The Alabama Municipal
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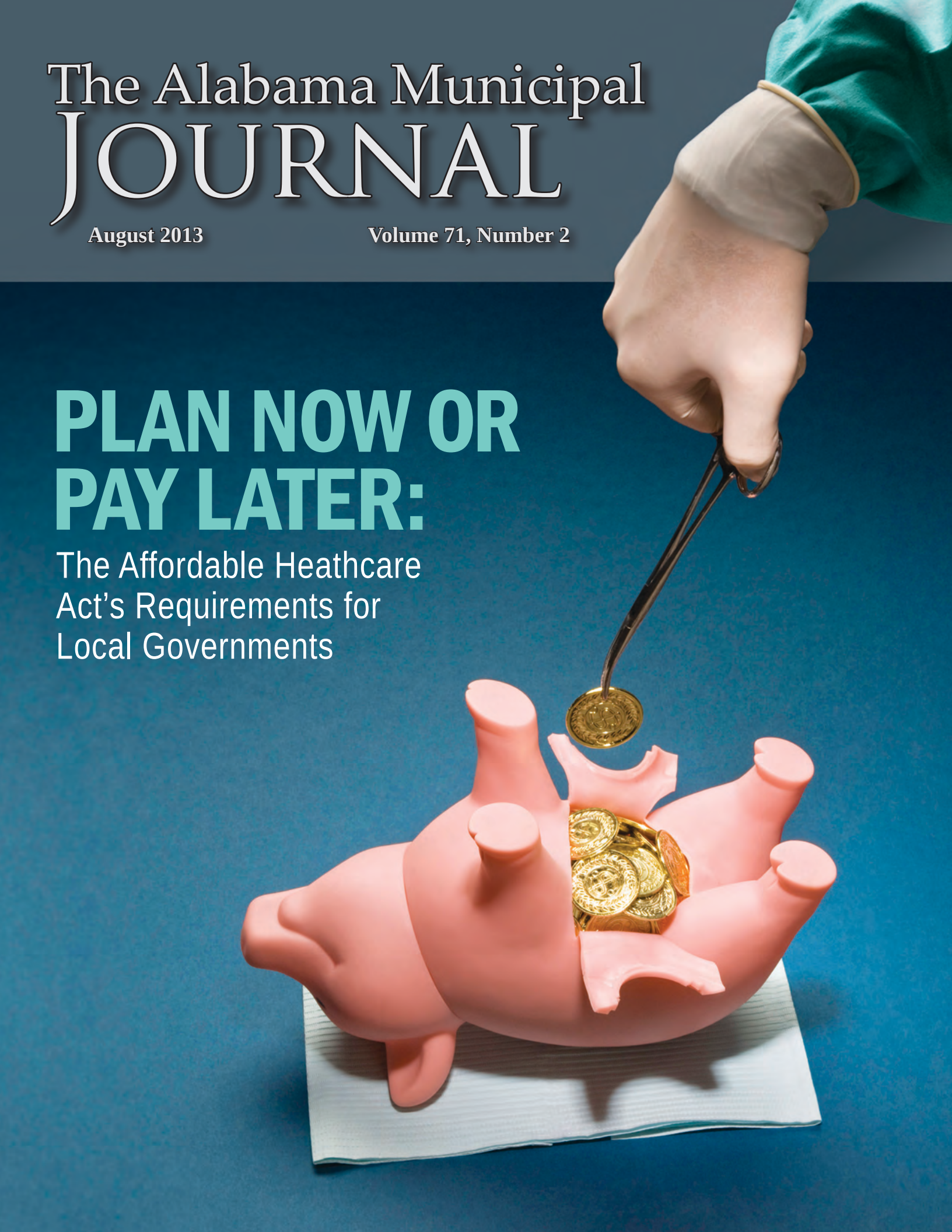
August 2013 Volume 71, Number 2

PLAN NOW OR PAY LATER:

The Affordable Heathcare Act's Requirements for Local Governments



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A Message from the Editor

Our nation's approach to healthcare is facing a paradigm shift that could significantly impact the operating budgets of local governments. This month's feature article, "Plan Now or Pay Later: The Affordable Healthcare Act's Requirements for Local Governments", begins on page 22 and addresses several issues municipalities need to be aware of and planning for. In addition, the League's CMO summer sessions (on July 31 in Birmingham and August 7 in Montgomery) will feature a segment on the Affordable Care Act and how it affects local government employers. (Visit www.alalm.org and click on the CMO Summer Session link for more information.)

Also this month, the League will be hosting its annual policy committee meetings. Six standing committees are charged with the review and development of ALM's policies and goals, which encompass a broad spectrum of issues affecting municipal government. The chair and vice chair of each of these standing committees are elected annually at the League's convention. Committee members are selected by the respective committee chairs to provide representation from each congressional district and to ensure representation of cities and towns of all sizes. Five committees – Finance, Administration and Intergovernmental Relations (FAIR); Energy, Environment and Natural Resources (EENR); Community and Economic Development (CED); Transportation, Public Safety and Communication (TPSC); and Human Development (HD) – meet annually with resource advisors to review existing League policies and adopt revised goals and recommendations in each committee's respective area. In November, the Committee on State and Federal Legislation will meet to consider the recommendations of the standing committees and to develop the League's legislative program for the Regular Session of the Alabama Legislature. Policy committee meetings will take place at League headquarters in Montgomery on the following dates: CED on August 15, FAIR on August 20, HD on August 27, EENR on August 29 and TPSC on September 5. For more information, please contact Krystle Bell at 334-262-2566 or via email at krystleb@alalm.org.

This issue of the *Journal* also features an in-depth article by the League's General Counsel, Lori Lein, (page 9) on legal issues and options available to cities and towns when developing social media policies. You will definitely want to read through this material carefully as these policies are loaded with danger for employers and should be approached with extreme caution, as well as the advice and assistance of your city attorney. Also included in this issue is an interesting and informative article on citizen surveys (see page 15) and how they can be used by municipal leaders and employees to determine how to better meet the needs of your communities.

On a final note, congratulations to Sylvan Springs Town Clerk/Treasurer, Peggy Shadix, who was named 2013 Clerk of the Year by the Alabama Association of Municipal Clerks and Administrators during its Summer Conference in June (see page 11)!

Carrie

The President's Report

Mayor Walt Maddox • Tuscaloosa

Fall CMO Sessions will Feature "Listening" Element

In the Book of James, the scriptures tell us "be quick to listen and slow to speak." They say confession is good for the soul so I readily admit that I do not always practice what I preach, especially when it relates to James 1:19. That being said, in my twelve years of public service, I have discovered that James' direction is as solid today as it was over 2000 years ago which brings me to the present.

The Alabama League of Municipalities is not an abstract organization in a faraway place. For nearly eight decades, the League has provided cities and towns with an effective voice. Since that time, the League has transformed into an organization that provides professional development, guidance on governing and management, legal advice, insurance services and low-interest loans for municipal projects and purchases. The League's success has meant a higher quality of life for the people we have the honor to represent.

To that end, and as discussed during my acceptance speech, it's imperative that our League remains strong, vibrant and well-positioned to compete in the race for relevance during this time of monumental economic, social and technological change. Status quo is not an option for the League and our communities. To compete in this race, we must galvanize the vast amount of intellectual capital that comprises our membership. This is where you can be the difference.

The planning process is currently underway for our annual Fall CMO sessions which will be held in four locations throughout the state. For the first time, a "listening" element will be included at the beginning of each session. Our purpose is simple: We want your direction on how the League should move forward. Every day, you and I listen to our constituents as we guide our municipalities. In my opinion, it is vital that we apply this same principle in shaping the League's future. Your wisdom, your ideas and your active involvement will be paramount as we work to ensure that we meet the needs of our membership by shaping services that will enhance our abilities to make local government efficient and effective.

The genesis for the listening tour was from our most recent convention in Montgomery. I was approached by several members about connecting our newly elected officials with the League. Clearly, their energy and untapped potential would benefit all of us. I was also approached by several members wanting additional roundtable discussions at the annual convention because it facilitated idea sharing and problem solving. You understand my point – *you* are the League and we want to reflect your needs and values.

I strongly encourage you to sign up for one of the four sessions as soon as the dates and locations are announced. I pledge to you that Vice-President Wally Burns, League Staff and myself will be there listening to you. ▪

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- Judge
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- 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

The League and Alabama's Universities

Readers of this month's *Journal* will notice an article on citizen surveys and how municipalities can use these as a tool to learn more about their citizens and better serve their needs (see page 15). This article is the first in a planned series of surveys being conducted as a joint project between the League and the Alabama State University Center for Leadership and Public Policy. The goal of this series is to publish three to four studies per year that will provide information that is interesting and beneficial to Alabama's municipal officials.

I hope you will take time to read this article and consider how you can use citizen surveys as well. The article was developed and authored by an individual who is familiar with Alabama's municipalities, Dr. Doug Watson, Distinguished Research Fellow at the Alabama State University (ASU) Center for Leadership and Public Policy (CLPP). Doug served as a city manager for 30 years prior to retiring from the City of Auburn. Following his retirement, he was a full professor in public affairs at the University of Texas at Dallas for eight years before returning to Alabama. He has authored or edited nine books and has published over 60 scholarly or professional journal articles on local government topics.

If you have topics or ideas for future research topics, I encourage you to contact Doug at dandtwatson@knology.net. We also welcome your feedback. You can contact me at kens@alalm.org or you can contact Thomas Vocino, Executive Director of the ASU CLPP, at tvocino@alasu.edu. We look forward to hearing from you.

While we are proud of this latest collaborative effort with one of Alabama's outstanding universities, this is only the latest in the League's long-standing working relationship with these institutions. The publication of this article seems like an excellent time for a discussion about how the League and Alabama's colleges and universities work together for the improvement of municipal administration and government.

Our Important Collaboration

One of the League's most important functions is to help educate municipal officials and employees regarding their roles in the operation of local governments. The League works closely with the University of Alabama, Auburn University, the University of North Alabama, Jacksonville State University and others to create training programs for various groups of employees. League staff members often speak at their events and provide questions and answers for their certification programs.

The Auburn University Center for Governmental Services works with the Alabama Municipal Revenue Officers Association (AMROA) and the Alabama Association of Public Personnel Administrators (AAPPA). The Center for Governmental Services was created in 1976 to provide technical assistance, training and survey and policy research to meet the changing needs of Alabama governments and public officials. Its mission is to improve and transform governance through innovation, research, technical assistance and training. Through partnerships with Alabama governments, the Center strives to improve the lives of Alabama citizens by promoting the improvement of management and operation of government at every level.

The League has worked very closely with the Center over the years, and League staff members are frequently invited to address its groups on municipal issues of interest to them. Additionally, the Center has developed stand-alone training programs with the League for our municipal elected officials and conducted those as part of our Certified Municipal Official Program. Working through the Center, AAPPA has for several years conducted training for their members at the League's convention.

Dr. Don-Terry Veal, Director of the Center, and Julia Heflin, Training Program Manager, and their staffs do an outstanding job managing these programs.

The League has a similar relationship with the University of Alabama's College of Continuing Studies. The College states that its role "is to provide flexible and innovative educational opportunities, technical assistance and applied research that touches lives and creates opportunities in ways that make a difference and improve our world." Many of our officials will remember the numerous contributions to municipal training and development provided by Dr. Tommy Pow, a long-time employee of the College who retired in 2011. Program Manager Leonard Smith now provides similar assistance for the Alabama Association of Municipal Clerks and Administrators (AAMCA) as well as AMROA. Like AAPPA, AAMCA conducts training sessions for municipal clerks and administrators at the League's annual convention.

The League and the University of Alabama also collaborate on other programs as well. The League, in conjunction with the Alabama Law Institute, which is closely affiliated with the University of Alabama School of Law, provides a service through which law students at the University of Alabama review, upon request at a nominal cost to the municipality, the ordinances of a city or town and offer suggestions as to needed changes or additions. You can read more about this service on the League's web site at: http://www.alalm.org/ModelCityOrdinanceReview.html. Additionally, League attorneys often serve on planning committees and as speakers at conferences put on by the Alabama Bar Institute for Continuing Legal Education.

Another University the League has worked with for many years is the University of North Alabama. UNA's Continuing Studies and Outreach Program serves as the University's primary means of extending its educational and training resources to non-traditional students, especially to adults seeking continued personal and professional development, and to employers seeking updated workplace skills and productivity-improving knowledge. The Program also conducts training for Alabama's Planner's and Zoning Administrators. Interim Director Lavonne Gatlin and Program Coordinator Wanda Dixon schedule and manage these training sessions at sites across the state.

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The Legal Viewpoint

By Lori Lein
General Counsel

Social Media and Municipal Employees: *Tweet Them Right*

In the past, when city employees communicated their opinions, thoughts and insight about their jobs outside of the workplace, the primary issues of concern for their employers were the placement of political signs in their front lawns, letters to the newspaper or bumper-stickers on their automobiles. With the explosion of Facebook and Twitter in the social media age, these issues seem almost charming in comparison. Now, almost every public employee has access to the world, and all their "friends", through the use of PCs, tablets and SmartPhones. These devices provide them with instant access to platforms such as Facebook, Twitter, Instagram, LinkedIn, YouTube and Pinterest. They can project themselves, through words and pictures, across town, across the country and across the globe in a matter of seconds – without ever having to leave their desk.

In addition to the organized social media outlets such as Facebook and Twitter, many people use the "blogosphere" to communicate to the world. Blogs are sometimes overlooked as a source of on-line buzz as compared to other social networking sites. There are an estimated 31 million bloggers in the United States alone, so – in addition to snippets shared on a feed – many employees are posting what amounts to personal editorials on all aspects of their lives, including their work lives.

So what is a city or town to do now that social media has impacted so many aspects of the average municipal employee's daily life, including their work routine? The shift in technology and social media in the public workplace gives rise to many legal issues for public employers and, although many of these legal issues aren't "new", they do manifest themselves in some unique factual scenarios not previously considered by employers or by the Courts. In fact, the Court system is a bit of a dinosaur and struggles to keep up with the rapid developments in the day-to-day life of employees and their use of technology. This article will attempt to outline some of those legal issues and the options available to cities and towns when it comes to developing social media policies.

Social Media Use by Employers and Employees: What's the Big Deal?

It's not just employees who use social media. Employers also access social media for a variety of purposes. Most commonly is the use in the hiring process. Many cities and towns use social media sites to post job openings. Some also use social media as part of the screening process for job applicants and in the on-going monitoring of existing employees. Screening and monitoring may consist of a simple Google search of the applicant's or employee's name to requesting or requiring access to personal social media accounts. Public employers should be extra cautious when using information gathered in this fashion and avoid using information found online against an applicant or employee when that information cannot otherwise be used in the hiring or employment process. Regardless of where the information comes from, an employer cannot base hiring or employment decisions on race, religion or marital status – to name a few.

As of June 1, 2013, nine states have passed legislation limiting in some way an employer's ability to demand access to an applicant or employee's personal social media information. Arkansas, California, Colorado, Illinois, Maryland, Michigan, New Mexico, Utah and, most recently, Washington have all passed legislation on this issue. Some

of the laws provide that employers cannot require applicants or employees to turn over account information and cannot retaliate against those who do not and others contain unique language, such as Washington's, providing that an employer may not "compel or coerce an employee or applicant to add a person, including the employer, to the list of contacts associated with the employee's or applicant's personal social networking account". Basically, employers in Washington cannot require that job applicants and employees become "friends" on social media.

So what's the big deal with employees using social media? The first thing that usually comes to mind is lost productivity. The simple argument is, every minute an employee is accessing social media, he or she isn't "working". With over 600 million daily users of Facebook, it would be naïve at best for employers to assume their employees are not updating their status or checking the status of their friends during work hours. There are conflicting studies as to the effect, if any, that social media has on productivity in the workplace but it is a commonly held perception that it decreases work productivity. Yet there is also an emerging perception that social media, for businesses with customer interaction, can actually improve productivity under the theory of "virtual co-presence" – the ability to collaborate and communicate with customers/others over long distances in relatively short, productive sessions to resolve problems, accomplish tasks or communicate to a larger audience at one time.

Completely banning social media in the workplace isn't realistic in this day and age. First, many would argue that it is a complete morale killer and second, it's impossible to enforce given the fact that most employees who have been banned simply resort to using their mobile devices to access social networks. It also begs the question: Is social media really more detrimental to productivity than other more traditional workplace activities such as the water cooler, standing in offices discussing the latest episode of a favorite TV program or taking a smoke break? Rather than jumping to a complete ban on social media usage for fear that it's interfering with productivity, employers should consider focusing more on the work that's getting done and address productivity concerns as they arise. While social media use may contribute to a productivity problem, the decline in the productivity of a particular employee may be more than just a social media problem.

Some other areas that can come up with regard to employee use of social media include content-based concerns such as potential damage to employer reputations by virtue of association, potential violations of anti-discrimination or harassment policies, release of confidential information and the potential for criminal conduct. With regard to criminal conduct, not only is there the risk of employees using municipal equipment to access illegal or inappropriate material, but also the risk of potential ethics law violations for using public property for personal gain.

First Amendment Issues

One of the first areas of the law that comes to mind when looking at public employees and their use of social media is the First Amendment to the United States Constitution. "Free Speech" in the world of employment law is a loaded phrase. Private employers don't have the First Amendment "free speech" concerns that public employers, such as municipalities, have because there is no constitutional duty for a private employer to accommodate, much less tolerate, the "free speech" of their employees. Public employers, however, do not have that same luxury. The First Amendment to the United States Constitution, which provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances" has been held to apply not only to the United States Government but to state and local governments as well.

Action on the part of public employer which "chills or curbs" an employee's freedom of speech may be found unconstitutional as violating an employee's First Amendment right to free speech. One of the most "chilling" things that an employer can do to an employee is to retaliate against him or her for personal expression. In order to establish a claim for retaliation under the First Amendment, an employee must show three basic things:

- First, that their speech can be fairly characterized as speech made as a citizen (rather than as an employee) relating to a matter of public concern;
- second, that his or her interests as a citizen outweigh the interests of the public employer in promoting the efficiency of providing public services through its employees; and
- third, that the speech played a substantial or motivating role in the public employer's decision to take adverse employment action against the employee. *See generally Pickering v. Bd. Of Education*, 391 U.S. 563 (1968).*; Connick v. Meyers*,461 U.S. 138 (1983); *Garcetti v. Caballos*, 547 U.S. 410 (2006).

Whether it is speech made on the street or on Facebook, courts will evaluate cases by asking a series of questions relating to the balancing test between the employee's and the employer's interests. Arguably, the most important question is "what is the nature of the topic the employee spoke (Tweeted?) about?" If the nature of the matter involves issues of "public concern" relating to a political, social or

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Peggy Shadix 2013 Clerk of the Year

By Toni McKelvey, MMC, City Clerk/Treasurer, Monroeville

The Alabama Association of Municipal Clerks and Administrators named Peggy Shadix the 2013 Clerk of the Year during its Summer Conference on June 20. Peggy, who has served as Sylvan Springs Town Clerk/Treasurer for 16 years, earned her Master Municipal Clerks (MMC) designation in August 2009. In addition to her regular clerk's duties, Peggy serves as secretary for the Planning Commission, Board of Adjustments and Abatement Board. She has also served as Secretary/Treasurer for the Jefferson County Mayors Association and the "Interlocal Board" of Maytown, Mulga and Sylvan Springs, a law enforcement contract program.

Peggy is very active in the Alabama Association of Municipal Clerks, serving as Secretary, President-elect and President in 2009, 2010 and 2011 respectively. As President, she was instrumental in improving the municipal clerks' certification program, created a Facebook page for the Association, amended the club's bylaws and published a clerk's newsletter to the Association's website. Peggy also helped establish a clerk's email network system to connect municipal clerks throughout the state, which allows clerks to share information and mentor less experienced clerks.

Sylvan Springs Mayor Stevan Parsons said: "Peggy has a big heart and treats everyone she encounters with kindness, even when they are frustrated and unkind to her. She definitely has a servant's heart in life that is exemplified in her position as clerk."

Peggy was selected from nominees from 14 state-wide districts. The following clerks were nominated and represented their districts: Bob Leyde, Florence, District 1; Faye Gamble, Woodstock, District 2; Becky Landers, Chelsea, District 3; Patricia Carden, Sylacauga, District 4; Sue Arnold, Greenville, District 5; Cheryl Hicks, Grove Hill, District 6; Melissa Robinson, Ozark, District 7; Lisa Hanks, Fairhope, District 8; Pam Leslie, Garden City, District 11; Brandi Clayton, Fyffe, District 12. ■

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Final Report of the 2013 Regular Session

Greg Cochran • Director, State and Federal Relations • gregc@alalm.org

The Alabama Senate and House of Representatives concluded the 2013 regular session on Monday evening, May 20th.

The session saw several controversial bills considered that had an impact on the pace of the proceedings during the session. When the final bell rang, 210 House bills and 85 Senate bills had been enacted this session. Of the 295 bills enacted, many were local legislation in nature along with 27 annual sunset bills addressing statewide boards and commissions; the State General Fund and Education Trust Fund budgets; and several supplemental appropriation bills. All in all, we saw gun rights, public school flexibility, Medicaid reforms, Fair Campaign Practices Act reforms and a myriad of tax exemption bills enacted this session.

League Supported Bills Enacted this Session

The League was successful in advocating the passage of two bills from our legislative agenda, **HB648 by Rep. Jones (Act 2013-353)** and **SB214 by Senator Waggoner (Act 2013-308)**. These two bills, respectively, authorize Municipal Pretrial Diversion Programs and allow for scheduled meetings to be cancelled ahead of time when a quorum is not going to be present. Several other bills supported by the League and our members were also enacted: the Entertainment Districts Authorization Act, allowing certain municipalities to establish entertainment districts under certain circumstances; Historical Tax Credits implementation to encourage revitalization of historic districts, Fair Campaign Practices Act and several local Pre-trial Diversion Authorization bills.

In addition, **SB445 by Senator Taylor (Act 2013-311)** made changes to the Fair Campaign Practices Act. With regard to candidates for municipal elections, the bill allows for candidates whose municipalities are located in more than one county to file in the county where city hall is located.

Bills the League Opposed

As with most legislative sessions, the League staff spent the majority of its resources successfully opposing bills of concern to our municipalities. 1176 bills were introduced this session and we were following and advocating a position on 2/3 of those bills at any given time.

Without the constant and emphatic contact legislators received from our municipal officials throughout the session, many of these bills would have received favorable consideration. We sincerely thank you for your commitment and time advocating on behalf of your municipality and, thus, furthering the League's efforts on behalf of local government. ▪

For a complete report of House and Senate legislation, visit our website at alalm.org and click on "State" under the "Legislative Advocacy" tab at the top of the homepage.

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Citizen Surveys:

A Useful Tool for Local Governments

By Douglas J. Watson, Ph.D., Distinguished Research Fellow Center for Leadership and Public Policy, Alabama State University

Introduction

As an elected or appointed municipal leader, do you get the feeling that you are setting policy based on what those most vocal in the community demand? You hold public meetings, you answer numerous phone calls every week from citizens, you speak to civic clubs, and you have an open microphone at the city council meetings. Unfortunately, public hearings, letters to the editor, citizen phone calls, and even neighborhood meetings often reflect the opinions of special interests rather than the broader interests of the entire community. Miller and Kobayashi (2001) noted, "Decision making by 'wheel decibel' (a squeaking wheel gets the oil), after all, could simply be dismissed as the American way, by which those people with enough interest, energy, or money get to call the tunes."

A few cities in Alabama are seeking a broader understanding of how their citizens view them through the use of citizen surveys. Some use the data generated by the citizen surveys to make key budget decisions, while others use the responses to compare the performance of their departments with comparable cities. These Alabama cities are in line with hundreds of cities across the United States that employ professional firms or universities to poll their citizens to determine their opinions on policy choices and service delivery. According to one expert, there has been a "tremendous increase" in the use of citizen surveys because of the rising expectation that citizens expect to be involved in local decision making even if they cannot attend public meetings (Tatham 2013).

Early Use of Citizen Surveys

Citizen surveys by local governments can be traced to the pioneering work of cities such as Dayton, Dallas, and St. Petersburg in the early 1970s. Most of the early surveys were single purpose ones rather than general opinion surveys. By the 1980s, some cities were using general opinion surveys, including Auburn which conducted its first survey in the mid-1980s (Watson, Juster, and Johnson 1991). Unlike Auburn, many of the surveys in that era were limited because the results were not used as an integral part of the management or budgeting process.

The Urban Institute was an early and effective advocate for the wider use of citizen surveys. Webb and Hatry (1973) noted that citizen surveys:

> …are possibly the most, if not the only, efficient way to obtain information on (1) constituents' satisfaction with the quality of specific services including identification of problem areas, (2) facts such as the numbers and characteristics of users and nonusers of various services, (3) the reasons that specific services are disliked or not used, (4) potential demands for new services, and (5) citizens opinions on various community issues, including feelings of alienation toward government and officials.

While surveys are only one of several participatory techniques, they produce the highest quality information when they are professionally constructed and implemented. Surveys on public issues are an important part of decision making on the national level. Citizen surveys bring that same level of understanding to local issues for elected and appointed officials.

Varied Uses of Citizen Surveys

Cities employ the results of citizen surveys in several ways. Auburn, for example, uses the results from its annual survey as part of budget making and priority setting. In effect, the survey has been "institutionalized" because the results are presented to the city council each year before the members begin to consider the city manager's proposed budget. The survey has been used to gauge the opinions of citizens as to the quality of services that the city delivers, as well as their opinions on major issues facing

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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. When trying to determine what Alabama law applies in a particular area or on a particular subject, it is often not enough to look at a single opinion or at a single provision of the Code of Alabama. A review of the Alabama Constitution, statutory law, local acts, administrative law, local ordinances and any relevant case-law may be necessary. 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: Proceedings relating to a defendant's motion to withdraw his guilty plea are a critical stage in which the defendant is entitled to counsel. A court may not conduct a hearing on a defendant's motion to withdraw his guilty plea unless counsel is provided or the defendant validly waives his right to counsel. *Stewart v. State*, 110 So.3d 395 (Ala.Crim. App.2012) and *Humphrey v. State*, 110 So.3d 396 (Ala.Crim. App.2012)

Obscenity and Pornography: The statute criminalizing the possession of obscene matter containing a visual depiction of a person under 17 years of age engaged in an obscene act did not violate the liberty component of the due process clause as applied to a defendant who possessed a photograph of him and 16-year-old female engaged in a sexual act, even though the defendant, who was 40 years old when the photograph was taken, argued that the photograph showed noncriminal consensual sexual conduct because 16 is the age of consent under Alabama law. *Cochran v. State*, 111 So.3d 148 (Ala. Crim.App.2012)

Open Meetings Act: An underlying dispute regarding a bill that was allegedly passed by the Legislature in violation of the Open Meetings Act was not ripe for adjudication, and thus, the circuit court's issuance of a temporary restraining order preventing transmittal of the bill to Governor was premature. The Alabama Constitution grants the legislature exclusive power over its own rules. The Governor had not signed the bill and it had not yet become law or even taken on the color of law. By enjoining the legislative process itself, rather than a duly enacted law, the circuit judge in this case violated the separation-of-powers provision of the Alabama Constitution. *Marsh v. Pettway,* 109 So.3d 1118 (Ala.2013)

Searches and Seizures: To justify a patdown search during an investigatory stop, the officer's actions must not be in response to his unparticularized suspicion or hunch, but must be in response to the specific and articulable reasonable inferences which he is entitled to draw from the facts in light of his experience. *Grantham v. City of Tuscaloosa*, 111 So.3d 174 (Ala.Crim.App.2012)

Searches and Seizures: A warrantless search preceding an arrest is reasonable under the Fourth Amendment, so long as probable cause to arrest existed before the search and the arrest and search are substantially contemporaneous. *Tolbert v. State*, 111 So.3d 747 (Ala.Crim.App.2011)

U.S. COURT DECISIONS AFFECTING ALABAMA

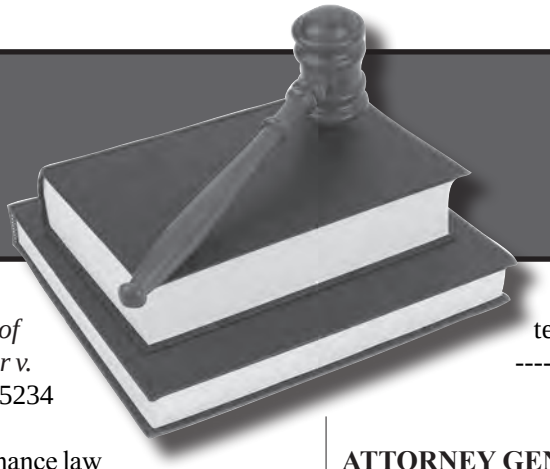
Administrative Law: An agency's interpretation of the scope of its own authority is entitled to deference from the courts under the well-established *Chevron* framework which provides that statutory ambiguities will be resolved, within the bounds of reasonable interpretation, not by the courts but by the administering agency. *City of Arlington, Tex. v. F.C.C.*, 133 S.Ct. 1863 (U.S.2013)

Arbitration: An arbitrator's contract-based decision to allow class proceedings cannot be overturned by a federal court, even if the arbitrator erred in making that decision, because of the narrow judicial review available under the Federal Arbitration Act. *Oxford Health Plans LLC v. Sutter*, --- S.Ct. ----, 2013 WL 2459522 (U.S.2013)

Arbitration: The Federal Arbitration Act (FAA) favors the absence of litigation when that is the consequence of a contractual waiver, since the FAA's principal purpose is the enforcement of arbitration agreements according to their terms. *American Exp. Co. v. Italian Colors Restaurant*, 133 S.Ct. 2304 (U.S.2013)

Discrimination: An employer may be vicariously liable under Title VII for an employee's unlawful harassment only when the employer has empowered that employee to take tangible employment actions against the victim, i.e., to effect a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits. Assuming that a harasser is not a supervisor, a Title VII plaintiff can still prevail by showing that his or her employer was negligent in failing to prevent harassment from taking place. *Vance v. Ball State University*, --- S.Ct. ----, 2013 WL 3155228 (U.S.2013)

Discrimination: Title VII retaliation claims must be proved according to traditional principles of but-for causation, not Title VII's lessened causation test applicable to status-based discrimination. This requires proof that the unlawful retaliation would not have occurred in the absence of the alleged wrongful



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actions of the employer. *University of Texas Southwestern Medical Center v. Nassar*, --- S.Ct. ----, 2013 WL 3155234 (U.S.2013)

Elections: A state campaign finance law requiring groups who spent money to influence elections to form political committees subject to disclosure requirements did not violate the First Amendment in ballot issue elections. *Worley v. Florida Secretary of State*, --- F.3d ----, 2013 WL 2659408 (11th Cir.2013)

Interstate Commerce: Parking and placard provisions of a municipal concession agreement that trucking companies had to sign before they could transport cargo at the city's port, which required that such companies develop off-street parking plans and display designated placards on their vehicles, were expressly preempted by the Federal Aviation Administration Authorization Act of 1994 as "provision[s] having the force and effect of law." *American Trucking Associations, Inc. v. City of Los Angeles, Cal.*, 133 S.Ct. 2096 (U.S.2013)

Miranda: The Fifth Amendment did not prohibit the prosecution from commenting on a defendant's silence in response to noncustodial police questioning. A witness who desires the protection of the privilege against self-incrimination must claim it at time he relies on it. *Salinas v. Texas*, 133 S.Ct. 2174 (U.S.2013)

Searches and Seizures: When officers make an arrest supported by probable cause to hold for a serious offense and they bring the suspect to the station to be detained in custody, taking and analyzing a cheek swab of the arrestee's DNA is, like fingerprinting and photographing, a legitimate police booking procedure that is reasonable under the Fourth Amendment. *Maryland v. King*, 133 S.Ct. 1958 (U.S.2013)

Voting Rights Act: The National Voter Registration Act mandate, that States "accept and use" a uniform federal form to register voters for federal elections, pre-empted a state law's requirement that voters present proof of citizenship when they registered to vote, as applied to federal form applicants. *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S.Ct. 2247 (U.S.2013)

Voting Rights Act: The Voting Rights Act provision setting forth the coverage formula used to determine which states and political subdivisions were subject to preclearance was unconstitutional, and thus could no longer be used as basis for subjecting jurisdictions to preclearance. Although the formula at the time of the Act's passage had met the test, current burdens were required to be justified by current needs and disparate geographic coverage was required to be sufficiently related to the problem that it targeted, and the formula no longer met that test. *Shelby County, Ala. v. Holder*, --- S.Ct. ----, 2013 WL 3184629 (U.S.2013)

ATTORNEY GENERAL'S OPINIONS

Boards: A public corporation cannot exceed the corporate powers granted by statute. AGO 2013-055

Housing: In the absence of a contrary agreement by the parties, a landlord (such as a Housing Authority) may serve a notice-of-lease termination upon a tenant by U.S. mail to the tenant's address of record provided that the tenant acknowledges receipt of the notice or the landlord can otherwise prove receipt by the tenant. Personal delivery to the tenant, however, as provided by section 35-9-7 of the Code, is the most prudent practice. AGO 2013-053

Service Charges: A tax is generally a revenue raising measure, imposed by a legislative body, which allocates revenue to a general fund, and is spent for the benefit of the entire community. A user fee, by contrast, is a payment given in return for a government provided benefit and is tied in some fashion to the payor's use of the service. The money collected from the user fee or service charge does not provide general revenue that can be used for any purpose. AGO 2013-054

Taxation: A municipal lodging tax imposed by ordinance without a specific exemption, would be applicable to a Park and Recreation Board created under section 11-18-1, *et seq.*, Code of Alabama 1975. Section 11-22-13 of the Code of Alabama does not exempt such a Park and Recreation Board from collecting and remitting the lodging tax established by a lodging tax ordinance. AGO 2013-050

Utilities: A public utility corporation incorporated under section 11-50-310, *et seq.*, Code of Alabama 1975, may purchase real estate to provide for the temporary lodging of consultants if the Utility Board determines that such a purchase is necessary or convenient to the system. If such a purchase is made, the Board may hold such real estate until the Board determines that disposal of said property is necessary or convenient to the system. There is no statutory authority for such a Utility Board to purchase real estate solely for investment purposes. AGO 2013-049

Utilities: A municipality may not increase the membership of the Board of Directors of a public utility corporation, incorporated under section 11-50-310, *et seq.*, Code of Alabama 1975, without the agreement of the Board to amend its articles of incorporation. Any decision to change the number of directors of the utility board must be mutual. The change is to be initiated by the Board and approved or disapproved by the municipal governing body. AGO 2013-052 ■

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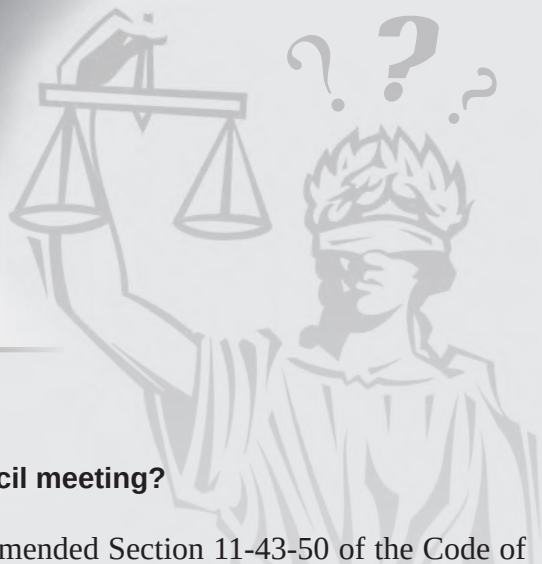

Your Frequently Asked (Legal) Questions Answered
by Assistant General Counsel Rob Johnston

Procedure

What is the process for cancelling or rescheduling a council meeting?

During the 2013 legislative session, the Alabama Legislature amended Section 11-43-50 of the Code of Alabama 1975 by passing Act 2013-308 (SB214 by Senator Waggoner). This Act allows for scheduled meetings to be cancelled ahead of time when a quorum is not going to be present. A council member may notify the presiding officer in writing when he or she is unable to attend a council meeting. Section 11-43-50(b) Code of Alabama 1975. If the presiding officer receives sufficient written notice to indicate that a quorum will not be present at a meeting, the presiding officer may cancel the meeting and give notice that the meeting is canceled. Section 11-43-50(b), Code of Alabama 1975. The presiding officer may reschedule the meeting provided proper notice of the rescheduled meeting is given pursuant to Section 36-25A-3(b), Code of Alabama 1975 of the Alabama Open Meetings Act. ▪

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other community concern, then all kinds of red flags should go up before even considering adverse employment action against an employee.

While there is not a standard "test" for what is a matter of public concern, some courts look to whether the information shared by the employee helps the community make informed decisions about the operation of government. One court has held that "unlawful conduct by a government employee or illegal activity within a governmental agency is a matter of public concern." *Thomas v. City of Beaverton*, 379 F.2d 802, 809 (9th Cir. 2004). Not of public concern are issues relating to individual personal disputes and grievances that are not relevant to the public employer's operations or performance. *See Connick, supra.*

First Amendment analysis in the area of public employee communication is not an exact science and if there is any take-away for the public employer it is that before taking any action against an employee for comments they have made through social media (or traditional media outlets), the employer should consult with its attorney to carefully evaluate whether the speech is protected speech under the First Amendment.

Other Legal Issues

In addition to the First Amendment, social media use by public employees also touches on other areas of the law that municipal employers need to be mindful of.

First is the issue of privacy, which touches on the Fourth Amendment to the United States Constitution. The Fourth Amendment provides that the "right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated …" Many people associate the Fourth Amendment with criminal searches and seizures; however, it goes beyond the sphere of criminal investigations and applies when the government acts in its capacity as an employer. As such, public employees are protected by the Fourth Amendment.

The U.S. Supreme Court has not settled on a clear standard by which we can judge when a search is unreasonable in the employment context. The plurality in the leading case, *O'Connor v. Ortega*, 480 U.S. 709 (1987), instructs that courts should first determine whether, in light of the "operational realities of the workplace," a public employee has a reasonable expectation of privacy. If not, then the Fourth Amendment would not apply. On a very specific set of facts following the *O'Connor* case the U.S. Supreme Court held that a police officer did not have a reasonable expectation of privacy when sending messages on a government issued pager. *City of Ontario v. Quon*, 130 S.Ct.2619 (2010). Even with this holding, however, the Court provided no helpful guidance for similar cases in the future, declining to decide whether the Fourth Amendment provides any reasonable expectation of privacy in the technological context. The advisable route is to have a policy making it clear to employees that they do not have an expectation of privacy when using publicly issued equipment such as computers and cell phones.

Another area of the law for municipal employers to be aware of as it relates to employees and social media is the Stored Communications Act found 18 U.S.C. §§2701-2711, which prohibits the unauthorized and intentional access of stored electronic communications, including unauthorized access to third party email service and unauthorized viewing of a password protected website. An exception to this prohibition is where access is authorized by the provider or by the user of the website. The fact that the employee uses an employer-provided computer, in and of itself, does not amount to consent or authorization. As such, it is advisable for public employers to adopt a clear policy providing that personal business on public equipment is prohibited and that activity on public equipment will be monitored.

Municipal employees seeking to monitor employees should also be aware of the Fair Credit Reporting Act which imposes notice and disclosure requirements on employers who seek consumer reports from third party agencies that assemble information on a person's "credit worthiness … character, general reputation, personal characteristics or mode of living." 15 U.S.C. §1681a, subdiv.(d)(1). What this means is that before utilizing such a third party service to evaluate employees or new job applicants, an employer must disclose that it is seeking a report and must seek the employee's or applicant's consent to seek the report. Further, if an employer takes an adverse employment action as a result of such a report, it must provide a copy of the report to the employee or applicant upon their request. Websites which compile personal information about individuals from public records and social media outlets may fall within the Fair Credit Reporting Act's coverage.

And last, but certainly not least, employers, public and private, need to be aware of the National Labor Relations Act (NLRA) and the enforcement activities of the National Labor Relations Board (NLRB) in the area of regulating employees and their social media access and use. Under the NLRA, employees who act in concert with each other to "address the terms and conditions of their employment" may not be disciplined or discharged for their activity. The NLRA applies to union and non-union employees.

Recently, the Office of General Counsel for the NLRB issued memoranda reports on social media cases dealt with by the board. It is the NLRB's position that social media

policy that prohibits any references to "terms or conditions" of employment violates an employee's rights to engage in protected activity under the NLRA. Very broadly drafted policies will likely run afoul of the NLRB's view of the protections provided by the NLRA. For example, the NLRB has found that a policy which provides that social media posts regarding the employer must be "completely accurate and not misleading" is overbroad because it would reasonably be interpreted by an employee to apply to discussions about, or criticisms of, the employer's policies and its treatment of employees. Extreme care must be used when developing social media policies and public employers need to be aware of the current guidance from the NLRB.

Do We Have a Policy For That?

So it's fairly well established that employees are most likely going to access some form of social media in the course of their employment – either personally or professionally. This then begs the question: "Do we have a policy for that?" A social media policy for city employees should go beyond "play nice" and "don't post anything that would cause your mother to blush." Municipalities should start the process of developing a policy by giving consideration to how social media will be used:

- Official Use, for the express purpose of communicating the municipality's interests;
- Professional Use, for the purpose of furthering specific job responsibilities or professional duties; and
- Personal Use, for the personal interests unrelated to job duties for the municipality.

First and foremost, a social media policy must make it clear to employees that they have no expectation of privacy or confidentiality when they use any public equipment, including computers and cellphones. A policy should include language that the employer has the right to access and monitor its computers, equipment and systems without warning or any specific notice to the employee. Employees must understand that what they say and do on public equipment may be subject to disclosure and that the employer has the right to back up anything, even if deleted by the employee. Employees need to understand that this can include any personal emails sent using public equipment, even if they are encrypted.

As with any employee policy, it should be clear and understandable. It should include definitions which are broad enough to cover future expansion and include specific examples of devices covered by the policy (cell phones, computers, tablets, pagers, etc.) and make it clear that any device provided by the employer to the employee is intended to be covered by the policy. Along these same lines, a policy should include specific examples of social media outlets and activities that are covered but, again, it should be worded to allow for other social media outlets which may come on the scene after adoption of your policy. Some other important considerations include:

- Encourage the use of good judgment;
- Make it clear that other employment policies apply in the context of social media use (such as policies against discrimination and harassment);
- Consider requiring a request for access to social media from employees who have official or professional need to utilize social media on behalf of the public employer.

As with any employee policy, public employers should provide training on the policy – and the training should be mandatory. And, perhaps most importantly, any policy should exercise the appropriate amount of control without appearing, in words or in practice, to go beyond the public employer's legitimate interest. A policy should also have a savings clause relating to the protected activity of the NLRA such as "nothing in this policy will be interpreted or applied in a manner that interferes with employee rights to organize, form, join, or assist labor organizations, to bargain collectively through representatives of their choosing to the extent allowed by law, or to engage in other concerted activities for the purpose of addressing the terms and conditions of employment." While it might not completely save your policy should it be challenged, it is important to make the effort to alert employees that the social media policy is not attempting to restrict their rights.

What's the Bottom Line?

The bottom line is that social media policies are loaded with danger for employers and should be approached with extreme caution and care and certainly shouldn't be established without the advice and assistance of the city attorney. After adoption, it is also vital that the city attorney be consulted and involved in any enforcement of a social media policy. The totality of the circumstances surrounding the social media communication must be carefully evaluated before deciding on any action under the policy. The city attorney will be able to advise whether or not an employee has engaged in protected conduct or speech. And lastly, it will be vital to enforce any policy in a consistent manner from one incident to the next. ■

PLAN NOW OR PAY LATER:

The Affordable Heathcare Act's Requirements for Local Governments

Paige M. Oldshue, Esq • Rosen Harwood Attorneys at Law

In a recent significant change, the effective date for the employer mandate provision of the Patient Protection and Affordable Care Act ("ACA") *has been delayed until 2015*. This gives employers more time to comply with the law's complex provisions. While this extra time will give local government employers some breathing room to plan for upcoming changes, planning now rather than later is prudent – and many of the ACA's deadlines have not been delayed.

Some provisions of the ACA applying to local government employers are effective in 2013 and some of the calculations contained in the ACA have look-back periods that will likely begin in 2014 depending upon different factors. Consequently, what a local governmental employer does in 2013 and 2014 could have a significant impact on whether the local government is penalized later when the full mandate is implemented. Following are several issues of which local government employers need to be aware:

1. The Employer Mandate Only Applies to Large Employers

The ACA requires employers with 50 or more employees to offer affordable health insurance coverage with minimum essential benefits or pay a penalty. The calculation is made by counting the number of full-time employees and full-time equivalent employees of the employer. Local government employers should consult with their accountants and legal counsel now to determine if the local government meets the definition of "large employer". The look-back period for counting the 50 employees could include months in 2014, so if a local government is considering a reduction in force to get below the 50 employee threshold, it needs to begin planning now.

2. Penalties for Non-Compliance

If the local governmental employer is a "large employer" for purposes of the ACA, then the local government needs to be aware of potential penalties contained in the ACA for not offering affordable health coverage with minimum essential benefits. If the local government does not offer coverage and at least one full-time employee receives a premium tax credit to purchase health insurance coverage on the exchange (or marketplace, as it is alternatively named), the local government will have to pay a penalty of $2,000 per full-time employee (excluding the first 30 employees). Employees eligible for a premium tax credit are those whose household income is less than 400% of the federal poverty level (approximately $43,560 for an individual and $89,400 for a family of four).

Example: if the local government has 100 full-time employees and fails to provide health insurance coverage, and one full-time employees receives a tax subsidy to purchase insurance from the exchange, the total penalty would be 70 (100 employees minus the first 30) x $2,000 which would be $140,000. This is an annual penalty.

The issues surrounding the implementation of the ACA are complex and yet to be fully determined.

If a local government does offer health insurance coverage to its employees, but the health insurance is not affordable or does not provide minimum essential benefits, the local government can still be penalized. If the employee's contribution toward the insurance premium exceeds 9.5% of the employee's household income or the health coverage offered does not cover at least 60% of the cost of the benefits provided under the policy, then a penalty could be assessed. The penalty for unaffordable coverage is $3,000 per year multiplied by the number of employees who have obtained a premium tax credit to purchase coverage on the health insurance exchange.

Example: If an employer with 50 full-time employees offers coverage that is unaffordable and 10 of those workers receive premium tax credits, or subsidies, the employer would face a penalty of $30,000 per year.

Local governments should be able to determine from a review of existing payroll information and W-2s whether the coverage now being offered to employees will be deemed affordable to its employees.

3. Do you Know Who Your Full-Time Employees Are?

The employer mandate provisions of the ACA apply to full-time employees only, i.e., in order to avoid a penalty,

local government employers must offer affordable health insurance coverage to full-time employees only. The local government employer does not have to offer coverage to part-time employees. The ACA defines "full-time" employees as those expected to work approximately 30 hours per week. Local government employers should be reviewing existing payroll and time records to determine if current employees will now become eligible for insurance coverage.

Also, if not currently doing so, local government employers should be keeping adequate time records for employees to help determine who is eligible to receive the offer of affordable health insurance coverage. For exempt employees, this may be in the form of a written job description identifying the expected hours to be worked in exchange for a salary. For non-exempt employees, it could consist of a time clock or time sheets. The important factor being that the local government employer has something in writing identifying the hours to be worked by each employee.

4. Is Your Existing Plan Offering Minimum Essential Benefits?

Many local governments have existing health insurance plans in place for their employees. Depending upon whether your plan is fully insured, self-insured, a grandfathered plan or a large group plan will determine what minimum essential benefits need to be provided by your health insurance plan. Administrators of the health insurance plans should be communicating with local government officials about changes in the benefits that will be required for your government's plan. If a local government has not received contact from the health insurance administrator about coming changes, contact your insurance representative immediately to make the determination whether the health insurance plan that you offer to your employees contains the minimum essential benefits required under the ACA.

5. Notice Requirements of October 1, 2013

Beginning October 1, 2013, employers are required to provide employees, at the time of hiring (or no later than October 1, 2013, for current employees) with written notice of local health insurance exchanges; employee eligibility for premium tax credits and cost-sharing subsidies; and employee's potential loss of any employer contribution if the employee purchases a plan through the exchange. [*Note*: This date may change based upon the recent delay of implementation of the employer mandate provision]. The Department of Labor issued Technical Release No. 2013-02 on May 8, 2013, which explains employers notice obligations to their employees. The Department of Labor also published model notices which employers can use in providing the required notice to employees. These model notices can be found at **www.dol.gov**. Your health insurance plan administrator will likely provide you with a form notice to provide to your employees as well.

6. Non-Discrimination Provisions of the ACA

Local government employers also need to be cognizant of the non-discrimination provisions of the ACA. First, local government employers cannot discriminate against employees because they received a tax subsidy to purchase insurance on the exchange. Employers need to be cautious when taking action against an employee who received the subsidy. Always make sure that employee disciplinary decisions are based upon well documented legitimate nondiscriminatory reasons.

Additionally, the ACA includes a requirement that employer-provided benefit plans not discriminate in eligibility, waiting period, benefits or contributions in favor of highly compensated employees. Again, get with your health insurance administrator to determine whether your plan is in compliance with these non-discriminatory provisions or contact your legal counsel.

7. W-2 Health Insurance Reporting Requirements

Another new requirement for local government employers under the ACA is the reporting of the "aggregate cost" of certain types of employer provided health insurance coverage on an employee's W-2 form. For most local government employers, this reporting will be required on the employee's 2013 W-2 form. Your health insurance

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ALABAMA LEAGUE OF MUNICIPALITIES

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the city. For example, in the most recent survey, citizens were asked if they supported an increase in property taxes for the construction of new schools. When a majority responded affirmatively, the city council felt comfortable moving ahead with a request to the Legislature to allow a referendum on the issue. Charlie Duggan (2013), Auburn's city manager, reported that "the survey is a vital piece of equipment in our policy creating toolbox; it doesn't dictate what we do but it does serve to give us confidence about the path chosen."

Mountain Brook also uses citizen surveys to gauge residents' thinking on the issues facing elected officials. Sam Gaston (2013), Mountain Brook city manager, noted that his city has "found citizen surveys to be very helpful in establishing priorities, assisting with budgeting and setting long-term goals." While Mountain Brook does not conduct its survey annually, the results have been effectively utilized in the city council's priority setting process.

Vestavia Hills learned in its first survey in 2011 that citizens desired more walking trails, sidewalks, and green spaces. As a result, the city council began working on a trail system as well as a 30-acre park to address those needs (Ammons 2013).

In addition to obtaining reaction to major issues facing the community, most surveys have questions concerning satisfaction with various programs and services. The city manager of Ames, Iowa explained that his city's annual survey is conducted primarily to find out how citizens feel about city services: "The survey lets us know how effective we're being in delivering quality services to the citizens. We work very hard to be efficient, but we also want to know if citizens are pleased with the level of service we provide" (Hassett and Watson 2003). Auburn's Duggan (2013) pointed out that "it enables us to hear from those residents who are not calling, emailing, or coming to meetings--it permits us to get a truer sense of how people feel about their government and on which areas they would like us to concentrate our limited resources."

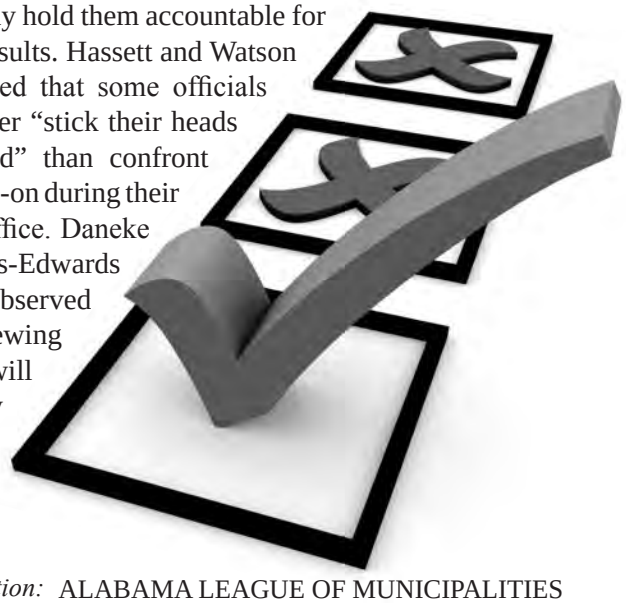
While many cities use the survey results to measure performance of their departments, one should realize that the results are one of several tools that can be used to judge performance levels. One expert noted that other tools should be employed to "triangulate" the quality of service delivery (Tatham 2013). For example, benchmarking may be helpful in understanding efficiency and effectiveness of services compared to other cities (Ammons 2001). Steve Ammons (2013), mayor pro tem of Vestavia Hills, noted, "It is important that we benchmark ourselves as well as see how we benchmark against other cities our size. Without it how do we really know we are improving, other than listening to the same talking heads instead of getting a true citizen response?"

It is also important to compare survey results with other cities so that officials understand acceptable quality levels for various services. For example, national data indicate that 80 percent favorable rating for fire service is low compared to most cities, while 80 percent for code enforcement is high among cities that use surveys (Tatham 2013). Those services, such as code enforcement, that are enforcing laws are likely to have more detractors than services, such as fire suppression, that save someone's property or life. Miller and Kobayashi (2001) pointed out:

> When you conduct a citizen survey, however, it is important not to presume that you can determine the best services by comparing ratings of one service with those of another. In the 'competition,' fire services will always win, and street repair will always lose. Fairer is a comparison of your fire service with those of other communities and of your street repairs with those of others.

The results of the survey can be used over a period of time to monitor the quality of services delivered by departments. It is important to ask the same or similar questions from one year to the next so that one can know whether there is improvement or decline in the quality of services in the eyes of the citizen-customer. Some cities establish consumer satisfaction targets for various services. For example, if the survey results indicate that city hall is not hospitable in handling citizen concerns, the department directors responsible for the poor behavior can be held accountable for improvement.

Some city officials may be hesitant to conduct a survey because they fear what the results may be. If they have been in office for an extended time and the results are negative, citizens may hold them accountable for the poor results. Hassett and Watson (2003) noted that some officials would rather "stick their heads in the sand" than confront issues head-on during their terms of office. Daneke and Klobus-Edwards (1979) observed that brewing problems will eventually surface and



ignoring them will not make them go away. Would not the wise public official prefer to know about the problem rather than be caught by surprise when it does surface? An advantage of surveys may be the identification of latent issues that the effective public official can confront proactively rather than wait until he/she is placed on the defensive.

Recommendations for a Good Survey

If you decide to use survey research to gauge your community's thinking on major issues or service performance, consider the following recommendations:

1. Hire a professional organization to conduct the survey. There are several private firms and university centers that specialize in citizen surveys. Check with the cities that do surveys to be sure that you are contracting with a competent provider. If the survey is not conducted properly, the results are useless or possibly even detrimental in establishing priorities or judging service levels.

2. Maximize the representativeness of the survey so that all citizens have an equal chance of being included. In order to do this, households should be selected at random using an accepted method. Miller and Kobayashi (2001) noted, "Imagine a citizen survey undertaken in New York City that sampled more than a million people. Wouldn't this survey give highly accurate estimates for this city of seven million? Probably not, if all those surveyed were from the Bronx. Or if they were all women. Or if they all worked on Wall Street."

3. Compare your results with surveys from other communities. A good example of comparable results can be seen for the Auburn citizen survey at **www.auburnalabama.org/survey/**.

4. Publicize the survey both before it is conducted and after the results are determined. In the pre-survey publicity, announce that the city is about to begin the process, and encourage those who are called to participate. Once the results are finalized, post the results on the city's webpage and distribute them widely to the local media. In order for the survey to have credibility with the public, the process must be transparent.

Conclusion

In the private sector, evaluation of customer satisfaction with products and services is closely monitored. There has been less effort in government to determine citizen satisfaction with local government. Of course, one can wait until election time when citizens express their ultimate opinion at the ballot box, but that does little to improve local government during the terms of office of incumbents. Governments as monopolies were not as concerned with citizen satisfaction in the past, but in the era when citizens are also considered as customers, local governments have discovered that citizen feedback is critical to sound policy making and performance. Citizen surveys have been found to be wise investments by those hundreds of cities nationwide that utilize them to determine what their citizens are thinking. ▪

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UNA is also active in conducting training for law enforcement officers. UNA and Jacksonville State University coordinate training through the Alabama Peace Officers Standards and Training Commission and the Alabama Association of Chiefs of Police, among others, to help these officers obtain and maintain their required training hours.

A few years ago, the League collaborated with Faulkner University in Montgomery to host a series of leadership seminars on economic development through our CMO program. These sessions brought in speakers from around the country to address our municipal officials on how they can improve relations with business and help their communities improve their economic well-being. These programs were well received by our members.

The League is proud to assist these universities with their training efforts and in other ways as well. In addition to the training our staff provides at seminars for municipal employee groups, League staffers have addressed university classes on how municipal governments function and even served as adjunct professors. General Counsel Lori Lein and I have served as judges of the Moot Court Competition at the Jones School of Law in Montgomery. I also serve as a Board Member on the Alabama Communities of Excellence (ACE) program, which is a joint effort of a number of Alabama universities, associations and businesses.

In these, and many other ways, League staff members strive to help Alabama's institutions improve the quality of life for municipal citizens by helping officials stay informed of the many issues they confront on a daily basis. We are proud of our latest effort with ASU. We will continue to collaborate with our universities and colleges in these efforts, and look for new, innovative ways to accomplish these goals. ▪

For more about training opportunities through the League, as well as information on AAMCA, AMROA, AAPPA and others, visit the "Training and Resources" tab on the League's website at www.alalm.org.

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administrator should be able to assist the local government employer in defining the "cost" to be reported. The cost of the health care benefits will be reported in box 12 of the Form W-2, with Code DD to identify the amount. It is important to alert the appropriate staff of the local governmental entity of this new requirement.

8. Patient-Centered Outcomes Research Institute Fee

In order to fund some of the initiatives of the ACA, various fees are being collected from some employers. One such fee is the Patient-Centered Outcomes Research Institute fee which is treated like an excise tax by the IRS. Issuers and plan sponsors are responsible for paying the fee which is $1.00 per covered life per year, with an adjustment to $2.00 per year in the second year until 2019. Self-funded local governmental entities must complete Form 720 and pay the fee directly to the IRS. It is important for self-funded local governmental entities to consult with their health insurance administrator and tax advisor to confirm compliance with this provision.

… what a local governmental employer does in 2013 and 2014 could have a significant impact on whether the local government is penalized later when the full mandate is implemented.

Bottom Line

The issues surrounding the implementation of the ACA are complex and yet to be fully determined. Local governmental entities need to be in close contact with their insurance representatives, their accountants and legal counsel now to ensure compliance with the ACA and avoid potentially costly penalties in the future. ▪

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Pictured left: Mayor Jerome Antone and Police Chief James Blackmon

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– Mayor Leigh Dollar, Guntersville

Pictured left: Fire Chief Tracy Battles and Mayor Leigh Dollar

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