. The election shall take place not less than 10 days and not more than 30 days from the order for election. The election will be directed by the probate judge.

The judge shall give notice of election as provided in Section 11-42-205, Code of Alabama 1975. Section 11-42-205 requires one publication of the notice for at least seven days in a newspaper published in the city or town. If there is no newspaper published in the city or town, the probate judge shall post a notice of election at three public places. The notice shall state the date of the election, describe the proposed limits as stated in the resolution and state that a map of territory to be de-annexed is provided for public inspection in the probate judge office of the respective county. The election shall be held at the regular voting places in the city or town and all qualified electors residing in the city or town shall have a right to vote on the reduction of corporate limits. Section 11-42-206, Code of Alabama 1975. The statute is ambiguous as to polling places, but the League's interpretation is that polling places shall be those designated for the municipal elections.

The probate judge shall conduct the election in accordance with the general election laws and any additional provisions found

in Section 11-42-200, et. seq., Code of Alabama 1975. Section 11-42-207, Code of Alabama 1975. The probate judge is not required to provide an official ballot; however, the probate judge is responsible for the appointment of clerks, inspectors and a returning officer. Section 11-42-207, Code of Alabama 1975. Each voter may furnish his or her own ballot with one of the following phrases written or printed: "For adoption of the proposed corporate limits." Or "Against the adoption of proposed corporate limits."

Section 11-42-208, Code of Alabama 1975.

Once the polls are closed, the election inspectors are responsible for determining the result of the election at their respective polling locations and deliver the results to the returning officer, who shall immediately return the results to the probate judge. The judge of probate is responsible for canvassing the results of the election. If a majority vote favors a reduction of the corporate limits, the judge must order on the record adjudging and decreeing that the corporate limits reflect the corporate limits as described in the council resolution. The probate judge shall also designate that the resolution and map or plat have been duly adopted and recorded of the records in the probate office. If a majority vote does not favor a reduction in the corporate limits, the probate judge shall enter an order dismissing the proposal. Section 11-42-208, Code of Alabama 1975.

The results of the election may be contested by any qualified elector who voted in the election in the manner provided for in Section 17-15-1, et. seq., Code of Alabama 1975. Section 11-42-209, Code of Alabama 1975. The party contesting the results of the election shall be responsible for the costs associated with the contest. Section 11-42-213, Code of Alabama 1975. The city or



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town shall be the contestee. Section 11-42-209, Code of Alabama 1975.

The city or town proposing the reduction in the corporate limits shall be responsible for the costs and expenses incident thereto. Section 11-42-210, Code of Alabama 1975.

The municipal governing body shall exercise the same jurisdiction over the new corporate limits as it exercised over the original corporate limits, including enforcement of laws and ordinances. Section 11-42-212, Code of Alabama 1975.

The municipality seeking to reduce its corporate limits is responsible for paying the probate judge \$10.00 for services surrounding the election. Section 11-42-213, Code of Alabama 1975. All other election officials are entitled to compensation as provided in the general election laws as found in Section 17-6-3, Code of Alabama 1975.

Voting Rights Act

The Voting Rights Act imposes reporting requirements on municipalities when changes are made in the election process. **All annexations or de-annexations of property come within the coverage of the Voting Rights Act.**

Section 5 of the Act prohibits the enforcement in any jurisdiction covered (Alabama is a covered jurisdiction) of any voting qualification or prerequisite to voting or standard, practice or procedure with respect to voting which is different from that in force or effect on the date used to determine coverage, until the authority proposing enforcement either (1) obtains a declaratory judgment from the District Court of the District of Columbia, or (2) the plan has been submitted to the U.S. Attorney General and he or she has no objection within 60 days. For more information of submissions to the U.S. Department of Justice Voting Rights Section please see the article in the Selected Readings for the Municipal Official titled "Preclearance Under the Voting Rights Act."

Notice of Annexations or De-annexations

Once an area becomes a part of the municipality through annexation or is taken out of a municipality through de-annexation, the municipality should notify the following federal and state agencies of their new boundaries:

- **Administrator, ABC Board:** 2715 Gunter Park Drive, West, Montgomery, Alabama 36109. A change in boundaries could increase revenue received from state ABC Board profits. Boundary change information will also aid the ABC Board in determining whether county or municipal approval is necessary in the granting of licenses. **Telephone:** (334) 271-3840; **Website:** www.abc.alabama.gov.
- **State Treasurer:** State Capitol, 600 Dexter Avenue, Room S-106, Montgomery, Alabama 36104. A boundary change could affect the municipal share of the tag tax distributed by the state treasurer. **Telephone:** (334) 242-7500 or (334) 242-7501; **FAX:** (334) 242-7592; **Website:** www.treasury.state.al.us
- **State Comptroller:** RSA Union, 100 North Union, Suite 220, Montgomery, Alabama 36130. A boundary change could affect the proceeds from the State Oil and Gas Severance Tax distributed by the comptroller. **Telephone:** (334) 242-7063; **Website:** www.comptroller.state.al.us

- **State Revenue Department – Individual and Corporate Tax Division:** Gordon Persons Building, 50 North Ripley Street, Montgomery, Alabama 36130. A boundary change could affect the municipal share of the State Financial Institution Excise Tax. **Telephone:** (334) 242-1170; **Website:** www.revenue.alabama.gov
- **State Department of Revenue – Property Tax Division:** Gordon Persons Building, 50 North Ripley Street, Montgomery, Alabama 36132. A change in boundaries could affect utility ad valorem taxes which are assessed by this office. **Telephone:** (334) 242-1170; **Website:** www.revenue.alabama.gov
- **State Department of Revenue – Sales, Use and Business Tax Division:** Gordon Persons Building, 50 North Ripley Street, Montgomery, Alabama 36130. A change in municipal boundaries could affect the amount of sales and use tax revenue collected by the state revenue department for the municipality. **Telephone:** (334) 242-1525; **Website:** www.revenue.alabama.gov
- **Probate Judge:** A boundary change may affect the revenue distributed to the municipality by the probate judge based on the automobile tag tax.
- **County Tax Assessor and County Tax Collector:** Boundary changes will affect ad valorem tax revenues.
- **County Commission:** Boundary changes may affect proceeds from the TVA money received from the state to be shared with counties and municipalities.
- **County Board of Registrars:** Boundary changes will affect the municipal voting list prepared from county voting lists compiled by this office.
- **State Legislative Reapportionment Office:** Any municipality which annexes property into the municipality or de-annexes property from the municipality shall notify the Legislative Reapportionment Office of such action within seven days of the final action. The municipality shall provide all census blocks involved in the annexation or de-annexation so that the office may maintain accurate information concerning the corporate limits of each municipality located within the state. A municipality's failure to notify the Legislative Reapportionment Office as provided by law shall not be grounds to challenge or invalidate the annexation or de-annexation. Section 11-42-7, Code of Alabama 1975.

Maintenance of Streets and Roads in Newly-Annexed Territory

Notwithstanding the adoption of a resolution as required in Section 11-49-80 and 11-49-81, Code of Alabama 1975, the annexation of unincorporated territory into a municipality, after July 7, 1995, shall result in the municipality assuming responsibility to control, manage, supervise, regulate, repair, maintain and improve all public streets or parts thereof lying within the territory annexed, provided such public streets or parts thereof were controlled, managed, supervised, regulated, repaired, maintained and improved by the county for a period of one year prior to the effective date of the annexation.

The municipality must also assume the responsibility to control, manage, supervise, regulate, repair, maintain and improve all public streets or parts thereof lying within the territory annexed, provided such public streets or parts thereof were dedicated to, accepted by, and were controlled, managed, supervised, regulated,

repaired, maintained, and improved by the county for a period of less than one year prior to the effective date of the annexation when such public streets or parts thereof were also approved upon construction by the municipal planning commission of the annexing municipality.

Except as herein provided, this section does not require a municipality to assume responsibility to control, manage, supervise, regulate, repair, maintain or improve any street or part thereof located within the territory annexed which was not being controlled, managed, supervised, regulated, repaired, maintained and improved by the county prior to the effective date of the annexation, nor does this section require a county to assume responsibility to control, manage, supervise, regulate, repair, maintain or improve any street or part thereof located within the territory annexed which was not being controlled, managed, supervised, regulated, repaired, maintained and improved by the county prior to the effective date of the annexation.

After July 7, 1995, when the annexation of unincorporated territory by a municipality results in a public street or part thereof which was dedicated to, accepted by, and was controlled, managed, supervised, regulated, repaired, maintained and improved by the county for a period of one year prior to the effective date of the annexation, or for a period of less than one year prior to the effective date of the annexation when such public street or part thereof was approved upon construction by the municipal planning commission, being located outside the corporate limits of the annexing municipality while at the same time bounded on both sides by the corporate limits of the annexing municipality, the county governing body shall consent to the annexation of such

public street or part thereof by the municipality. Once consent is given by the owners of such public street or part thereof to annexation by the municipality, the municipality shall annex that portion of the public street or part thereof which is bounded on both sides by the municipal corporate limits. Once the annexation becomes effective, the municipality shall assume responsibility for the public street or part thereof as provided above.

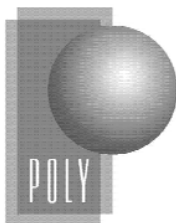
Nothing contained in Section 11-49-80 and 11-49-81 shall prohibit a county and a municipality from entering into a mutual agreement providing for an alternative arrangement for the control, management, supervision, regulation, repair, maintenance or improvement of public streets or parts thereof lying within the corporate limits of an incorporated municipality.

A municipality may adopt a resolution pursuant to Section 11-49-80 and 11-49-81 of the Code of Alabama to accept responsibility for county roads within the corporate limits. If the municipality does not adopt this resolution, the county remains responsible for the road, unless it was annexed into the municipality after July 7, 1995, or unless other factors are present. AGO 2001-254, AGO 2002-277, and AGO 2003-034.

Court Cases and Attorney General’s Opinions on Annexation

There is no requirement that names on an annexation petition be dated. *Lett v. State*, 526 So.2d 6 (Ala. 1988).

A municipality may annex property separated from it by a public waterway. *Johnson v. Rice*, 551 So.2d 940 (Ala. 1989). Provided, however, that in order to do so, there must be a public road by which the properties can be reached by automobile from the original municipal boundaries without traveling through



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another municipality to get to the proposed annexed territory. See *City of Irondale v. City of Leeds*, 2013 WL 563410 (Ala. Feb. 15, 2013); *City of Spanish Fort v. City of Daphne*, 774 So.2d 567 (Ala. 2000); *City of Madison v. City of Huntsville*, 555 So.2d 755 (Ala. 1989).

Long-lasso annexation – annexation of the public right of way along a road to bring in non-contiguous property – is invalid. *Fultondale v. Birmingham*, 507 So.2d 489 (Ala. 1987). Long-lasso annexations are retroactively repealed. *Birmingham v. Blount County*, 533 So.2d 534 (Ala. 1987). However, the legislature has the right to annex property through the long-lasso method. *Vance v. Tuscaloosa*, 661 So.2d 739 (Ala. 1995).

A city may annex the waters of Mobile Bay either by local act or by approval of all property owners. AGO 1995-293.

A municipality may not amend an ordinance of annexation which has been adopted and published pursuant to law to exclude property owners who no longer wish to belong to the municipal limits. This property should be de-annexed. AGO 1996-155.

State courts lack jurisdiction over municipal election contests by voters whose votes are not counted because the Justice Department refused to preclear their annexations. These votes may not be included in election totals until the annexations are precleared. *Singer v. Alabaster*, 821 So.2d 954 (Ala. 2001).

Voting by absentee ballots must be allowed in annexation elections. AGO 1999-027.

The procedure for the annexation of fire districts is the same as the procedure for the annexation of unincorporated parcels of land. Like noncontiguous parcels of land, noncontiguous parcels of a fire district may only be annexed by local act. AGO 2001-277.

If a city located in a wet county expands into a dry county, the newly annexed property within the dry county will remain dry. The sale and distribution of alcoholic beverages on that land is governed by the county's wet-dry election. AGO 2002-197. Section 28-2A-20, Code of Alabama 1975, provides a procedure which can be used by the governing body of any Class 1, 2, or 3 municipality or any municipality of 18,500 people or more which is wet and that has annexed territory located in a dry county to determine the wet-dry status of the annexed territory located in a dry county. [Note: If a municipality votes separately from the county to go wet in a municipal wet-dry election, rather than simply that the city is wet because it is located in a wet county, newly annexed territory beyond the county lines would be wet as well.]

A city can require private and commercial entities to become a part of the municipality in order to continue to receive water and sewer services from the city. AGO 2005-038.

Requiring annexation of property as a condition to providing water services is a reasonable condition precedent to the obligation of a utility to serve an applicant. *Brown v. Huntsville*, 891 So.2d 295 (Ala. 2004).

The territory in an industrial park established pursuant to section 11-23-1, et seq., of the Code of Alabama cannot be annexed. The property on the opposite side of the industrial park is not, and does not become, contiguous to the boundaries of the city unless it is actually touching at some point. AGO 2007-005.

A city's annexation of property where a gas station was located was valid, where the map was located in a file on the chief probate clerk's desk and at least one person was furnished the map by the office staff after asking to see it. The annexation map was open to inspection during the public notice period of the annexation statute as was required for annexation. *Russell Petroleum, Inc. v. City of Wetumpka*, 976 So.2d 428 (Ala.2007)

A town annexed public roads from the county. The public's use of a roadway for over 20 years provided the county with only a prescriptive easement in the roads, not ownership, and, thus, the county was not an owner with the ability to consent to town's annexation of portions of the roads. A neighboring town had standing to bring a counterclaim, even though it was not incorporated at time of the challenged annexation and the personal representative of the property owner's estate had the power to consent to neighboring town's annexation of the estate property. *Town of Elmore v. Town of Coosada*, 957 So.2d 1096 (Ala.2006)

A willingness ordinance regarding annexation may be rescinded before the special election on the question of annexation to the extent that such rescission does not disturb any vested rights. *Bradley v. Town of Argo*, 2 So.3d 819 (Ala.2008) ■

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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

Civil Service Boards: The traditional deference given an administrative agency's interpretation of a statute appropriately exists when the interpretation does not exceed the agency's statutory authority. The Enabling Act for the county-wide civil service system and personnel board in Jefferson County does not prohibit the personnel board from enacting a rule allowing an appointing authority to suspend merit pay increases across-the-board. Further, it does not entitle employees of the appointing authority to mandatory step increases as a matter of right, or step increases in any particular amount, even if the Act does not explicitly state that the personnel board has the power to allow an appointing authority to suspend merit pay increases and requires that the personnel board create a scheme for salary advancements. *Fraternal Order of Police, Lodge No. 64 v. Personnel Bd. of Jefferson County* 103 So.3d 17 (Ala.2012)

Contracts: Evidence may support a finding that a general contractor and an airport authority violated the Prompt Pay Act by not paying a subcontractor the increased costs associated with a change order made after accepting the subcontractor's original bid, and which the subcontractor agreed to do for additional compensation. *Diamond Concrete & Slabs, LLC v. Andalusia-Opp Airport Authority*, 103 So.3d 73 (Ala.Civ.App.2011)

Courts: A trial court's pretrial determination about the sufficiency or alleged insufficiency of the prosecution's proposed evidence is not a proper ground to justify the dismissal of a charge. *State v. Worley*, 102 So.3d 408 (Ala.Crim.App.2009), *Ex parte Worley*, 102 So.3d 428 (Ala.2010)

Elections: The felony statute protecting the vote or political action of "any person" from the improper use of an official's authority or position extends to situations where the alleged victims are the official's employees. Allegations that a defendant obtained the home addresses of some of her employees by virtue of her position in order to solicit their votes, financial contributions, and additional actions to further her campaign supported felony charges for attempting to "use" the powers of her office to influence a person's vote or political action, notwithstanding that the employees' home addresses were otherwise available in a telephone book. Violation of the misdemeanor statute by soliciting a contribution or coercing work in a political campaign from a subordinate can be accomplished by anyone with supervisory authority over a subordinate. For purposes of the misdemeanor

statute prohibiting any officer or employee who has a subordinate employee from soliciting political campaign contributions or coercing work in a political campaign from a subordinate, the coercion or solicitation need not be related to the use of the particular power or authority associated with one's unique official position. *State v. Worley*, 102 So.3d 435 (Ala.Crim.App.2011)

Sex Offenders: The sex offender registration requirement that an adult criminal sex offender provide "the actual address at which he or she will reside or live upon release" to the Department of Corrections at least 180 days prior to release can violate equal protection as applied to indigent and homeless criminal sex offenders. *McKenzie v. State*, 103 So.3d 84 (Ala.Crim.App.2010)

Sex Offenders: Where the defendant's victim was not a minor, but was in fact an undercover police officer, the evidence is insufficient to support a conviction for soliciting a child by computer. The statute required the defendant to entice or seduce a "child who is less than 16 years of age and at least three years younger than the defendant" for the purpose of engaging in sexual intercourse. *Tennyson v. State*, 101 So.3d 1256 (Ala.Crim.App.2012)

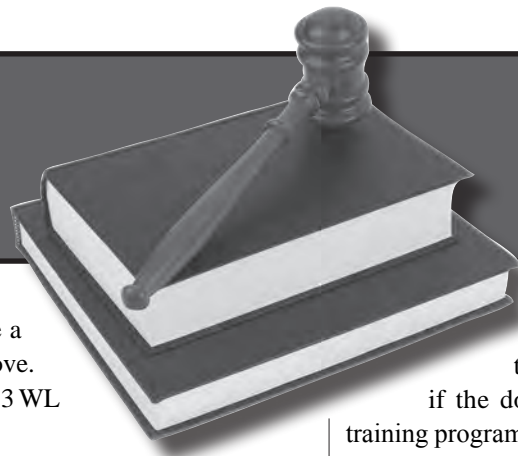
Taxation: The tax-assessment appeal statute's safe harbor provision allows a circuit court to grant a taxpayer an additional 30 days to file a notice of appeal with the Administrative Law Division (ALD) of the Department of Revenue, where the taxpayer filed a timely notice of appeal from a rental tax-assessment but failed to file a notice of the appeal with the ALD within 30 days of entry of the Administrative Law Judge's order. *Ex parte State Dept. of Revenue*, 102 So.3d 396 (Ala.Civ.App.2012)

Taxation: A Town's delay in seeking to collect the sales taxes and business-license fees due under its sales-tax and business-license ordinances could not serve as a basis for applying the defense of laches (failure to assert a right within a reasonable time, causing prejudice to a party) to bar the town's right to enforce its ordinances and collect the amounts due and owing by a store. *Town of Westover v. Bynum*, 103 So.3d 827 (Ala.Civ.App.2012)

UNITED STATES COURT DECISIONS AFFECTING ALABAMA

Antitrust Laws: The state-action immunity doctrine of federal antitrust law does not protect a local hospital authority from liability for the monopoly it created when it purchased the second of two hospitals in its jurisdiction. State-law authority to act is insufficient to establish state-action immunity from federal antitrust laws. The substate governmental entity must also show that it has been delegated authority to act or regulate anti-competitively. *Federal Trade Commission v. Phoebe Putney Health System, Inc.*, --- S.Ct. ---, 2013 WL 598434 (U.S.2013)

Courts: The Fifth Amendment's Double Jeopardy Clause bars a retrial after a defendant obtains an underserved directed verdict of acquittal from a trial judge who erroneously ruled that



the prosecution had failed to prove a fact it was not required by law to prove. *Evans v. Michigan*, --- S.Ct. ----, 2013 WL 610197 (U.S.2013)

Searches and Seizures: While police may prohibit an occupant from leaving the scene during the execution of a search warrant in order to safeguard the integrity of the search, the Fourth Amendment does not allow police officers who are on the verge of executing a search warrant to follow and detain former occupants who have left the immediate vicinity of the premises, where they pose no real threat to the safe and efficient execution of the warrant. *Bailey v. U.S.*, --- S.Ct. ----, 2013 WL 598438 (U.S.2013)

Searches and Seizures: Even if a drug detection dog has not completed a formal certification program, the court can presume,

subject to any conflicting evidence offered, that the dog's alert provides probable cause to search, if the dog has recently and successfully completed a training program that evaluated his proficiency in locating drugs. *Florida v. Harris*, --- S.Ct. ----, 2013 WL 598440 (U.S.2013)

ATTORNEY GENERAL'S OPINIONS

Conflicts of Interest: Separately incorporated waterworks boards, sewer boards, gas boards and other like utility boards may lease equipment from an employee without violating sections 11-43-12, 41-16-60, or 13A-10-62 of the Code of Alabama. Questions concerning provisions of Alabama's Ethics Law should be addressed to the Alabama Ethics Commission. AGO 2013-031

Streets: There is no authority for a municipality to independently place a toll booth on public streets. AGO 2013-030 ■

F.A.Q.

Your Frequently Asked (Legal) Questions Answered
by Assistant General Counsel Rob Johnston

De-annexation

How are municipal corporate limits reduced?

Alabama law provides two (2) ways for a municipality to reduce its corporate limits or otherwise "de-annex" property. One method is by a legislative act by the Alabama Legislature. The other process, which involves the municipal council, is found in Section 11-42-200 through 213 of the Code of Alabama 1975.

If the council determines that the public health or public good requires the reduction of its corporate limits, Section 11-42-200, Code of Alabama 1975, requires the council to pass a resolution defining the proposed corporate limits. Once the resolution is adopted, the mayor or council president must file with the probate judge a certified copy of the resolution, a plat or map defining the proposed corporate limits, and the names of all registered voters residing in the territory proposed to be excluded from the area of the proposed corporate limits. Section 11-42-201, Code of Alabama 1975.

If no one in the affected area objects to the reduction, the probate judge will order the corporate limits reduced. Section 11-42-202, Code of Alabama 1975. If residents in the affected area show a reasonable cause as to why the reduction should not take place, the probate judge will order an election. Section 11-42-203, Code of Alabama 1975. The probate judge would conduct the election in accordance with general election laws, and all registered voters in the municipality would be able to vote in the election. Section 11-42-206, Code of Alabama 1975. The municipality is responsible for the costs of the process including the cost of the election. Section 11-42-210, Code of Alabama 1975. ■



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Quinn of Fairhope. Councilmember Jesse Matthews from Bessemer currently serves on the NLC board and Gadsden Councilmember Robert Avery is the current chair of NLC's Finance, Administration and Intergovernmental Relations (FAIR) Committee. In addition, a number of Alabama officials are either serving on or actively pursuing placement on one of NLC's standing committees.

On December 9, 2006, during the Congress of Cities in Reno, Nevada, Alabama achieved a prestigious milestone when then Councilmember Cynthia McCollum of Madison was elected First Vice President of the National League of Cities, making her the eighth woman and third African-American female in NLC's history to hold that position. She became the first Alabama official to lead the national organization when she was elected NLC President at the November 2007 Congress of Cities in New Orleans.

In 2013, NLC represents 49 state leagues with more than 1,600 member cities, towns and villages. The Alabama League remains a strong voice within NLC and will continue to work in conjunction with the national association to advocate for municipal government throughout the country.

NLC's 2013 Congress of Cities will be held in Seattle,

Washington, November 12-16 and next year's Congressional City Conference, which truly is an important legislative meeting, is slated for March 8-12, 2014 in D.C. Please make plans to attend these conferences, support the Alabama League and take advantage of the many important educational and networking opportunities.

The spring Congressional City Conference offers you the unique opportunity to visit your congressional delegation. After all, we as locally elected officials are the closest to the people they serve and we need our congressional officials to listen. Every year, our congressional representatives host dinners for their districts and the Alabama League sets up a breakfast with our two senators. In addition, the League also hosts an Alabama Caucus meeting during the Congressional City Conference.

I assure you that taking part in these conferences will be some of the best experiences of your career as an elected official representing your municipality. There are also many leadership and committee positions available with NLC and I encourage you to research these opportunities. To learn more about the National League of Cities, visit www.nlc.org. ■

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Federal Action Alert!

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Director of Intergovernmental Relations • ALM

Last month we attended the National League of Cities' (NLC) Annual Congressional City Conference in Washington D.C. for an opportunity to advocate as a unified voice on issues of importance to municipal governments across our country. There were several key take-aways from this conference that are important for Alabama's municipal officials to comprehend and embrace.

First, times continue to change. We must not fall into the trap of believing that because something always was, it will always be. The way we interact with our congressional members and their staffs is constantly shifting. *Keeping in touch with your congressional members and their staff is vital to the well being of your municipality.* They should be partners in your economic development, community enhancement and public safety efforts. Make sure they are aware of and constantly updated on your goals and that they understand what you need to accomplish critical community projects.

Second, the myriad of issues Congress is considering on the Hill have the ability to affect how you successfully manage your community. Keep your congressional members informed of the affect the issues they are considering will have on your municipality. Funding cuts, unfunded mandates, taxation exemptions, these all affect your revenue streams and your ability of providing services to your citizens.

Third, make contact and send resolutions of support to your congressional members on issues you need them to consider. Help provide them with

the data and information to make thoughtful decisions starting with these three issues that will have a *critical* impact on municipalities:

1. Ask your Congressional Members to support the **"Marketplace Fairness Act"**. At a time when cities have closed budget deficits but still face gaps for fiscal years 2012 and 2013, collecting owed sales taxes means more money for basic services, such as roads and police officers, without increasing the overall federal deficit. NLC urges support for legislation to simply allow state and local governments the flexibility to collect the taxes already owed to them on remote online purchases – not raising existing taxes or imposing new ones. Allowing local governments to collect taxes already owed places brick-and-mortar corner stores on a more level playing field with online retailers and provides consumers more choice through fair competition.

2. Ask your Congressional Members to support your **"Municipal Tax Exempt Financing Authority"**. As the Administration and Congress look for revenue to reduce the deficit and fund programs, the federal income tax exemption provided to interest paid on state and municipal bonds (debt) is under threat. In addition to increasing taxes, the federal government can raise revenue by expanding what is subject to being taxed (broadening the base). As an alternative to raising taxes, interest paid on bonds issued by local governments currently not taxed could lose their exemption from taxation. NLC opposes any attempt to eliminate or limit the traditional tax exemption for municipal bonds – whether as a part of a deficit reduction plan, a push for comprehensive tax reform or as an offset for new spending.

continued next page

3. Ask your Congressional Members to support “**Comprehensive Immigration Reforms**”. America’s immigration system is failing our cities and our economic future. It is time for Congress to acknowledge the economic vitality that immigration brings to this nation and adopt a reform policy that supports secure borders and a path to citizenship for the millions of immigrants currently contributing to our local and national economies. Comprehensive immigration reform will provide cities and towns with the support needed to integrate immigrants into their communities and allow them to make both cultural and economic contributions to the nation. For information on immigrant integration efforts in local communities across the country, visit NLC’s Immigrant Integration page at www.nlc.org/find-city-solutions/center-for-research-and-innovation/immigrant-integration.

The Alabama League of Municipalities thanks those municipal officials who traveled with us to Washington and encourages you to consider attending this conference next year March 8-12, 2014. In addition,

please make sure you’ve signed up to receive the League’s weekly legislative update, the *State House Advocate*, which is emailed on Monday afternoons during the Session and highlights what will be happening at the Alabama Legislature during the upcoming week as well as Bills of Interest to municipalities.

The *State House Advocate* is the best way for you to stay informed on what’s happening at the Legislature throughout the Session as well as our way of letting you know when critical, immediate action is needed from our membership. To subscribe, click on the red link at the top left of our home page at www.alalm.org and complete the short form. You will also receive *This Week*, the League’s year-round weekly e-newsletter that is emailed to subscribers every Tuesday morning and features upcoming meetings as well as other information of interest to municipal officials and employees.

Should you have any questions about any of the information mentioned here, please contact me at gregc@alalm.org or via my cell at 334-546-9092. ■

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MINI BOOT CAMP Offered Last Day of Annual Convention

Join us on the afternoon of May 21st for a program focused on back-to-the-basics!

NEW this year, the MINI BOOT CAMP is a half-day CMO program on Tuesday afternoon, May 21st – the last day of the League’s 2013 Annual Convention at the Renaissance Montgomery Hotel and Spa at the Convention Center. This is an excellent opportunity for elected officials who need additional credit hours or for new enrollees beginning course work toward the CMO Program’s required Core Curriculum.*

NOTE!! The MINI BOOT CAMP is not part of the convention. Attendance requires a separate registration and payment of an additional \$60 fee. Attendance at the 2013 Annual Convention is not required. Registration is open to all elected officials and municipal personnel. For those who are attending the convention, there will be a 1.5 hour break before the program begins for lunch on your own. Officials and municipal personnel are encouraged to pre-register! Onsite registration will be available at the Convention Registration Desk but is not encouraged as space is limited.

MINI BOOT CAMP registration forms are available at www.alalm.org

1:00 – 1:20	Registration	2:30 – 3:15	Basic Parliamentary Procedure (Elective Core) Ken Smith, Executive Director, ALM
1:25	Welcome		
1:30 – 2:15	Duties of Mayor and Council (Required Core) Lori Lein, General Counsel, ALM	3:15 – 3:45	Working with Municipal Boards (Elective Core) Tracy Roberts, Deputy General Counsel, ALM
2:15 – 2:30	Break	3:45	Adjourn

MINI BOOT CAMP has been approved for 2.5 Core Curriculum, Basic, Advanced or Continuing hours in the Certified Municipal Officials Program. Any municipal employee may register, but only elected officials will be awarded credit hours in the CMO Program.

Questions? Contact Cindy Price at 334-262-2566 or cindyp@alalm.org

**CMO Basic Program Core Curriculum was adopted by ALM’s Executive Committee on October 18, 2012, for officials enrolling after October 30, 2012.*



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Please visit our website - www.revds.com - to find more information or to see the latest announcements about One Spot. As always, if you have any questions about One Spot or the administration of your local taxes, please contact us directly at 800-556-7274 x34111 or by email at AlabamaSales@revds.com.

One Spot does not include free administration of local taxes.

One Spot Information

Act 2012-279 Central Point of Electronic Return & Remittance



2013 Convention Quick Guide

Renaissance Montgomery Hotel & Spa at the Convention Center
Montgomery, Alabama • May 18-21

www.alalm.org

Meetings and/or events are subject to change. CMO credits can be earned.
See convention program for details.

Saturday, May 18

10:00 a.m. - 5:00 p.m. Registration
 11:00 a.m. Resolutions Committee Meeting
 1:00 p.m. AMIC Annual Meeting
 3:00 p.m. - 5:00 p.m. **OPENING SESSION:** ALM President's Address; Gov. Robert Bentley (invited);
 Quality of Life Award Presentations
 6:00 p.m. City of Montgomery Welcome Reception, Union Station Train Shed

Sunday, May 19

7:30 a.m. Annual Municipal Golf Tournament • Lagoon Park
 9:30 a.m. or 11:30 a.m. Prayer Service*
 1:00 p.m. - 5:00 p.m. Registration
 1:30 p.m. - 4:30 p.m. **Roundtable Discussions (by population)**
 4:30 p.m. - 6:00 p.m. ABC-LEO Reception
 5:30 p.m. - 7:00 p.m. Exhibitors Showcase, Flag Showcase and Reception (Expo Hall)

*Attendees are invited to attend non-denominational Church of the Highlands services in the MPAC at the Convention Center: www.churchofthehighlands.com/campuses/montgomery

Monday, May 20

8:00 a.m. - 5:00 p.m. Registration
 8:30 a.m. - 9:30 a.m. Clerks Breakfast and Business Meeting
 8:30 a.m. - 5:00 p.m. Alabama Association of Public Personnel Administrators: Training & Development Course
 9:30 a.m. - 5:00 p.m. Municipal Clerks Conference
 9:30 a.m. - 11:00 a.m. Spouses Breakfast
 8:30 a.m. - 10:30 a.m. **GENERAL SESSION:** "Building Communities," Gary McCaleb, Vice President, Abilene Christian University, Executive Director, Center for Building Community and Professor of Management, ACU; NLC Update, Clarence Anthony, NLC Executive Director
 Exhibits Open (Expo Hall)
 10:30 a.m. - 2:45 p.m. **Concurrent Sessions** (choose from): 1. Maximizing Recreational Facilities in Your Community, 2. Understanding City Financial Statements, 3. Gaining an Economic Edge with Complete Streets
 11:00 a.m. - Noon Luncheon and Dessert in the Expo Hall
 12:15 p.m. - 2:15 p.m. **Concurrent Sessions** (choose from): 1. Alabama Immigration Law Overview, 2. Employees and Technology, 3. Helping Your Community Manage Disasters
 2:30 p.m. - 3:30 p.m. **ANNUAL BUSINESS SESSION**
 3:45 p.m. - 5:30 p.m. Reception
 6:00 p.m. President's Banquet and Entertainment: Michael and Amy Dueling Piano/Comedy Show
 7:15 p.m.

Tuesday, May 21

8:00 a.m. - Noon Registration
 8:30 a.m. - 10:30 a.m. **GENERAL SESSION:** The Alabama Ethics Law: Required Training for Public Officials and Public Employees
 10:30 a.m. - Noon Ask Your Attorney Panel
 Noon Adjourn*

***NEW THIS YEAR!** Join us Tuesday afternoon from 1:00 p.m. to 3:45 p.m. for a CMO Mini Boot Camp of core curriculum CMO topics. *Separate registration and \$60 fee is required: www.alalm.org.*

media and interactive communication. It has never been as easy as it is today to express a viewpoint to vast numbers of people. Some social commentators have suggested that this may lead some to feel that they have to try to demonstrate their expertise on every subject, or voice an opinion on every subject. As Abraham Lincoln once said, it is better to remain silent and be thought a fool than open your mouth and remove all doubt.

This may seem to contradict the advice above about expressing your view, but it doesn't. You should feel free to express yourself, but don't express yourself for the sole goal of making sure you've had your say. Comments should be succinct as well as relevant. And if someone else has already made your point, it may be sufficient to simply say "I agree."

7. Seek additional information or background before presenting opinion as fact.

Presumptions and assumptions are dangerous. Much more often than any of us care to admit, we present information as fact that is based on nothing more than conclusions we've drawn without a thorough investigation. As noted above, there is nothing wrong with asking questions to seek additional information. Seeking information is part of the investigatory process. Problems arise when a board member draws conclusions without conducting an adequate inquiry or, even worse, acts without sufficient information in order to force the body reach a conclusion he or she desires.

8. Challenge "groupthink."

This may seem to contradict the earlier advice to commit to board decisions. Groupthink occurs when a highly cohesive group is so concerned with maintaining unanimity that it fails to evaluate all other alternatives and options. Groupthink members see themselves as part of an in-group working against an out-group that is opposed to their goals.

The way to avoid this is, of course, to seek the advice of others and to encourage councilmembers to express their own views. But once all views are expressed and a vote is taken, councilmembers should work to find ways to support the decision.

9. Trust is essential. Keep confidential discussions confidential.

In a council setting, this problem arises most often when one of the members reveals information that is discussed during an executive session, or when a member shares information outside a meeting with another member, only to have it disclosed at an inopportune time or even revealed in the media.

Of course, council meetings are subject to the Open Meetings Act. This advice should not be taken as encouraging discussions on municipal business outside a publicly convened meeting. But the confidentiality of discussions held in compliance with the OMA should be respected.

Members have to know that they can trust other members. One of the reasons state law recognizes the right of councils to meet in executive session is so that the members will be able to freely discuss sensitive matters. If a member discloses the content of these discussions, that freedom has been destroyed.

10. Keep outside matters out of the council chamber.

Councilmembers rarely serve without some outside contact with other members. There may be some pre-existing relationship between them. Additionally, while serving, councilmembers have contact with each other outside meetings. They may work together, go to church together or volunteer at the same facilities. Sometimes, this contact can be negative. Perhaps they were on opposing sides in a lawsuit or compete in business. But whether it is negative or positive, these outside matters must not be allowed to intrude into a council meeting. Decisions should be made on their facts, not because one member either likes or dislikes another.

Conclusion

Being a member of any board requires respecting the views of your fellow members. Often this may mean biting your tongue rather than speaking. It may require tact that you don't think you have. But the successful operation of your municipality depends largely on your ability to relate to and work with other members. After all, a municipal council can only act as a body, by voting.

Councilmembers must be able to trust each other and know that actions of the board will be respected by other members. Gaining that trust may take time but losing it only takes an instance. When you walk that fine line, always keep in mind that each member shares the same goal with you – helping your city or town grow, prosper and serve the citizens.

You want to be known as a facilitator, not a rubber stamper or roadblocker. ■



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