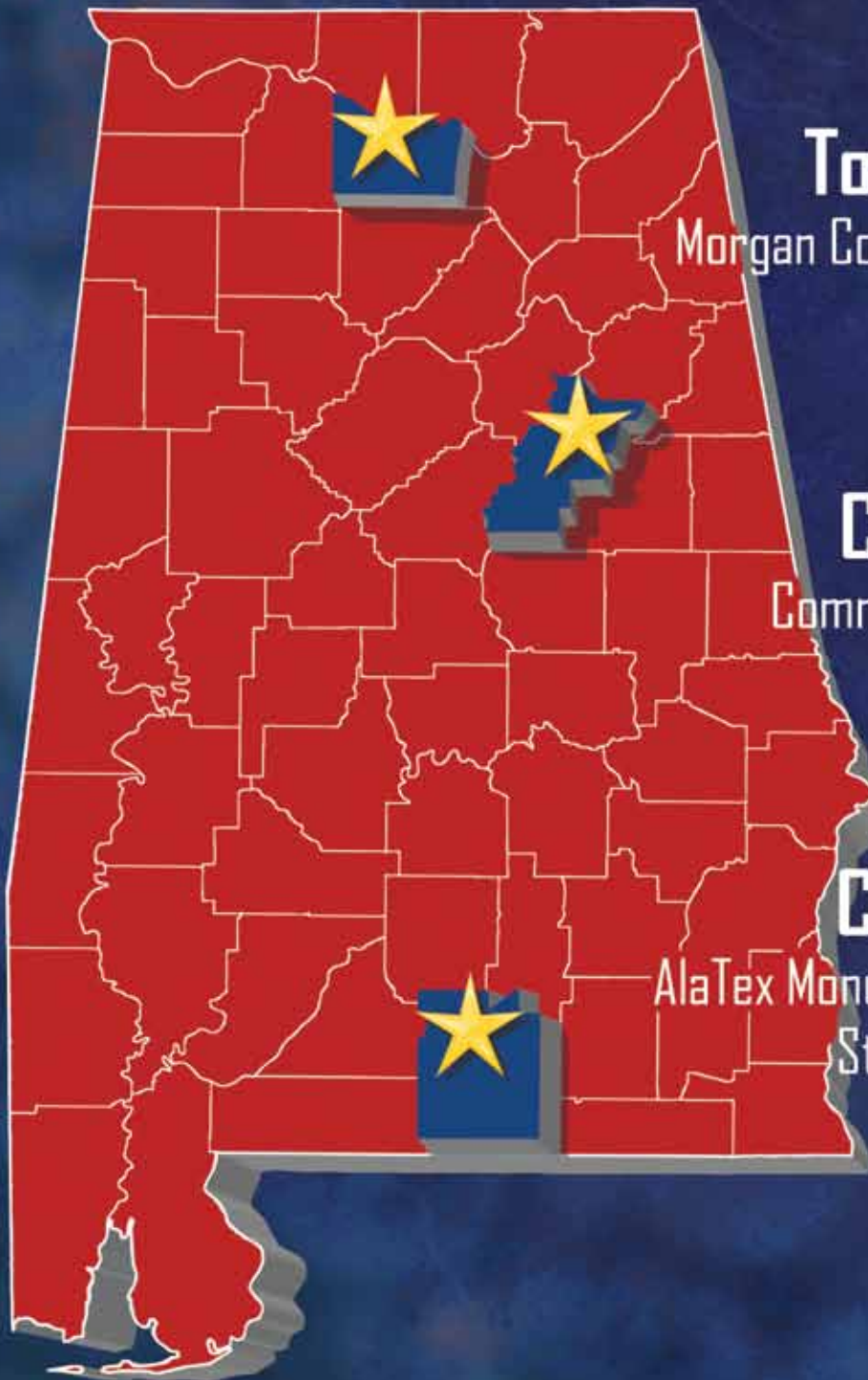


# The Alabama Municipal JOURNAL

January 2013

Volume 70, Number 6

## 2013 Municipal Quality of Life Awards



Winner: Under 5,000

### **Town of Priceville**

Morgan County Veterans Memorial  
at Veterans Park

Winner: 12,001 and Over

### **City of Talladega**

Community Revitalization and  
Project Green

Winner: 5,001 to 12,000

### **City of Andalusia**

AlaTex Monument Park & River Falls  
Street Renovation Project

# Insuring the Future of Local Government



## Is *YOUR* Future Covered?

Rated B++ by A.M. Best

Steve Wells, President  
334-386-3863

[www.amicentral.org](http://www.amicentral.org)

Jim Chamblee, Sales Manager  
866-239-AMIC (2642)



# The Alabama Municipal JOURNAL

Official Publication, Alabama League of Municipalities

January 2013 • Volume 70, Number 6

## OFFICERS

DAVID BRADFORD, Mayor, Muscle Shoals, President

WALT MADDOX, Mayor, Tuscaloosa, Vice President

KEN SMITH, Montgomery, Executive Director

## CHAIRS OF THE LEAGUE'S STANDING COMMITTEES

### Committee on State and Federal Legislation

SADIE BRITT, Councilmember, Lincoln, Chair

DONALD MYERS, Councilmember, Guntersville, Vice Chair

### Committee on Finance, Administration and Intergovernmental Relations

ADAM BOURNE, Councilmember, Chickasaw, Acting Chair

OPEN, Vice Chair

### Committee on Energy, Environment and Natural Resources

RUSTY JESSUP, Mayor, Riverside, Chair

OPEN, Vice Chair

### Committee on Community and Economic Development

NEWTON CROMER, Councilmember, Saraland, Chair

CAROLYN DOUGHTY, Councilmember, Gulf Shores, Vice Chair

### Committee on Transportation, Public Safety and Communication

GARY LIVINGSTON, Mayor, Eva, Chair

OPEN, Vice Chair

### Committee on Human Development

LaFAYE DELLINGER, Mayor, Smiths Station, Acting Chair

OPEN, Vice Chair

The Alabama Municipal Journal is published 10 times a year by the Alabama League of Municipalities, 535 Adams Avenue, Montgomery, Alabama 36104.

Telephone (334) 262-2566. Website: [www.alalm.org](http://www.alalm.org).

Single copies, \$2.00. By subscription, \$24.00 per year. Advertising rates and circulation statement available at [www.alalm.org](http://www.alalm.org) or by calling the above number. Statements or expressions of opinions appearing within this publication are those of the authors and not necessarily those of the Alabama League of Municipalities. Publication of any advertisement should not be considered an endorsement of the product or service involved. Material from this publication may not be reprinted without permission.

Editor: CARRIE BANKS

Staff Writers: LORI LEIN, TRACY L. ROBERTS, ROB JOHNSTON

Graphic Design: KARL FRANKLIN

For a complete list of the ALM staff, visit [www.alalm.org](http://www.alalm.org).

## Table of Contents

<i>A Message from the Editor</i> .....	4
<i>The President's Report</i> .....	5
ALM's 2013 Legislative Package	
<i>Municipal Overview</i> .....	7
An End Run at Municipal Employees: Dangerous Damages Exposure	
<i>The Legal Viewpoint</i> .....	9
Overview of Municipal Tort Liability	
<i>2013 Municipal Quality of Life Awards</i> .....	19
<i>Municipal Marketplace</i> .....	22
<i>2013 Convention Information</i> .....	27
<i>2013 Convention Registration Form</i> .....	30
<i>Legal Clearinghouse</i> .....	32
<i>Legal FAQ</i> .....	34
<i>Municipal Legislative Advocacy Agenda</i> .....	36
<i>Pictures from the State and Federal Legislation Meeting, December 13, 2012</i> .....	38

## On the Cover:

Congratulations to this year's Municipal Quality of Life Awards winners! Priceville, Andalusia and Talladega were chosen as the winners for their population categories – Under 5,000, 5001 to 12,000 and 12,001 and Over, respectively. They will be recognized during the Opening Session of the League's 2013 Annual Convention in Montgomery on May 18th. See page 10 for more information.

## Active Members (449)

Abbeville, Adamsville, Addison, Akron, Alabaster, Albertville, Alexander City, Aliceville, Allgood, Altoona, Andalusia, Anderson, Anniston, Arab, Ardmore, Argo, Ariton, Arley, Ashford, Ashland, Ashville, Athens, Atmore, Attalla, Auburn, Autaugaville, Avon, Babbie, Baileyton, Baker Hill, Banks, Bay Minette, Bayou La Batre, Bear Creek, Beatrice, Beaverton, Belk, Benton, Berry, Bessemer, Billingsley, Birmingham, Black, Blountsville, Blue Springs, Boaz, Boligee, Bon Air, Brantley, Brent, Brewton, Bridgeport, Brighton, Brilliant, Brookside, Brookwood, Brundidge, Butler, Calera, Camden, Camp Hill, Carbon Hill, Carrollton, Castleberry, Cedar Bluff, Center Point, Centre, Centreville, Chatom, Chelsea, Cherokee, Chickasaw, Childersburg, Citronelle, Clanton, Clay, Clayhatchee, Clayton, Cleveland, Clio, Coaling, Coffee Springs, Coffeeville, Coker, Collinsville, Colony, Columbia, Columbiana, Coosada, Cordova, Cottonwood, County Line, Courtland, Cowarts, Creola, Crossville, Cuba, Cullman, Dadeville, Daleville, Daphne, Dauphin Island, Daviston, Dayton, Deatsville, Decatur, Demopolis, Detroit, Dodge City, Dora, Dothan, Double Springs, Douglas, Dozier, Dutton, East Brewton, Eclectic, Edwardsville, Elba, Elberta, Eldridge, Elkmont, Elmore, Emelle, Enterprise, Epes, Eufaula, Eutaw, Eva, Evergreen, Excel, Fairfield, Fairhope, Fairview, Falkville, Faunsdale, Fayette, Five Points, Flomaton, Florala, Florence, Foley, Forkland, Fort Deposit, Fort Payne, Franklin, Fredonia, Frisco City, Fruithurst, Fulton, Fultondale, Fyffe, Gadsden, Gainesville, Gantt, Garden City, Gardendale, Gaylesville, Geiger, Geneva, Georgiana, Geraldine, Gilbertown, Glen Allen, Glencoe, Glenwood, Goldville, Good Hope, Goodwater, Gordo, Gordon, Gordonville, Goshen, Grant, Graysville, Greensboro, Greenville, Grimes, Grove Hill, Guin, Gulf Shores, Guntersville, Gurley, Hackleburg, Haleyville, Hamilton, Hammondville, Hanceville, Harpersville, Hartford, Hartselle, Hayden, Hayneville, Headland, Heath, Heflin, Helena, Henagar, Highland Lake, Hillsboro, Hobson City, Hodges, Hokes Bluff, Holly Pond, Hollywood, Homewood, Hoover, Hueytown, Huntsville, Hurtsboro, HyTop, Ider, Indian Springs, Irondale, Jackson, Jackson's Gap, Jacksonville, Jasper, Jamison, Kansas, Kellyton, Kennedy, Killen, Kimberly, Kinsey, Kinston, LaFayette, Lake-view, Lanett, Langston, Leeds, Leesburg, Leighton, Lester, Level Plains, Lexington, Lincoln, Linden, Lineville, Lipscomb, Lisman, Littleville, Livingston, Loachapoka, Lockhart, Locust Fork, Louisville, Lowndesboro, Loxley, Luverne, Lynn, McIntosh, McKenzie, Madison, Madrid, Magnolia Springs, Malvern, Maplesville, Margaret, Marion, Maytown, Mentone, Midfield, Midland City, Midway, Millbrook, Millport, Millry, Mobile, Monroeville, Montevallo, Montgomery, Moody, Mooresville, Morris, Mosses, Moulton, Moundville, Mount Vernon, Mountain Brook, Mulga, Munford, Muscle Shoals, Myrtlewood, Napier Field, Natural Bridge, Nauvoo, Nectar, Needham, Newbern, New Brockton, New Hope, New Site, Newton, Newville, North Courtland, Northport, Notasulga, Oak Grove, Oak Hill, Oakman, Odenville, Ohatchee, Oneonta, Onycha, Opelika, Opp, Orange Beach, Orrville, Owens Cross Roads, Oxford, Ozark, Paint Rock, Parrish, Pelham, Pell City, Pennington, Perdido Beach, Phenix City, Phil Campbell, Pickensville, Piedmont, Pike Road, Pinckard, Pine Apple, Pine Hill, Pine Ridge, Pinson, Pisgah, Pleasant Grove, Pleasant Groves, Pollard, Powell, Prattville, Priceville, Prichard, Providence, Ragland, Rainbow City, Rainsville, Ranburne, Red Bay, Red Level, Reece City, Reform, Rehobeth, Repton, Ridgeville, Riverside, Riverview, River Falls, Roanoke, Robertsdale, Rogersville, Rosa, Russellville, Rutledge, Saint Florian, Samson, Sand Rock, Sanford, Saraland, Sardis City, Satsuma, Scottsboro, Section, Selma, Semmes, Sheffield, Shiloh, Shorter, Silas, Silverhill, Sipsy, Skyline, Slocomb, Smiths Station, Snead, Somerville, South Vinemont, Southside, Spanish Fort, Springville, Steele, Stevenson, Sulligent, Sumiton, Summerdale, Susan Moore, Sweet Water, Sylacauga, Sylvan Springs, Sylva, Talladega, Talladega Springs, Tallahassee, Tarrant, Taylor, Thomaston, Thomasville, Thorsby, Town Creek, Toxey, Trafford, Triana, Trinity, Troy, Trussville, Tuscaloosa, Tusculumbia, Tuskegee, Twinn, Union, Union Grove, Union Springs, Uniontown, Valley, Valley Grande, Valley Head, Vance, Vernon, Vestavia Hills, Vina, Vincent, Vredenburgh, Wadley, Waldo, Walnut Grove, Warrior, Waterloo, Waverly, Weaver, Webb, Wedowee, West Blocton, West Jefferson, West Point, Westover, Wetumpka, White Hall, Wilsonville, Wilton, Winfield, Woodland, Woodstock, Woodville, Yellow Bluff, York.

# A Message from the Editor



Photo by Elmore DeMott

**H**appy New Year! 2013 is unfolding quickly. Next month the League will be hosting its annual Legislative Advocacy CMO program. Because this workshop has become so popular, we will offer it twice – February 19 and 26 – at the Alabama Judicial Building, 300 Dexter Avenue, in downtown Montgomery. This year's program features an update on the Constitutional Revision Commission; state financial outlooks on the General and Trust Fund Budgets, a Legislative Panel with participants from legislative leadership as well as the Governor's Legislative Office; an overview of legislation affecting municipalities; and, of course, an opportunity to meet with your legislators at the State House (for a full agenda, see page 36). CMO credit is also available. Visit [www.alalm.org](http://www.alalm.org) to download your registration form.

## Are You Receiving the League's Weekly E-newsletters?

If you're not, I encourage you to subscribe immediately by clicking on the red link at the top left of our home page at [www.alalm.org](http://www.alalm.org). *This Week* is emailed to subscribers every Tuesday morning and features upcoming meetings as well as other information of interest to municipal officials and employees. When the Regular Session begins in February, subscribers will also receive the *State House Advocate*, which is emailed on Monday afternoons, and the *Legislative Bulletin*, which is emailed on Fridays. These e-newsletters are 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.

## Congratulations to the 2013 Quality of Life Award Winners!

Priceville, Andalusia and Talladega were chosen as the winners for their population categories – Under 5,000, 5001 to 12,000 and 12,001 and Over, respectively. The communities of Hartford, Montevallo, Robertsedale (there was a tie in the 5,001 to 12,000 division) and Ozark were chosen as the Honorable Mentions for those same population categories. Priceville, Andalusia and Talladega will be recognized during the Opening Session of the League's 2013 Annual Convention in Montgomery on May 18<sup>th</sup>. To read about their winning programs, see page 10.

## 2013 Annual Convention

The League's 2013 Annual Convention and Expo will be held in downtown Montgomery May 18-21. Online registration will begin February 1; however, registration materials have also been included in this issue of the *Journal*. See pages 28-30. To download a convention Quick Guide, visit [www.alalm.org](http://www.alalm.org) and click on the convention link featured on the home page. This year's convention will feature a General Session by the Alabama Ethics Commission. The Alabama Ethics Law requires all municipal elected officials to obtain training on the Ethics Law within 120 days of taking office. The Ethics Commission has agreed to waive the 120-day training requirement for officials who attend the Ethics training seminar at the League Convention in Montgomery at which time Ethics Commission Director Jim Sumner and General Counsel Hugh Evans will provide in-depth training on how the Ethics Law affects municipal officials and employees. This training at the League's convention will satisfy your Ethics Law requirement so please make your plans to attend this session and receive your required training. *If you do NOT plan to attend the seminar at the League's convention, you are still bound by the 120-day requirement and should visit the Ethics Commission's website at [www.ethics.alabama.gov](http://www.ethics.alabama.gov) for more information.*

## League Members Elected to NLC Leadership

During NLC's Congress of Cities this past November, Councilmember Jesse Matthews of Bessemer and League Director Ken Smith were elected to serve on NLC's Board of Directors. Councilmember Robert Avery of Gadsden was named Chair of NLC's Finance, Administration & Intergovernmental Relations (FAIR) Committee. Congratulations!

Carrie



# The President's Report

Mayor David Bradford • Muscle Shoals



## ALM's 2013 Legislative Package

The Alabama League of Municipalities Committee on State and Federal Legislation met at League Headquarters on Thursday, December 13, 2012, and adopted an ambitious League Legislative Package for the upcoming session beginning February 5th. The committee, which is composed of elected municipal officials from throughout the state, considered a multitude of legislative recommendations from the League's five policy committees, member municipalities and the League staff. At the conclusion of their meeting, the committee unanimously approved the following ambitious package of bills (in no particular order of priority) to be introduced during the 2013 Regular Session.

Due to the continued shortfalls in both State budgets, we can expect a challenging session. Therefore, it is critical that all municipal officials get behind this package and push for its passage during the Session. Make sure you have subscribed to our weekly e-newsletters: *This Week*, *State House Advocate* and the *Legislative Bulletin* so you will always have the latest information on our efforts and be ready to act when we ask. Visit the League's home page at [www.alalm.org](http://www.alalm.org) and subscribe by clicking on the link at the top left. In addition, check the website often as we will post information throughout the Session.

### Mayoral Vacancies in Certain Class 7 or 8 Municipalities

Section 11-44G-2, Code of Ala. 1975, provides a procedure to be used in Class 7 or 8 municipalities for filling a vacancy in the office of mayor. Another statute provides that the Council President in cities of 12,000 or more inhabitants shall automatically become mayor upon the death or resignation of the mayor. Over the years, the population of some Class 7 or 8 municipalities has increased to 12,000 or more inhabitants. These cities are faced with conflicting statutes and have no guidance as to the procedures they should use to fill mayoral vacancies. This bill proposes to amend Section 11-44G-2 to allow the council president to fill the vacancy in Class 7 or 8 cities with populations of 12,000 or more inhabitants. This bill will also allow a council president who does not want to become mayor to resign as council president without having to resign from the council.

### Employee Liability Protection

The League will seek legislation to clarify the status of municipal employee liability under the tort laws of the State of Alabama to ensure that municipal employees are protected by the tort caps provided to municipal governments when acting within the line and scope of their jobs.

### ABC Sales Tax Revision

ABC retail stores do not currently collect the local sales tax rates of the jurisdiction where they conduct business. The League will seek legislation amending the way local ABC retailers establish, collect and remit municipal sales taxes at local retail locations.



ALM's Legislative Committee met on December 13, 2012, at League headquarters in Montgomery to establish the League's 2013 Legislative Package. The 2013 Regular Session begins February 5th.

*continued on page 8*



# Judicial Correction Services

## Case Supervision for Misdemeanor Courts

Collect & Successfully Close Twice As Many  
Partial Payment Cases

### Benefiting the Court...

"...(JCS's) service has decreased my magistrates' probation workload and court sessions by 65%...collections are at an all time high..."

- Court Administrator  
Large Municipal Court

"JCS has improved our court operations greatly with their professionalism and by the amount of monies collected."

- Court Clerk  
Large Municipal Court

"We are now collecting more than 90% of our fines, and I see far fewer return visits from those I sentence to probation."

-Judge  
Georgia Municipality

### Benefiting the Community...

"JCS has provided great cooperation with the County to cut these overhead costs that have been growing...It's everyone's goal not to have to build more jails. That and these high costs of keeping someone in jail are a big drain on county resources that can be better used elsewhere."

- Former Director of Corrections  
Large Florida State Court

"We have saved on jail expenses and issued fewer warrants."

- Court Clerk  
Large Municipal Court

"...we found that a full service probation provider like JCS can be instrumental in controlling the growth of the jail population and assuring the appropriate use of expensive jail cells."

- Judge  
Alabama Court

### Benefiting the Defendants...

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

- Emma G., Defendant  
Florida State Court

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

- Danny B., Defendant  
Marshall County, Alabama

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

- Craig A., Defendant  
Foley, Alabama

**Judicial Correction Services**

888-527-3911 Hoover, Alabama & Locations Throughout Alabama

# Municipal Overview

Ken Smith • Executive Director



## An End Run at Municipal Employees: Dangerous Damages Exposure

If you attended our November Orientation Conferences, you heard me discuss several key issues related to municipal tort liability. Under Alabama law, municipal liability is based on negligence, either the negligence of the municipality itself, or for the negligent actions of their employees and officers. This month's Legal Viewpoint provides an in-depth look at municipal liability in general.

Throughout most of this state's history, public entities and their employees were exempt from liability for actions taken in the line and scope of their duties. The doctrine of governmental immunity serves several purposes. It protects the public treasury from excessive damages and enables public employees and officials to make decisions and act for the public good without fear of being sued by individuals who may be negatively affected by those decisions.

The doctrine of governmental immunity survives today for certain groups and individuals. The state and its officers and employees, for example, are exempt from tort actions. Similarly, sheriffs and their deputies are also exempt. But municipalities and their employees and officers are exposed to possible damage awards if they are held to have behaved in a negligent manner.

Subjecting a municipality to any tort exposure directly impacts municipal taxpayers. Any damages assessed against the municipality will be paid by the municipal treasury – from funds collected from taxpayers. As a result, the Alabama Legislature adopted several statutes specifically designed to protect taxpayers from excessive awards. One of the most vital protections provided by the Legislature to municipalities is tort caps, which place limits on the amount of money a plaintiff may recover from a municipality.

### Municipal Employees Under Attack

In the November/December *Journal*, our League President, Mayor David Bradford, wrote an article titled "Municipal Employees Under Attack" that discussed one of the most disturbing recent developments in municipal tort law. Several recent cases have subjected individual

employees to recovery for any amounts above what can be recovered against the municipality. (To read this article, visit [www.alalm.org](http://www.alalm.org), click on the *Alabama Municipal Journal* link under Publications and Advertising, go to the Past Issues Archives, click 2012 and then click on the November/December icon. The article is on page 5.)

In *Suttles v. Roy*, 75 So.3d 90 (Ala. 2010), the plaintiff alleged that she was injured when, following instructions from a municipal motorcycle officer, she attempted to cross a street and was then struck and injured by another municipal motorcycle officer. The officers, who were assigned by the City to control traffic at a Special Olympics event, were clearly acting in the line and scope of their duties.

The plaintiff sued the city and the officers, both as individuals and in their official capacities. The Alabama Supreme Court held that the damage caps in Section 11-93-2, Code of Alabama (1975) did not apply to any recovery against the employee as an individual, but declined to address whether Section 11-47-190 of the Code limits recovery. The Court then returned the case to the trial court for further action.

If the Court does not reconsider this issue and finds that both Sections 11-93-2 and 11-47-190 cap recovery against a municipal employee, the effect of this decision will be to subject municipal employees to the potential of unlimited damages against them *individually*, even in situations where they make a good faith effort to perform a legitimate public function as part of their job. Thus, this outcome creates a way to circumvent the protections the Legislature enacted for municipalities and their employees by making individual employees personally liable for damages that cannot be recovered against the public entity itself.

An example may help clarify the issue. When a municipal employee, acting in the line and scope of his or her duties, allegedly commits a negligent tort, both the employee and the municipality are generally sued.

*continued on page 35*



## Weed Abatement Revisions

Municipalities have the authority to abate weeds in their jurisdictions and the process in which to apply the cost of abatement to the property owner. The League will introduce legislation to amend these processes to shorten the length of time for notice and address frequent abusers of abatement ordinances.

## Municipal Election Law Revisions

Following each municipal election cycle, the League discovers areas of municipal election laws which need amending. The League will seek to amend several technical amendments to the municipal elections laws.

## Competitive Bid Law – Local Preference

Current law allows municipalities to give a 3 percent preference for local bidders as defined by the bid law. The League will seek legislation to increase the preference allowed local bidders under the provisions of the competitive bid law from 3 percent to 5 percent.

## Appropriation for Wastewater Treatment SRF and the Alabama Drinking Water Finance Authority

Many years ago, the Alabama Legislature established a State Revolving Loan Fund for Wastewater Treatment (SRF) and the Alabama Drinking Water Finance Authority. The purpose of these programs was to take state funds and match them with federal dollars to create a loan fund to offer low interest loans to governmental entities for wastewater treatment and drinking water projects. Each year, the League seeks additional matching funds from the Legislature to continue these nationally recognized programs.

## Meeting Cancellation

No current procedure exists that allows municipalities to cancel meetings in advance, even when no quorum will attend. This legislation will allow the presiding officer to cancel and reschedule a meeting after receiving written notice from a sufficient number of members of the council to know that a quorum will not attend the meeting.

## Island Annexation

The Legislature has granted a few municipalities the authority to annex by ordinance all or any portion of any unincorporated territories, which are enclosed within the corporate limits of the municipality and have been so enclosed for a period of one (1) year or more. The League will seek Legislation to allow this to apply statewide.

## Municipal Debt Recovery

Municipalities acquire debt from citizens with little recourse in collecting these debts. This legislation authorizes the creation of a program to allow the Alabama Department of Revenue to set aside taxpayers' refunds in order to satisfy debts owed to a municipality.

## Administrative Search Warrants

Current law does not authorize an administrative official of a governmental entity to seek and obtain an administrative search warrant to inspect for certain code violations and public welfare laws. The League will seek legislation to empower judicial officers to issue an administrative search warrant upon a showing of the probable cause standard applicable to the administrative search warrants.

## Conclusion

The Committee on State and Federal Legislation has adopted an ambitious League Legislative Package for 2013. Please begin supporting our efforts by making a special effort to contact legislators while they are home before the Regular Session begins on February 5, 2013. ■



**America's Tank Maintenance Company!™**

Utility Service is the premier provider of professional water tank services:

- Maintains thousands of potable water tanks under full service asset management programs
- Delivers true sustainable solutions and peace of mind
- Provides site management services for antennas on existing and new tanks

A water quality management tool... **WaterMix™**  
The Right Mix for Cleaner Water

- Minimize organics
- Stabilize disinfectant residuals
- Eliminate thermal water stratification
- Maximize filter media efficiency

Call your local Utility Service Representative today...

**Michael Szabo • 706.575.1456**  
mszabo@utilityservice.com

www.utilityservice.com



# The Legal Viewpoint

By Lori Lein  
General Counsel



## Overview of Municipal Tort Liability

Those of you who attended the League’s orientation seminars heard Ken Smith, the League’s Executive Director, present a lively overview of municipal liability. As you get settled into your new terms of office, it is important to have a basic understanding of the potential liabilities facing you, your municipality, and your municipal employees.

The first step in protecting yourself and the municipality is education. This article is designed to provide an overview of municipal liability issues, focusing specifically on immunities and limitations from suit in both state and federal court. It will also provide you with some practical information regarding the handling of claims.

### What is a Tort?

Balentine’s Law Dictionary with Pronunciations (2nd ed. 1948) defines a tort as an “injury or wrong committed... to the person or property of another.” There are three basic types of torts: intentional torts, negligent torts and strict liability torts.

Strict liability torts rarely have any application to municipalities. Instead, municipal liability in state court is usually based on negligence, pursuant to Section 11-47-190, Code of Alabama, 1975. This provision of law establishes a negligence standard for municipalities. It states that a municipality can be held liable for the torts of its officers and employees which are due to “neglect, carelessness or unskillfulness.”

In its simplest terms, a negligent tort arises if the plaintiff can prove:

1. that the defendant owed (or assumed) a duty to the plaintiff to use due care (DUTY);
2. that the defendant breached that duty by being negligent (BREACH);
3. that the plaintiff was injured (INJURY/DAMAGES); and
4. that the defendant’s negligence caused the plaintiff’s injury (CAUSATION).

All four elements must be satisfied for liability to

arise. Liability for negligence may be founded upon either nonfeasance (failing to perform an assumed or required duty), malfeasance (performing an act that exceeds municipal authority) or by misfeasance (improperly doing a lawful act).

While Section 11-47-190 creates a negligence standard of care for municipalities, because of court decisions like *Neighbors v. City of Birmingham*, 384 So. 2d 113 (Ala. 1980), municipalities must also be concerned with intentional torts. An intentional tort is a willful tortious action taken by the defendant towards the plaintiff. Examples of intentional torts are assault, battery, false imprisonment, false arrest, trespass on real and personal property, etc.

When it comes to the damages element of a torts, it is important to keep in mind that punitive damages cannot be recovered against a municipality. Section 6-11-26, Code of Alabama, 1975. This section also applies to separately incorporated utility boards. *Carson v. City of Prichard*, 709 So.2d 1199 (Ala. 1998).

### Statutory Limitations and Defenses

Municipal liability for state torts dates from 1975, when the Alabama Supreme Court abolished the doctrine of municipal immunity in Alabama. *Jackson v. City of Florence*, 320 So.2d 68 (Ala. 1975). Fortunately, although the Court held that municipalities may be liable for the negligent actions of their officers and employees, the Court also noted that it was within the power of the legislature to limit municipal liability in any manner it deemed necessary.

In response to *Jackson*, the legislature enacted several statutes limiting the tort liability of municipalities. These include:

- Section 11-93-2, Code of Alabama 1975, limits the amount of damages awardable against a municipality to \$100,000 per person and \$300,000 per occurrence for claims based on personal injuries and \$100,000 for a property loss. This section protects municipalities from losses they incur either on their own or through

*continued on page 14*

# 2013 Municipal Quality

**T**his year's Municipal Quality of Life Awards program had 15 entries with winners and honorable mentions in three population categories. Priceville, Andalusia and Talladega were chosen as the winners for their population categories – Under 5,000, 5001 to 12,000 and 12,001 and Over, respectively. The communities of Hartford, Montevallo, Robertsedale (there was a tie in the middle population division) and Ozark were chosen as the Honorable Mentions for those same population categories. Priceville, Andalusia and Talladega will be recognized during the Opening Session of the League's 2013 Annual Convention in Montgomery on May 18<sup>th</sup>.

The Municipal Quality of Life Awards program was created to recognize outstanding projects in local government and to share those success stories with other municipalities. Winners were chosen by a panel of three independent judges who are not employed by or affiliated with the Alabama League of Municipalities. Judging was based entirely on the written entries and supportive information and winners were chosen on how well entries met the three main objectives of the program: 1. To recognize successful, **innovative** projects that improve the quality of life for citizens. 2. To share those projects with other municipalities. 3. To demonstrate the value of cities and towns. The following brief summaries highlight the winners and honorable mentions in this year's Awards program.

## Under 5,000

### Town of Priceville:

#### Morgan County Veterans Memorial at Veterans Park

To honor their veterans who paid the ultimate price for freedom, the Town of Priceville, in conjunction with the Morgan County Combined Patriotic Organization, has constructed the Morgan County Veterans Memorial at Veterans Park in Priceville. A groundbreaking ceremony was held on July 4, 2011, to begin the \$800,000 Memorial and the dedication was held on November 11, 2012, following the Morgan County Veteran's Parade.

The memorial features five black granite monuments within an inner circle representing the five US military branches with names, rank and wartime served for each Morgan County resident whose life was lost. Three black granite monuments featured in the outer ring recognize POW/MIA, Blue Star Mothers/Gold Star Mothers and Purple

Heart recipients. A kneeling bronze soldier in the center star represents a combat soldier paying homage to his fellow comrades at the Fallen Soldier Battle Cross in front of him. A T-34C Mentor Plane on loan from the National Aviation Museum in Pensacola, Florida, is currently on display as is an M60A1 Tank on loan from the Department of the Army. A Huey Helicopter donated by Alabama A&M University is also prominently featured.

The Morgan County Veterans Memorial is a gesture of remembrance and respect, and symbolizes the gratitude of the citizens of Morgan County to those who made the ultimate sacrifice.

## 5,001 to 12,000

### City of Andalusia:

#### AlaTex Monument Park & River Falls Street Renovation Project

In 2009, the City of Andalusia purchased the old AlaTex Textile Mill and has since rehabilitated the site to create the Andalusia Chamber of Commerce Office, Welcome Center and a national textile workers monument in tribute to the thousands who worked at the site and in textile mills all over the United States. AlaTex, founded in the 1920s, occupied a 35-acre complex on River Falls Street in Andalusia until 1995 when the property was gated, padlocked and largely left to ruin. In 2009, the City began a \$5 million restoration project of the AlaTex Plant fronts as well as River Falls Street, which had been one of the main entrances into the city when it was founded in the early 19<sup>th</sup> Century. A plan was put together to purchase the abandoned plant site and relocate the Andalusia Chamber of Commerce to the old AlaTex Office building and turn the site into a monument. A committee of former AlaTex employees raised \$40,000 to purchase monuments and Mayor Earl Johnson personally designed and commissioned a giant, white, men's dress shirt that is 14 feet high by 11 feet wide, weighs 2,500 pounds and is installed on a pedestal at the park in front of the new Chamber of Commerce Office. The shirt even has a 10-foot tie that can be changed to reflect seasons or local events.

On October 25, 2012, the new Andalusia Chamber of Commerce Office, Welcome Center and AlaTex Memorial Park were dedicated in a public ceremony. The project, in conjunction with the River Falls Street renovation, is a perfect example of public investment in an area that was destined



# of Life Award Winners

to become blighted. Both projects were accomplished by establishing an unprecedented number of partnerships. The Alabama Department of Transportation contributed \$1.5 million toward River Falls Street and the Andalusia Chamber of Commerce put \$200,000 towards their new office. City of Andalusia employees contributed hundreds of hours of labor and design expertise which enabled the projects to be completed at a substantial savings. Today, the area has recently seen private investment in a variety of forms including several expanded and remodeled businesses.

## **12,001 and Over**

### **City of Talladega: Community Revitalization and Project Green**

Established in 1835, the City of Talladega has a long history of industrial development along its railroad lines with textile mills, logging and foundries. Because of its industrial past, the City applied for and received funding in both 2009 and 2012 through the Environmental Protection Agency's Brownsfield Assessment Program to conduct environmental site assessments and redevelopment planning on contaminated properties – many of which were situated within a major City transportation and business thoroughfare. As the only Alabama municipality in 2009, and one of only two in 2012, to receive this funding (\$800,000 total), the success and subsequent implementation – which involved community outreach and planning – also engaged the Alabama Institute for Deaf and Blind (AIDB), Alabama's first educational entity to initiate a biodiesel public education, training and production program known as Project Green. This program has the capacity to produce 55 gallons of biodiesel per day, benefitting local businesses and City infrastructures within a 120-mile radius while providing alternative fuels education to Alabama school systems and to schools for the deaf and blind in Appalachian states.

Project Green's primary purpose is to educate the general public on the benefits of alternative fuels in tandem with the City of Talladega. In addition, the City was awarded a \$150,000 grant through the Alabama Department of Transportation's Safe Routes to Schools Programs, which was used to upgrade and improve sidewalks. With six states and national financial supporters providing in excess of \$400,000, Project Green has also garnered verbal and technical support from more than 20 entities, including

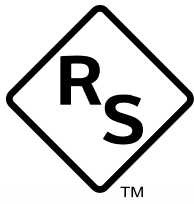
businesses/organizations in Talladega, surrounding counties and surrounding states. With waste vegetable oil picked up at no charge to participating businesses, Talladega City has helped market the program to the general public, supporting Community Recycle Stations within the City limits where residents can drop off their waste.

Each of these components encompasses a larger economic development, public safety, public works and public service plan, addressing every hot-button topic municipalities currently face: economy and jobs, healthcare, debt, education, taxes, governmental reform, alternative energy and the environment. Each success was achieved through careful strategic planning and collaboration while garnering diverse community support through communication and idea sharing.

## **Under 5,000 Honorable Mention**

### **City of Hartford: Preserving the Past – Preparing the Future**

Founded in 1897, the City of Hartford's business and social activities still center around its square. Several years ago, City officials started working on a plan to revitalize and enhance the City in phases, including the square, the exterior perimeter of the square and the areas extending in front of businesses located adjacent to the square. In 2008, the City was awarded a \$212,553 Transportation Enhancement Grant to construct new sidewalks and improve the landscaping around the square. In addition to the matching grant funds, the City dedicated funds for a new irrigation system and renovations to an existing gazebo as well as refurbishing the original 1902 fountain. The police reserve officers raised money for a memorial dedicated to the Hartford Police Department's fallen officers. In 2009, the City applied for help through the American Recovery Reinvestment Act to continue the process of replacing hazardous sidewalks with brick paver and concrete sidewalks. Decorative lampposts were installed and several additional properties, including the community center and fire rescue, were landscaped. The City then decided to use \$400,000 in local funds to complete the downtown square project. Local merchants began to get involved by renovating storefronts and replacing awnings and the square is now home to many annual community events including the Hometown Holiday Festival, Pumpkin People Exhibit and the State Line Muscle Car Cruise In.



# RICE SIGNS

Your Leader In Transportation Safety

- Traffic Signs
- Roll-Up Construction Signs
- Sign Stands
- Traffic Cones & Barricades
- Custom Street Name Signs
- Sign Posts & Hardware



**Free Traffic Sign Catalog:**

Call 888-728-7665

- or -

Visit [www.RiceSigns.com](http://www.RiceSigns.com)

**Contact Us / Bids / Quotes:**

Toll-Free: 888-728-7665

Fax: 877-546-6165

Email: [sales@RiceSigns.com](mailto:sales@RiceSigns.com)

Web: [www.RiceSigns.com](http://www.RiceSigns.com)

**RICE SIGNS LLC**

P.O. DRAWER 3170

AUBURN, AL 36831-3170

# 2013 Municipal Quality of Life Award Winners

## 5,001 to 12,000 (tie in this category) Honorable Mention

### City of Montevallo:

#### Vallocycle – Intimately Uniting the University, Municipality and Businesses of Montevallo

Created through a partnership between the City, the University of Montevallo, students, local citizens and the businesses of Montevallo, *Vallocycle* is a bike-sharing program that allows any Montevallo resident to rent a bicycle for a nominal fee. This creative and innovative program is the first of its kind in Alabama and has three main goals: 1. reduce transportation costs for local residents; 2. preserve the environment by reducing carbon emissions; and 3. promote healthy living via physical activity. Through *Vallocycle*, several Montevallo locations are designed for explore-riding: the UM Organic Community Garden, which is the largest university-wide garden in the state; the Eco Park at the University Lake, which has 10 trails along the lake; Orr Park, the oldest recreational area in the City; and Eclipse Coffee shop, a local café where students, faculty and residents dine and socialize. The University of Montevallo is the first college institution to receive a “green fund” from the State of Alabama to help support *Vallocycle*. Local businesses were asked to help sponsor bike purchases, which are then maintained by the City Public Works Department and university students. *Vallocycle* is currently working with the RPC and Montevallo Parks Trail Committee to develop a new, active transportation plan to include a 10-mile biking/hiking trail system within Montevallo, as well as exploring designated bike lanes in several areas.

## 5,001 to 12,000 (tie in this category) Honorable Mention

### City of Robertsdale:

#### Neighbors Helping Neighbors Utility Assistance Program

The City of Robertsdale’s *Neighbors Helping Neighbors (NHN) Utility Assistance* program provides a convenient method for residents to voluntarily provide financial assistance to indigent, disabled or otherwise incapacitated customers of the City’s utility system. The *NHN* is strictly voluntary whereby the City rounds each participating customer’s utility bill up to the next whole dollar. On average, customers contribute about 50 cents per month, or six dollars per year, to the program. The extra charge is

held in a separate account to provide financial assistance to qualifying utility customers. In 2010, the City, which has just over 5,000 residents, executed a service contract with Catholic Social Services, a 501(c)3 organization, to administer the program and screen customers for eligibility based on their individual circumstances. Catholic Social Services provides the customer with a voucher indicating the amount of financial assistance which is then presented to the City Utility Billing Department where the account is credited and the funds are transferred from *NHN* to the City’s Accounts Receivable. Out of nearly 4,000 utility customers, approximately 85 percent participate in the voluntary billing round-up program. The majority of opt-outs are either commercial customers or non-profit agencies prohibited from providing charitable contributions through their organizational by-laws, charters or other governing documents. Since its inception in 2010, *NHN* has collected more than \$55,000 and assisted 353 family units totaling \$52,778.86.

## 12,000 and Over Honorable Mention

### City of Ozark:

#### Camp Oz

Camp Oz was established by the City of Ozark in June 2009 and is operated by the Department of Leisure Services. This unique program provide a place for children ages 6 to 14 to learn how to work as a group and gain confidence in their abilities as individuals during the summer when school is not in session. Staff provides a variety of planned and supervised age-appropriate activities including arts and crafts, supervised play, creative dance, gym play, group discussions, swimming and special guest speakers. Campers also participate in structured field trips throughout the summer. Several city departments, including Police and Fire, hold workshops for the campers and the Wiregrass Resources Conservation and Development Council works with the children throughout the summer to plant, maintain and harvest a garden. The State Department of Education provides a grant for the Summer Food program, ensuring each child receives two nutritious meals a day. The cost to parents is \$25 and slots are available on a first come basis. A waiting list is started once the camp is full. Each participant is expected to follow all rules or they are not allowed to continue to attend. ■



indemnification of their officers or employees.

- Section 11-47-190, Code of Alabama 1975, states that no recovery above the \$100,000/\$300,000 amount may be had against a municipality under any judgment or combination of judgments, whether direct or by way of indemnity arising out of a single occurrence. See, also, *Benson v. City of Birmingham*, 659 So.2d 82 (Ala. 1995). Unfortunately, the Alabama Supreme Court has held that these liability damage limits do not apply to property damage cases, holding that an amendment to Section 11-47-190 did not expand the protection of the caps to property damage cases. See, *City of Prattville v. Corley*, 892 So. 2d 845 (Ala. 2003). The court held that the statute “places no aggregate limit on a local governmental entity’s liability for property-damage claims payable on multiple judgments arising from the same occurrence.” The League will attempt to correct this legislatively.
- In *Smitherman v. Marshall County Commission*, 746 So.2d 1001 (Ala. 1999), the Alabama Supreme Court held that summary judgment was proper as to the county commissioners and the county engineer in their *individual capacities*. In the alternative, claims against county commissioners and employees in their *official capacities* are, as a matter of law, claims against the county and are subject to the \$100,000 cap contained in Section 11-92-2, Code of Alabama 1975. Thus, damages against officials of protected entities for official actions are limited as well. However, in *Suttles v. Roy*, 75 So.3d 90 (Ala. 2010), the court held that statutes which capped damage awards against cities, towns, and governmental entities at \$100,000 did not apply to a personal injury action which was brought against a police officer in his individual and personal capacity. Municipal peace officers are deemed to be officers of the State for purposes of the statute that affords them immunity when sued in their individual capacity. Whether they have such immunity depends upon the degree to which the action involves a State interest. This is a developing area of the law that the League is following closely.
- Section 11-47-23, Code of Alabama 1975, states that in order for a plaintiff to recover damages against a municipality, she must file a claim with the municipality within six months. If she fails to do so, the claim is barred, unless the municipality waives the requirement in this section. *Downs v. City of Birmingham*, 240 Ala. 177, 198 So. 231 (1940). It is important to remember that a municipality must raise the plaintiff’s failure to comply with this section as an affirmative defense, or the court will deem it waived. *Alexander City v.*

*Continental Insurance Co.*, 262 Ala. 515, 80 So.2d 523 (1955).

- Closely related to Section 11-47-23 is Section 11-47-192, Code of Alabama 1975, which states that a person who has been injured by a municipality must file a sworn statement with the city clerk stating the manner in which the injury occurred, the day, time and place where the accident occurred, and the damages claimed. *Waterworks and Sewer Board v. Brown*, 268 Ala. 96, 105 So.2d 71 (1958). In *Howell v. City of Dothan*, 234 Ala. 158, 174 So. 624 (1937), the Alabama Supreme Court stated that the six-month limitation period in Section 11-47-23 must be read into this section. Therefore, written notice must be given to a municipality within six months of the accrual of a claim for personal injuries or it is barred.<sup>1</sup>
- Section 6-3-11, Code of Alabama 1975, restricts the venue of tort actions against municipalities to the county in which the municipality is located or the county where the cause of action accrued. Although originally held invalid, Section 6-3-11 was upheld in *Ex parte Alabama Power Co.*, 640 So.2d 921 (Ala. 1994). It was also applied favorably in *Ex parte Talladega County*, 28 ABR 1490 (Ala. 1994) and, most recently, in *Ex parte City of Greensboro*, 730 So.2d 157 (Ala. 1999).
- Section 6-5-338, Code of Alabama 1975, extends “state-agent immunity” to police officers and the municipalities which employ them for actions taken in the line and scope of the officer’s authority. It does not, however, protect an officer who exceeds the authority given in a particular case. *Newton v. Town of Columbia*, 695 So.2d 1213 (Ala. 1997).
- Section 6-5-336, Code of Alabama 1975, grants immunity to municipal volunteers engaged in certain activities for governmental entities. However, this immunity does not protect the governmental entity from liability under the doctrine of respondeat superior.

## State Court Immunities

State law cloaks public officers and employees with two distinct types of immunity. First is absolute immunity. Absolute immunity generally applies only to legislative and judicial acts by officers and employees. Absolute immunity is defined as the total protection from civil liability arising out of the discharge of judicial or legislative power. Under the doctrine of absolute immunity, the actor is not subject to liability for any act committed within the exercise of a protected function; the immunity is absolute in that it applies even if the actions of the judicial officer are taken maliciously or in bad faith. *Black’s Law Dictionary* 761 (5th Ed. 1979).

But, once it is determined that absolute immunity applies to the official function being performed, how far does the protection extend? Provided that the protected official acted within the scope of his or her duties, the protection is total. Courts will not inquire into the motives behind a protected action.

It is not always easy, however, to determine whether an official is acting within the sphere of protected activities. Absolute immunity does not shield protected officers from suit for all actions, only those taken while acting in a protected capacity. As the court noted in *Bryant v. Nichols*, 712 F. Supp. 887, 890 (M.D. Ala. 1989), “It is the official function that determines the degree of immunity required, not the status of the acting officer. A court must examine the specific activity undertaken by the officials and assess whether it was performed in the course of an activity justifying absolute immunity.”

Absolute immunity, though, is rarely applied. Instead, Alabama courts in the past have followed what used to be called discretionary function immunity. This was considered sufficient to protect public defendants. Under discretionary function immunity, the good faith of the defendant became relevant. Stated simply, discretionary function immunity protected public defendants when they in good faith performed a discretionary act that was within the line and scope of their duties.

Recent decisions, though, have made clear that municipalities and their officers and employees can no longer rely on discretionary function immunity. In *Blackwood v. City of Hanceville*, 936 So.2d 495 (2006), for example, the Alabama Supreme Court noted that Section 6-5-338 of the Code essentially replaced discretionary function immunity for municipal police officers with “state-agent” immunity as provided for in *Ex parte Cranman*, 792 So.2d 392 (2000). In *Cranman*, the Alabama Supreme Court restated the rule governing state-agent immunity, stating:

“A State agent *shall* be immune from civil liability in his or her personal capacity when the conduct made the basis of the claim against the agent is based upon the agent’s

- (1) formulating plans, policies, or designs; or
- (2) exercising his or her judgment in the administration of a department or agency of government, including, but not limited to, examples such as:
  - (a) making administrative adjudications;
  - (b) allocating resources;
  - (c) negotiating contracts;
  - (d) hiring, firing, transferring, assigning, or supervising personnel; or
- (3) discharging duties imposed on a department or agency by statute, rule, or regulation, insofar as the statute, rule, or regulation prescribes the manner for performing the duties and the State agent performs the duties in that manner; or

- (4) exercising judgment in the enforcement of the criminal laws of the State, including, but not limited to, law-enforcement officers’ arresting or attempting to arrest persons, or serving as peace officers under circumstances entitling such officers to immunity pursuant to § 6-5-338(a), Ala.Code 1975. (modified in *Hollis v. City of Brighton*, 950 So.2d 300 (Ala. 2006)); or

- (5) exercising judgment in the discharge of duties imposed by statute, rule, or regulation in releasing prisoners, counseling or releasing persons of unsound mind, or educating students.

Notwithstanding anything to the contrary in the foregoing statement of the rule, a State agent *shall not* be immune from civil liability in his or her personal capacity

- (1) when the Constitution or laws of the United States, or the Constitution of this State, or laws, rules, or regulations of this State enacted or promulgated for the purpose of regulating the activities of a governmental agency require otherwise; or

- (2) when the State agent acts willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law.”

792 So.2d at 405.

Rather than depending on discretionary function immunity, defendants must fit their actions into one of the listed *Cranman* categories in order to claim immunity. Strict reliance on these standards can lead to disturbing results. In *Blackwood*, the defendant police officer exceeded the speed limit in response to an emergency call involving a serious accident. In route, the officer’s vehicle struck another vehicle, injuring the passenger.

The Court gave the actions of the police officer an extremely narrow interpretation under the *Cranman* analysis, finding that driving to the scene of an accident does not fall within any of the listed *Cranman* categories. The closest, they stated, would be Category (4), listed above.

Despite the fact that the Court noted that this list is not intended to be exhaustive the Court applied a very narrow construction to the application of these categories. They noted that Category (4) applies only to the enforcement of criminal laws and driving to the scene of an accident does not does not implicate the criminal laws. Thus, the Court stated that the officer had no immunity from suit based on Section 6-5-338. Although this decision might be different now that the Court has modified the *Cranman* standards to recognize the different immunity standard in Section 6-5-338, the Court’s narrow construction of these categories to the functions of law enforcement officers is bothersome.

The discretionary part of Section 6-5-338(a) is working its way back into the courts analysis, however. In *Ex parte Kennedy*, 992 So.2d 1276 (Ala.2008), the Court held that officers involved in a fatal shooting of a suspect were entitled

to state agent immunity in a wrongful-death action. A state agent is immune from civil liability in his or her personal capacity when the conduct made the basis of the claim against the agent is based upon the agent's exercising judgment in the enforcement of the criminal laws of the State, including, but not limited to, municipal law-enforcement officers' arresting or attempting to arrest persons, or serving as peace officers under circumstances entitling such officers to immunity pursuant to section 6-5-338(a), Code of Alabama 1975.

Regardless, it is now clear that rather than relying on the protection of discretionary function immunity when performing their discretionary acts, municipal actors must fit their actions into one of the listed *Cranman* categories to entitle the officer or employee to claim immunity.

The *Cranman* case created a burden-shifting process. When a defendant raises state-agent immunity as a defense, the state/city agent bears the initial burden of showing that the plaintiff's claims arise from a function that entitles the state/city agent to immunity. Once this is established, the burden shifts to the plaintiff to show that the law requires finding the actor liable, or that the state/city agent acted willfully, maliciously, fraudulently, in bad faith, or beyond his/her authority.

Examples of state agent immunity cases include:

- Arresting officer and police dispatcher who searched the National Crime Information Center (NCIC) database for outstanding warrants, as well as the city employing both, had state agent immunity from tort liability for the mistaken arrest of an individual on a warrant for a different individual who had a similar name. Both the

officer and the dispatcher were exercising judgment in the enforcement of criminal laws of the state as law enforcement officers, and the city's immunity derives from their status as law enforcement officers. *Swan v. City of Hueytown*, 920 So.2d 1075 (Ala. 2005).

- In a case involving the execution of an arrest warrant, the Alabama Supreme Court held that summary judgment was proper for issues related to the operation of the police department and courts that involved legal issues, but was premature for issues that required the development of facts. The Court also held that the city was immune from vicarious liability for the alleged acts of malice or acts of bad faith committed by its officers in the execution of the warrant. *Ex parte City of Tuskegee*, 932 So.2d 895 (Ala. 2005).
- In *City of Crossville v. Haynes*, 925 So.2d 944 (Ala. 2005), the Alabama Supreme Court held that because a police chief was immune from suit by state-agent immunity for an alleged jail suicide, the employing municipality was also immune from being sued.
- Any alleged negligence by a police officer in initiating and continuing a high-speed pursuit of a motorist did not proximately cause the motorist's wreck and resulting fatal injuries. The officer followed policies and procedures reflected in the city's police department manual. The motorist wrecked because he lost control of his vehicle as a result of his excessive speed during the pursuit. The officer was more than 200-300 yards from the motorist's vehicle when it wrecked, and the motorist could have slowed down and stopped at any

# Municipal Revenue Service



The League's Municipal Revenue Service for collection of delinquent insurance license taxes has more than 50 years experience of responsible and aggressive collection of lost revenue.

Contact us today and let our proven professionals get the job done efficiently and effectively.

**ALABAMA LEAGUE OF MUNICIPALITIES**  
535 Adams Avenue Montgomery, AL 36104  
334-262-2566 OR 888-255-0434

**PUT OUR EXPERIENCE TO WORK FOR YOU - Over 300 Alabama Municipalities Have.**

time during the chase. *Gooden v. City of Talladega*, 966 So.2d 232 (Ala.2007)

- City and the city’s planning director were immune from liability to landowner for flooding of property as a result of construction of a subdivision. Immunity applies to employees of municipalities in the same manner that immunity applies to employees of the state. *City of Birmingham v. Brown*, 969 So.2d 910 (Ala.2007)
- A police officer who was part of team that processed arrestees in a prostitution sting had statutory and state-agent immunity on tort claims by a plaintiff whose name, date of birth, and address were falsely given to the officer by one arrestee as being her own, and who was later incorrectly identified in a press release to news media as one of the arrestees. Even if the city’s police department had a policy regarding the verification of an accused’s identity, the policy did not include detailed rules or regulations that the officer violated. *Ex parte City of Montgomery*, 19 So.3d 838 (Ala.2009)
- A state agent acts beyond authority and is therefore not immune when he or she fails to discharge duties pursuant to detailed rules or regulations, such as those stated on a checklist. A child abuse investigator acted beyond her authority by failing to visit a mother’s home, and was not entitled to state-agent immunity. *Ex parte Watson*, 37 So.3d 752 (Ala.2009)
- State workers acted outside their authority by disregarding federal mandates requiring them to repair, mark, or light the remains of a coastal pier structure that was damaged in a hurricane three years prior, and therefore, the state workers were not entitled to “state agent immunity” from a negligence and wantonness suit brought by speedboat passengers who were injured in a collision with the pier remains, regardless of whether the suit concerned a function that would otherwise entitle the state workers to state agent immunity. *Ex parte Lawley*, 38 So.3d 41 (Ala.2009)

This is a developing area of law that the League will follow closely.

### **Municipal Liability Under Section 1983**

Municipalities and their officials have been subject to liability under 42 U.S.C. Section 1983 (Section 1983) since the United States Supreme Court handed down its landmark decision in *Monell v. Department of Social Services*, 436 U.S. 658 (1978). Section 1983 states:

“Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any

rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.”

Section 1983, which makes municipalities liable for violations of civil rights resulting from customs or policies of the municipality, has become one of the broadest bases for challenges to municipal actions. So, liability under Section 1983 is predicated on first, finding a violation of federal statutory or constitutional rights, and two, that this deprivation was caused by an official policy or custom. These next sections discuss Section 1983 and the impact it continues to have on municipalities.

### **Overview of Section 1983**

Section 1983 is not designed as a substitute for state court tort actions. In *Monell*, the court required that the municipality’s custom or policy actually cause the alleged deprivation of civil rights. A municipality “cannot be held liable solely because it employs a tort-feasor.” See also, *Cremins Search Term End v. City of Montgomery*, 779 So.2d 1190, 1191 (Ala. 2000).

The most difficult hurdle facing a plaintiff under Section 1983 is demonstrating that the deprivation of civil rights was due to a policy or custom. However, it is clear that the existence of a written policy is not necessary to impose liability on a municipality. Conversely, the U. S. Supreme Court has held that a “single egregious incident” cannot establish a policy or custom under Section 1983. *City of Oklahoma City v. Tuttle*, 105 S. Ct. 2427 (1985). Yet, in the *City of Los Angeles v. Heller*, 54 LW 3693 (1986), the Court found the city liable for a single act by someone the court felt had authority to set policy for the city. And, in *Todd v. Kelley*, 783 So.2d 31 (Ala. Civ. App. 2000), the Alabama Supreme Court held that where a mayor has the final decision-making authority to fire a police officer under the municipality’s rules, the mayor’s actions may subject the municipality to liability under Section 1983.

One significant issue to keep in mind with Section 1983 claims is the risk of attorneys fees. In *Maine v. Thiboutout*, 488 U.S. 1 (1980), the U. S. Supreme Court held that successful plaintiffs under Section 1983 are entitled to recover attorneys’ fees under the Civil Rights Attorneys Fees Awards Act of 1976, codified at 42 U.S.C. Section 1988.

As in state court, under Section 1983, municipalities are not subject to punitive damages. In *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981), the U. S. Supreme Court held that municipalities are immune from punitive damages in civil rights cases brought under 42 U.S.C. Section 1983. The Alabama Supreme Court has held that state courts must accept Section 1983 cases if the plaintiff selects a state court as the forum. *Terrell v. City of Bessemer, supra*. The

appropriate statute of limitations for Section 1983 claims is two years. *Owens v. Okure*, 57 LW 4065 (1989). However, in *Felder v. Casey*, 56 LW 4689 (1988), the U. S. Supreme Court held that state notice-of-claim statutes do not apply to Section 1983 actions. Thus, a plaintiff suing under Section 1983 does not have to provide the municipality with notice of his claim within six months. *Morrow v. Town of Littleville*, 576 So. 2d 210 (Ala. 1991).

### Section 1983 Immunities

In discussing immunities under Section 1983, it is important to draw a distinction between immunities which protect the municipality from those which protect the individual actor. In *Owen v. City of Independence*, 445 U.S. 622 (1980), the court held that municipal defendants in Section 1983 actions cannot take derivatively the good-faith immunities of their officers, who are usually co-defendants in Section 1983 actions. The good-faith of the defendant municipality is now irrelevant. The only issue is whether the defendant municipality deprived the plaintiff of federal constitutional or statutory rights. Whether the deprivation was intentional, inadvertent, malicious or benign is not an issue.

However, the court in *Owen* made clear that a public officer may be personally immune from liability. The official's good faith is relevant in such cases because it transfers the financial burden of liability from the individual officer to the city or town. Thus, while municipalities cannot take the immunities claimed by their officials, common law immunities continue to protect officials performing certain functions from Section 1983 liability. Courts have recognized that this protection is necessary to preserve independent decision-making by guarding municipal officials from the distracting effects of litigation. See, e.g., *Gorman Towers, Inc. v. Bogoslavsky*, 626 F.2d 607 (8th Cir. 1980); *Bruce v. Riddle*, 631 F.2d 272 (4th Cir. 1980).

As in state court, there are two types of immunity available to municipal officials, depending upon the function being performed. First, there is absolute immunity. A municipal official cannot be held liable for taking an action that entitles him or her to absolute immunity. *Bogan v. Scott-Harris*, 66 LW 4163 (1998). As under state law, whether a person is entitled to absolute immunity depends on the function he or she is performing. If it qualifies as legislative or judicial, he or she is probably entitled to absolute immunity. The official claiming absolute immunity bears the burden of proving that such immunity is warranted. *Forrester v. White*, 484 U.S. 219 (1988).

As the United States Supreme Court noted in *Burns v. Reed*, 59 LW 4536 (1991), the presumption is that qualified immunity is sufficient to protect government officials. If the officer or employee's action is not legislative or judicial in nature, he or she may only be granted qualified immunity.

Qualified immunity protects municipal officials when acting within their discretionary authority. Generally, this type of immunity requires a good faith showing on the part of the official. This form of immunity protects the actor from liability for a discretionary action only if the employee or officer acted in a good faith, reasonable manner.

Qualified immunity operates somewhat differently in federal court than state agent immunity does in state court, however. Qualified immunity is an affirmative defense. This means that it must be pled by the official or the court will deem it to have been waived. While the degree of protection afforded by qualified immunity is not as great as that provided by absolute immunity, qualified immunity still protects official conduct in many areas.

Qualified immunity represents a balancing approach taken by the courts. On the one hand, courts are concerned with the need to provide a damages remedy to protect the rights of citizens. On the other hand, courts must protect officials who are required to exercise their discretion in the public interest. The fear is that officials subject to unbridled liability for discretionary actions, will refuse to make tough decisions that might later be second-guessed by a court.

A public official asserting that he is protected by qualified immunity from liability on a civil rights complaint must establish that he was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred. A civil rights plaintiff attempting to defeat a public official's qualified immunity defense must make two showings: (1) that official violated a constitutional right; and (2) that the illegality of the official's conduct was clearly established.

In *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), the United States Supreme Court ruled that governmental officials performing discretionary functions are generally immune from liability for civil damages, provided their conduct does not violate a clearly established law. The court established this test so that insubstantial lawsuits would be disposed of on summary judgment, rather than subjecting officials to the expense of a full-blown trial. The court stated that:

“[r]eliance on the objective reasonableness of an official's conduct, as measured by reference to clearly established law, should avoid excessive disruption on government and permit the resolution of many insubstantial claims on summary judgment.”

Thus, the goal of the test set out in *Harlow* is to protect government officials from either the costs of trial or the burdens of broad-reaching discovery. To this end, the court stated that more was needed to proceed to trial than “bare allegations of malice.”

The *Harlow* case, established an objective method of determining the good faith of a governmental official.



The court further explained this standard in *Anderson v. Creighton*, 483 U.S. 635 (1987). There, the court made clear that the test is not based solely on the alleged violation of a clearly established right, but also on the official's reasonable belief that the violation was justified in light of the surrounding circumstances.

That is to say, would a reasonable governmental official have believed, in light of the clearly established law and all objective facts present, that the action taken was justified? In order to defeat a motion for summary judgment, a plaintiff must demonstrate that the action not only violated his or her rights but that the government official's action was unreasonable.

The Eleventh Circuit Court of Appeals defines the test like this:

“could a reasonable official have believed his or her actions to be lawful in light of clearly established law *and* the information possessed by the official at the time the conduct occurred?” *Nicholson v. Georgia Department of Human Resources*, 918 F.2d 145, 147 (11th Cir. 1990).

And,

“A governmental official proves that he acted within the purview of his discretionary authority by showing ‘objective circumstances which would compel the conclusion that his actions were undertaken pursuant to the performance of his duties and within the scope of his authority.’”

*Hutton v. Strickland*, 919 F.2d 1531, 1537 (11th Cir. 1990). (Citations omitted).

The reasonableness inquiry is an objective one. The question is whether the officers' actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to underlying intent or motivation. *Hutton*, at 1540. (Citations omitted).

Thus, as long as the action taken was reasonable under the circumstances, courts will not inquire into motive. Courts anticipate that public officials will apply their own experiences when exercising their discretionary powers and are loathe to substitute their opinions for that of the governmental official.

### Handling Claims

In handling claims, municipal officials must remember that the purpose of the notice of claims statutes is to allow them time to fully investigate the allegations against the municipality to determine the validity of the claim. Therefore, claims should be treated seriously and dealt with promptly. This may involve submitting the claim to the municipal attorney or to the insurance company. Regardless of whether municipal officials intend to investigate the claim or have legal representatives do so, certain steps should be followed in determining the merits of the claim. These risk

management procedures may help the municipality avoid costly litigation by negotiating a settlement with valid claimants and by refusing to pay on non-meritorious claims.

Bear in mind that the following information is not meant to substitute for internal methods of obtaining information regarding potential claims before a claim is ever filed. Employees with knowledge of injured citizens or private property should report, to their supervisors, the incident which caused the damage. Supervisors should then report to the municipal clerk, mayor or legal department. A written policy instructing employees to take these measures may give the municipality with even more time to investigate and determine the merits of potential claims. The earlier the municipality receives the notice and the earlier the municipality acts on that notice, the fresher the recollections of witnesses and, perhaps, the more weight a jury will apply to the testimony later should trial result. Additionally, quick notice allows municipal decision-makers to view the accident site before time changes the circumstances surrounding the accident.

### When a Claim is Presented

A municipality must take a claim seriously, and treat it with the respect it is due. Deal with it promptly. Don't just put it in a file to handle later. When a claim is presented to the clerk, he or she should stamp it with the date and time it was received. It may also be a good idea to give the presenter a photocopy of the claim, showing the time and date as well.

A citizen's tort claims against a city accrued, and limitations period began to run, on the date of his injuries. The citizen's tort claims for false arrest and false imprisonment against city and its police chief in his official capacity arising out of an altercation with the police chief at a town hall meeting accrued, and the six-month period for presentation of claims against municipalities began to run, on the date of the citizen's arrest. *Locker v. City of St. Florian*, 989 So.2d 546 (Ala.Civ.App.2008)

The claim should be filed along with a statement of the clerk's action – assigning it to the insurance company, legal department or municipal attorney, for instance. Some municipalities assign the claim to the municipal department involved. If the claim involves damages caused by a pothole, for example, the clerk would send the claim to the street department for an investigation. Whatever the clerk's duty, the file should indicate that the appropriate action was taken.

If a municipality conducts its own investigation, the file should also show the results. Was the claim determined to be valid? If not, why was it rejected? The names of any witnesses interviewed, their testimony and any remedial action taken could also be added to the file, or at the very least, made available to the municipal attorney and the insurance carrier.

# Initial Attack Engine for \$149,438.00!



The days of unlimited funds for fire apparatus purchases are gone. Be budget wise and consider the MiniMax™ for a tremendous value at an affordable price.

No more basic is a fire engine than a tool box with a box of water inside that is capable of delivering fire fighters to put the wet stuff on the red stuff. Why is your department spending 350,000 to 400,000 dollars to purchase an engine?

Contact Travis Moore at M3 Fire Apparatus and find out the rest of the story. 931.766.7665



## Is the Claim Valid on its Face?

To be valid, a claim must be filed no more than six months following the accrual of the claim. A claimant need not follow a particular form in filing the claim. However, the claim must give the municipality sufficient information to determine the time and place of the accident. The claim should contain a statement of the damages the injured party seeks. Additionally, the claim must be filed with the appropriate person. Statutes require filing the claim with the municipal clerk. In *Fortenberry v. Birmingham*, 567 So. 2d 1342 (Ala. 1990), however, the Alabama Supreme Court upheld presenting the claim to the mayor. The clerk, or other investigating officer, should verify that the claim provides adequate information to investigate the merits.

Another issue that should be considered is whether the notice of claim has to be a sworn statement. The plain language of Section 11-47-192, Code of Alabama 1975, specifically provides that the notice provided to the city shall be “a sworn statement filed with the clerk by the party injured or his personal representative in the case of his death.”<sup>2</sup> Despite the plain language of the statute, the Alabama Supreme Court has determined that requiring a complaint filed against a city within six months in lieu of a notice of claim pursuant to Section 11-47-192 to be a sworn complaint conflicts with the fact that no civil complaint, other than a stockholder’s derivative action, is required to be sworn to in Alabama, *see generally Rule 8, A.R.C.P.* Consequently, there is no need for a complaint to be sworn to in order to comply with either Section 11-47-23 or Section 11-47-192. *Diemert v. City of Mobile*, 474 So.2d 663 (Ala. 1985).

The *Diemert* case involved an individual filing a lawsuit within the six month time period rather than filing a separate notice with the city first. The decision in the *Diemert* case does not address the necessity of the notice filed with the clerk being a sworn statement but rather simply addresses the issue of whether a complaint, serving as notice within six months, has to be a sworn complaint.

*City of Montgomery v. Weldon*, 195 So.2d 110 (Ala. 1967), indirectly addresses the issue of whether or not a notice of claim filed with the clerk pursuant to Section 11-47-192 must be a sworn statement. In *Weldon* the Alabama Supreme Court held that when a city actively misleads a claimant by continually representing to the claimant that their claim was sufficiently noticed and urges the claimant not to seek legal advice or take any further action for a year, the city is *estopped* from asserting that the claim filed with the city did not comply with the statutory requirements. By way of dicta, the Alabama Supreme Court noted that the plaintiff could not have satisfied the requirements of Section 11-47-192 (previously codified at Tit. 37, Section 504, Code 1940) because he failed to provide a sworn statement. However, the court ruled against the city because the facts were such that

the city was *estopped*, due to its own actions, from asserting the claimant’s failure to file a sworn statement.

Arguably, because there is no specific guidance other than the plain language of the statute and the dicta of *Weldon*, a notice of claim filed with a municipality must be a sworn or verified notice. This argument is countered, however, with the line of cases allowing for “substantial compliance” (*infra*) and the *Diemert* case, decided after *Weldon*, holding that a complaint, serving as notice, does not have to be a sworn complaint.

If the facts as presented in the claim are true, the next step is to determine if the municipality is liable. The facts in the claim may reveal that the municipality was not responsible for the injury at all. For instance, an automobile accident may have occurred on a private roadway. If the claimant alleges that the road was not adequately maintained, the municipality is not liable because it has no duty to keep private roads in repair.

If the facts indicate potential municipal liability, the municipality should conduct a complete and thorough investigation. Once the investigation is finished, the results should be reported to the council for a determination of payment, to begin the negotiation process or to deny the claim altogether. However, state law does not require the council action for the plaintiff to perfect his or her claim. *Stewart v. City of Northport*, 425 So. 2d 1119 (Ala. 1983). Thus, even if the council does not act, the plaintiff may still sue the municipality for acts alleged in the claim.

## Conclusion

Lawsuits frequently cannot be avoided. Individuals these days sue at the drop of a hat, often for imagined slights. Municipalities, as public agencies, have to be concerned both with lawsuits brought in state court and with those brought in federal court, mostly brought pursuant to 42 U.S.C. Section 1983 (Section 1983). Hopefully this article has given you some background and information relative to municipal tort liability. For a more complete discussion please refer to the 2012 Selected Readings for the Municipal Official. ■

## Endnotes

<sup>1</sup> The six-month notice of claim statute does not act to bar contract actions. Nor does it apply to separately incorporated municipal boards. *Williams v. Water Works and Gas Board of the City of Ashville*, 519 So.2d 470 (Ala. 1987). The notice of claim statute does, however, apply to unincorporated municipal entities, such as the Von Braun Civic Center Authority. *Ex parte Von Braun Civic Center*, 32 ABR 1921 (Ala. 1998). Further, the notice of claim statute does not apply in Section 1983 cases. *Morrow v. Town of Littleville*, 576 So.2d 210 (Ala. 1991).

<sup>2</sup> *Black’s Law Dictionary*, 6<sup>th</sup> ed., defines “sworn” as being synonymous with the word “verify” which is defined as “To confirm or substantiate by oath or affidavit.”

# Municipal Marketplace

The following vendors have purchased advertising packages through the League. This list is intended to be a resource tool for municipal officials and employees. These vendors can also be found on the League's website at [www.alalm.org](http://www.alalm.org) under the Municipal Marketplace.

## League Programs

### Alabama Municipal Funding Corporation (AMFund)

**It's that simple**

P. O. Box 1270

Montgomery, Alabama 36102

Phone: 334-386-8130 FAX: 334-386-8170

E-mail: [gregc@amfund.com](mailto:gregc@amfund.com)

Website: [www.amfund.com](http://www.amfund.com)

**Contact: Greg Cochran**

AMFund was developed in 2006 specifically to address municipal needs by providing low-interest, fixed-rate financing ideal for infrastructure and capital improvement projects; refinancing existing loans; and for equipment financing (leasing and purchasing). AMFund's application is a simple, two-page, straight-forward document that can be downloaded from [www.amfund.com](http://www.amfund.com). Once audits are submitted, the approval process moves quickly with no obligation to the borrower. **It's that simple.**

See our ad on page 39

### Alabama Municipal Insurance Corporation (AMIC)

110 North Ripley Street

Montgomery, Alabama 36104

Phone: 334-386-3863 FAX: 334-386-3874

E-mail: [stevev@amicentral.org](mailto:stevev@amicentral.org)

Website: [www.amicentral.org](http://www.amicentral.org)

**Contact: Steve Wells**

The Alabama Municipal Insurance Corporation (AMIC) is a mutual insurance company incorporated in 1989 under the laws of the State of Alabama and owned by its participating Alabama member municipalities. AMIC writes all lines of automobile insurance, commercial general liability, police professional liability, public officials errors and omissions coverage, bonds, property, inland marine, etc and provides 24 hour, 7-day-a-week, 1-866 convenience for the claims of its members. Coverage is available to municipalities as well as other incorporated municipal entities such as utility boards, industrial development boards, and housing authorities.

See our ad on page 2

### Municipal Revenue Service

P. O. Box 1270

Montgomery, Alabama 36102

Phone: 334-262-2566 FAX: 334-263-0200

E-mail: [stevem@alalm.org](mailto:stevem@alalm.org)

**Contact: Steve Martin**

The League's Municipal Revenue Service for collection of delinquent insurance licenstaxes has more than 50 years experience of responsible and aggressive collection of lost revenue, currently for over 300 communities in Alabama.

See our ad on page 16

### Municipal Workers Compensation Fund, Inc. (MWCF)

P. O. Box 1270

Montgomery, Alabama 36102

Phone: 334-262-2566

Phone: 1-888-736-0210 FAX: 334-263-0200

E-mail: [terry@alalm.org](mailto:terry@alalm.org)

Website: [www.almwcf.org](http://www.almwcf.org)

**Contact: Terry Young – Marketing manager**

Established in 1976, the Municipal Workers Compensation Fund (MWCF) is the second oldest League insurance pool in the nation. With more than 625 participating municipal entities and over 80% of the Alabama League's membership – MWCF provides a direct means for municipalities, Water / Sewer utilities, Gas / Power utilities, Housing Authorities...the ability to save on workers compensation coverage. MWCF offers a variety of Loss Control and Risk Management Services including loss control representatives; on-site risk management with follow-up reports and recommendations; specialized law enforcement risk control; loss analysis and trending; employment practices hotline; proactive driver training; firearms training systems; DVD library; and seminars. For more information please contact Terry Young.

See our ad on the back cover

# Platinum Package Vendors

See our ad on page 20	<p><b>HME Incorporated</b>          1950 Byron Center Avenue          Wyoming, Michigan 49519          Phone: 616-534-1463 FAX: 616-534-1967          Website: www.firetrucks.com  <b>Contact: Ken Lenz</b></p>	<p>The HME Ahrens-Fox® name evokes the rich history and heritage of the finest fire trucks ever built. HME made its mark on the industry in the 1970's with advanced, custom chassis designs, quality engineering and manufacturing. Today HME stands alone as the world's largest single-source producer of custom, stainless steel fire apparatus.</p> <p>Always forward thinking and breaking ground with new fire apparatus designs and engineering, HME Ahrens-Fox®, meets the needs of today's budget minded departments.</p>
See our ad on page 6	<p><b>Judicial Correction Services</b>          1678 Montgomery Highway,          Suite 104 #334          Hoover, Alabama 35216          Phone: 888-527-3911 FAX: 251-990-7907          E-mail: kegan@judicialservices.com          Website: www.judicialservices.com  <b>Contact: Kevin Egan</b></p>	<p>JCS provides case supervision for the purpose of reducing jail expense and improving defendant services. JCS ensures that court orders, including prompt remittance of fines, are followed. No more overdue fines, stacks of letters, large jail expense or collection agencies. "Helping municipal court clerks kick their heels up in joy" is what one client said about Judicial Correction Services after implementing supervised probation. According to another: "It's like having extra staff a phone call away." Supervised probation works and is available at no-charge to your city. More than 100 Alabama courts have appointed Judicial Correction Services. Learn why for yourself. Give us a call and let's chat.</p>
See our ad on page 37	<p><b>NAFECO</b>  <b>North America Fire Equipment Co., Inc.</b>          1515 West Moulton Street          Decatur, Alabama 35601          Phone: 256-353-7100 FAX: 256-355-0852          E-mail: rwoodall@nafeco.com          Website: www.nafeco.com  <b>Contact: Ronald Woodall</b></p>	<p>NAFECO carries complete lines of Fire, Police, and EMS equipment, KME Fire Apparatus and industrial safety products. Established in 1968, we are the largest stocking fire equipment distributor in the US. Our Public Safety Division can meet all your uniform, stationwear and high visibility needs, while our Fire Division can assist with your PPE needs. NAFECO also offers a complete parts and service department for apparatus, SCBA and compressors. We look forward to serving you!</p>

# Gold Package Vendors

**Carr, Riggs, and Ingram, LLC**  
**Enterprise Contact: Hilton Galloway**  
 1117 Boll Weevil Circle  
 Enterprise, Alabama 36330  
 Phone: 334-347-0088 Fax: 334-347-7650  
 E-mail: hgalloway@cricpa.com

**Birmingham Contact: Brian Barksdale**  
 2100 16th Avenue, South, Suite 300  
 Birmingham, Alabama 35205  
 Phone: 205-933-7822 Fax: 205-933-7944  
 E-mail: bbarksdale@cricpa.com  
 Website: CRIcpa.com; Blog: blog.CRIcpa.com

CRI's governmental auditing and accounting industry knowledge, insight, and client accessibility ensure the delivery of timely, high-quality, and cost-effective solutions. Our more than 150 governmental clients include municipalities, boards of education, utility boards, and transportation agencies ranging from revenues under \$100,000 to budgets in excess of \$400 million.

Core services include financial statement audits (including OMB Statement A-133), internal control reviews and recommendations, accounting issues consulting, and forensic investigations. Join our governmental conversation from blog.CRIcpa.com.

**RDS-Revenue Discovery Systems**  
 4131 Carmichael Road, Suite 19  
 Montgomery, Alabama 36106  
 Phone: 334-272-2247 FAX: 334-272-7197  
 E-mail: smorris@revds.com  
**Contact: Stephen Morris**

RDS has more than 33 years of experience providing local governments with tax and license administration, tax and license discovery & recovery, and compliance examination services designed to ensure taxpayer and other revenue source compliance. We are committed to delivering government solutions based on competitive pricing and exceptional customer service. Our goal is to provide you with high value solutions and a trusted relationship that will continue for years to come.

Pete Yonce	Yolanda Watkins
205-423-4110	334-272-9995
pyonce@revds.com	ywatkins@revds.com



# Silver Package Vendors

---

## **Alabama 811**

3104 Bates Lane  
Fultondale, Alabama 35068  
Phone: 205-731-3206 FAX: 205-731-3249  
E-mail: mdory@al811.com  
Website: www.al811.com  
**Contact: Michele Dory**

Alabama 811 is a non-profit organization established to provide a centralized one call notification system as a means to safeguard against injury and loss of life, to protect public services and to prevent damage to underground facilities by providing for prior notification of excavation and demolition activities. Notification to underground facility owners is required by Alabama Act 94-487.

---

## **Converged Networks, Inc.**

1295 Newell Parkway  
Montgomery, Alabama 36110  
Phone: 334-271-5520 FAX: 334-271-5519  
E-mail: glockhart@cnisoutheast.com  
Website: www.converged-networks.com  
**Contact: Greg Lockhart**

Converged Networks, Inc. is a leading provider of Unified Communications in the southeast, serving clients in Alabama, Georgia and the Florida panhandle. We provide high quality VoIP telephony solutions from ShoreTel, a world-wide leader in IP telephony. ShoreTel's Unified Communications solution brings together VoIP telephony, instant messaging, conferencing, mobility, presence and collaboration capabilities into a seamless business environment. Call us for a free analysis and find out how Unified Communications can help your organization.

---

## **Lee Helms Associates, LLC**

236 Town Mart  
Clanton, Alabama 35045  
Phone: 205-280-3027 FAX: 205-280-0543  
E-mail: lee@leehelmsllc.com  
Website: www.leehelmsllc.com  
**Contact: Lee Helms**

Consulting for EMA / Home Land Security, Public Safety, Planning / Training / Exercises; Disaster Response and Recovery; and Enhanced 911 Systems.

---

## **Local Government Corporation**

714 Armstrong Lane  
Columbia, Tennessee 38401  
Phone: 800-381-4540 FAX: 931-381-0678  
E-mail: marketing@localgovcorp.com  
Website: www.localgovcorp.com  
**Contact: Stacy Hardy**

Local Government Corporation, headquartered in Columbia, Tennessee, was established in 1977 as a private, not-for-profit corporation chartered to provide computer services to local government entities. These services are provided on a cost recovery basis, with local governments benefiting from the economies of a large-scale computer organization. With the assistance of state agencies, LGC has developed many software applications to meet the management needs and legal requirement of local governments. LGC prides itself in providing a total technical solution including all software, hardware, installation, training, support, website design, and network maintenance for its customers.

---

## **Municipal Code Corporation**

Dale Barstow, Vice President of Sales  
P. O. Box 2235  
Tallahassee, Florida 32316  
Phone: 800-262-2633 FAX: 850-575-8852  
E-Mail: info@municode.com  
Website: www.municode.com  
**Contact: Dale Barstow, Vice Pres. of Sales**

Municipal Code Corporation has served Alabama Municipalities for over 50 years. Our well known services include: codification, recodification, code supplementation – printed & electronic, minutes imaging and electronic services, internet services, N.O.W. new ordinances on the web, munipro – codebank – ordbank, munibill\$: bill printing and mailing services, zoning and planning: smartcode or form-based code, departmental and enterprise wide content management solutions as well as legislative management solutions, document imaging, software / services, outsourced document scanning services.

# Silver Package Vendors

## **Polyengineering, Inc.**

P. O. Box 837 (36302)  
1935 Headland Avenue  
Dothan, Alabama 36303  
Phone: 334-793-4700 FAX: 334-677-9477  
E-mail: ddavis@polyengineering.com  
Website: www.polyengineering.com

**Contact: David Davis**

Polyengineering, Inc. is in its 54th year of providing professional engineering and architectural design services to public and private clients. Their office includes an on-site, full service water and wastewater laboratory. POLY's staff consists of over 60 multi-disciplined professionals including civil, electrical, mechanical, and environmental engineers; architects; environmental scientists; surveyors; and construction representatives. This diverse in-house staff allows Polyengineering to provide a broad range of engineering and architectural services.

## **Tuscaloosa Tourism and Sports Commission**

P. O. Box 3167  
Tuscaloosa, Alabama 35403-3167  
Phone: 205-391-9200 FAX: 205-759-9002  
E-mail: tjones@visittuscaloosa.com  
Website: www.visittuscaloosa.com

**Contact: Tina Jones**

Spirit. Energy. Passion. Tuscaloosa is rich in history and alive with attractions. The city contains its own dazzling array of sights, sounds, and flavors. The new Riverfront showcases the Tuscaloosa Amphitheatre, only a short walk to the downtown entertainment district. From the historic architecture of the Jemison Mansion, to the sounds of Tuscaloosa Symphony playing, to the taste of BBQ plus the refreshment of ice-cold sweet tea, Tuscaloosa will bring you to life in a colorful way. VISIT TUSCALOOSA!

# Bronze Package Vendors

## **ADAPCO, Inc.**

550 Aero Lane  
Sanford, Florida 32771  
Phone: 888-400-9085 FAX: 866-330-9888  
E-mail: dpowers@myadapco.com  
Website: www.myadapco.com

**Contact: Donnie Powers**

ADAPCO has been the leader in providing quality mosquito control products since 1985. We carry a comprehensive line of products representing over 25 manufacturers. ADAPCO also offers leading aerial and ground technology and equipment that was designed, developed, and is serviced by our ADAPCO team. ADAPCO can provide you with everything you need to run a successful program which includes surveillance, application and reporting. ADAPCO takes pride in being the name you trust for mosquito control.

## **Black Mountain Software, Inc.**

145 Southlake Crest, Suite 1  
Polson, Montana 59860-6961  
Phone: 800-353-8829 FAX: 406-883-1029  
E-mail: sales@blackmountainsoftware.com  
Website: www.blackmountainsoftware.com

**Contact: Heather Neff**

Nationwide leading software provider of fund accounting, payroll, and utility billing solutions for Municipalities and Utility Districts. Our software products are full-featured and highly integrated to improve operational efficiency, including periodic updates that reflect new technology opportunities, user suggestions, and changes in laws and standards. Discover a better alternative! **Call us today to learn more!**

## **Great West Retirement Services**

450 S. Union Street  
Montgomery, Alabama 36104  
Phone: 334-240-0057  
FAX: 334-240-0071  
E-mail: donald.erwin@gwrs.com

**Contact: Donald Erwin**

Great-West Financial<sup>SM</sup> is one of America's leading providers of defined contribution retirement plans and an expert in lifetime retirement solutions. With headquarters in Greenwood Village, Colorado, and regional offices around the country, Great-West has a long history of providing financial security for Americans.

---

**Mauldin & Jenkins, CPA, LLC**

2000 Southbridge Parkway, Suite 501  
Birmingham, Alabama 35209  
Phone: 888-277-0080 FAX: 205-445-2940  
E-mail: medwards@mjcpa.com  
Website: www.mjcpa.com

**Contact: Miller Edwards**

Since 1918, Mauldin & Jenkins has based our service on personal attention to our clients and technical competency combined with integrity, honesty and commitment. We employ more than 240 professionals, 65 of whom have current governmental accounting, auditing, financial reporting and consulting experience. On an annual basis, we provide more than 60,000 hours of professional services to our 200 governmental entities in the Southeast. We understand the burdens, issues and complexities placed on governmental organizations. Our Birmingham office serves governmental clients in Alabama.

---

**Neptune Technology Group, Inc.**

1600 Alabama Highway 229  
Talladega, Alabama 36078  
Phone: 334-283-6555 FAX: 334-283-7293  
E-mail: npeterson@neptunetg.com  
Website: www.neptunetg.com

**Contact: Niki Peterson or Kevin Smith**

Neptune Technology Group is a pioneer in the development of automatic meter reading (AMR) and advanced metering infrastructure (AMI) technologies for more than 47 years. Since 1892 Neptune has continually focused on the evolving needs of utilities – revenue optimization, operational efficiencies, and improved customer service. Neptune offers a fully integrated migration path for its utility customers to meet their needs now and in the future.

---

**Sales Tax Auditing & Collection Services (STACS)**

P. O. Box 3989  
Muscle Shoals, Alabama 35662  
Phone: 256-383-5569 FAX: 256-383-3496  
E-mail: salestax@comcast.net  
Website: www.stacsonline.com

**Contact: Don Allen**

STACS provides low cost sales, use, rental, lodging and gasoline tax collection and auditing for local governments throughout the state of Alabama. Personal service to both local governments and taxpayers are our specialty along with Toll Free telephone service and a website for rate information and for downloading applications and reporting forms. STACS provides online filing through the click2file system.

---

**Sealmaster / Alabama**

540 37th Street North  
Birmingham, Alabama 35222  
Phone: 205-591-9779 FAX: 205-591-9700  
E-mail: alan@sealmasteralabama.com

**Contact: Alan Cashion**

SealMaster /Alabama is your “one stop shop” for all pavement maintenance and sport surfacing products including pavement sealers, cracksealing products, traffic paints, tennis and running track surfacing products. We also sell equipment and tools. For a free catalog, contact a SealMaster representative or call a store near you or visit us at sealmaster.net. Contact us to learn how we can help you protect and maintain your pavement. Locations – Birmingham – 205-591-9779; Mobile – 251-452-0769

---

**Taylor Power Systems**

415 Highway 49 South  
Richland, Mississippi 39218  
Phone: 601-922-4444 FAX: 601-922-6020  
E-mail: lwadsworth@taylorpower.com or  
lsperry@taylorpower.com  
Website: www.taylorpower.com

**Contact: Lisa Wadsworth – Birmingham  
or Lisa Sperry - Mobile**

In today's world you can know that in the event of severe weather your generator needs will be met. Some may take this for granted but not at Taylor Power Systems. For twenty six years the Taylor name is synonymous with dependability. TPS brings to you a full line of American-made generators designed to meet the specific needs of you, our customer. Taylor Power Systems stands ready to be of assistance to you with sales, service and rental from our two Alabama locations, Birmingham (205-428-1130) and Mobile (251-443-8402).



# Join us in Montgomery for our 36th EXPO!

On May 19, the 2013 EXPO Hall doors will open to more than 50,000 square feet of city solutions! This unique showcase offers an excellent opportunity for the League's 1,000+ delegates and guests to network and make valuable connections with more than 300 vendor representatives. The League will kick off its 36th annual EXPO on Sunday evening at 5:30 p.m. with the Exhibitors Showcase – a casual reception featuring live music, heavy finger foods and an open bar in the Expo Hall. Monday morning the Hall will open at 10:30 a.m. followed by a full day of events and opportunities for officials and vendors to meet.

**ALM vendors are here for you!** This one-stop shopping opportunity only happens once a year. Take the time to experience the entire exhibit hall and visit ALM's vendors to get answers to questions, learn solutions for problems and return home with key information for your municipality! A vendor listing for this year's Expo and the promotional video clip can be previewed at [www.alalm.org](http://www.alalm.org). To reserve a booth space in Montgomery, contact Cindy Price at (334) 262-2566, or via e-mail at [cindyp@alalm.org](mailto:cindyp@alalm.org).

**The Monday Luncheon will be held in the Expo Hall.** This provides Convention attendees additional time for face-to-face interaction with exhibitors. There will be plenty of seating.

Municipal Marketplace vendor prize drawings will be featured in the Expo Hall during the Sunday evening reception. *Officials must be present to win the featured prize drawings.*

## 2013 Municipal Flag Showcase

The League will hold its Third Annual Municipal Flag Showcase at this year's ALM Annual Convention in Montgomery. **The registration form for the Flag Showcase can be downloaded from [www.alalm.org](http://www.alalm.org).**

- Flags will be showcased in a prominent area of the Expo Hall on Sunday, May 19, 2013, 5:30-7:00 p.m. and Monday, May 20, 2013, 10:30 a.m. - 2:30 p.m. in Montgomery at the Renaissance Montgomery Hotel & Spa at the Convention Center.
- Flags can be checked in at the main ALM Convention Registration Desk on Saturday, May 18, 2013, during regular registration hours. Flags must be checked in **NO LATER** than 3:00 p.m. on Sunday, May 19, 2013.
- **You must provide a flag stand for your Municipal Flag.** Please label your flag stand with your contact information.
- ALM will provide a placard for each flag identifying the Municipality.
- Flags must be picked up from the display area **NO LATER** than 5:30 p.m. on Monday, May 20, 2013. *The League is not liable for flags or stands not picked up by this time.*
- **Deadline for submitting the application form is May 1, 2013.**
- A confirmation will be emailed to you prior to this event. We will ask for a contact number of the municipal official on-site for notifications during the Convention.
- What size flag? The standard size flag is 3 feet by 5 feet. Flag sizing should be close to this size.
- What height does your flag pole need to be? The average height is 6 feet to 8 feet. The height should not be over 8 feet if at all possible.
- If your municipality does not have a flag and is interested in purchasing one, please contact Sharon Carr at (334) 262-2566 for more information.



# 2013 Annual Convention Information

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

**NOTE:** Use the forms provided in this issue of the Journal or register online at [www.alalm.org](http://www.alalm.org). Online registration will be available February 1. (Registration materials will not be mailed.)

**Online Registration:** To make the registration process more efficient, delegates are encouraged to pre-register. Pre-registration will assist the League staff in making arrangements for attendance at this year's convention. The deadline for pre-registration is April 26, 2013. After April 26, delegates must register at the Convention Registration Desk. It is also important for delegates and their spouses who plan to participate in the golf tournament to register as soon as possible.

**Hotel Accommodations:** Hotel information was mailed in November to all municipal officials and clerks. Please note that Municipal Officials are responsible for making their own reservation at their choice of hotel. Please visit [www.alalm.org](http://www.alalm.org) for hotel contact and room block information.

## IF NOT REGISTERING ONLINE:

1. Complete the convention registration forms in this issue of the Journal to register yourself and your spouse (if applicable). Use one form for each delegate registered.
2. Complete golf tournament registration (provided on convention registration form) if applicable.
3. Enclose a payment for the appropriate convention registration fee and golf tournament fee (if applicable). Payment in full must accompany each registration form.
4. Return the forms and payment or credit card number to Alabama League of Municipalities, Attention: Convention Registration, P.O. Box 1270, Montgomery, AL 36102. (You may fax your forms with credit card payment to 334-263-0200.) **Credit card numbers will not be accepted by email.**

**NOTE:** Although a separate convention registration must be completed for each delegate, the municipal clerk may send registration forms and a payment for all municipal officials and employees to the League in a single envelope. **NO CONVENTION REGISTRATIONS BY PHONE WILL BE ACCEPTED.**

Envelopes must be postmarked by the dates below. There is no extra charge for children under 6; however, children must be pre-registered. The full convention fee covers the following events for each delegate and children under 6: Saturday Night Welcome Party, Sunday Night Exhibitors Showcase and Reception, Monday Luncheon and Monday Reception and Banquet. The registration fee for spouses includes Saturday Night Welcome Party, Sunday Night Exhibitors Showcase and Reception, Monday Spouses Breakfast, Monday Luncheon and Monday Reception and Banquet.

## CONVENTION REGISTRATION FEES:

\$300 through April 12, 2013	(\$20 nonrefundable registration fee for spouses*)
\$325 from April 13 through April 26, 2013	(\$30 nonrefundable registration fee for spouses*)
\$375 after April 26, 2013 (on-site registration)	(\$50 nonrefundable registration fee for spouses*)

\*Spouse registration cannot be paid by the municipality; therefore, registration must be paid by the official at the time of registration.



The astronomical cost of putting on a convention makes it impossible to allow free admittance of guests of delegates at any function. Delegates who bring a guest may purchase additional tickets for the various events at the registration desk. For children ages 6 and over and guests, the full registration fee must be paid or single tickets to events may be purchased at the registration desk at the following discounted prices:

**Monday Luncheon - \$25.00      Monday Banquet - \$40.00**

*If you need assistance due to disability or other special services, please call Theresa Lloyd (334) 262-2566 before May 3, 2013. For additional guest information, please contact Krystle Bell at (334) 262-2566.*

### **CONVENTION REFUND / CANCELLATION POLICY:**

In order to receive a partial refund of your registration fee, your cancellation request must be received in writing by **May 3, 2013**. A \$60 administrative fee will be charged for all cancellations regardless of the reason for cancellation (including medical emergencies). No refunds will be given after this date. Registration fees for spouses are nonrefundable. **ALM cannot make exceptions to this policy.**

**Distinguished Service Awards:** This year the League will present its Distinguished Service Awards to Mayors, Council Members, Clerks, Administrative Assistants, City Managers, City Administrators, Commissioners, Attorneys and Judges who have served for 20, 30 or 40 years in municipal office. Service in multiple positions may be combined to make the required number of years. These service awards will be presented at the Annual Convention during the banquet on Monday night, May 20. Please help us prepare for the presentation of the League Distinguished Service Awards by notifying League Headquarters by **March 20, 2013** of any official who has served for 20, 30 or 40 years in municipal office and has not previously received a service award for the number of years submitted. **Only entries received by the deadline will be accepted.** You can download a form for this purpose at [www.alalm.org](http://www.alalm.org).

### **2013 ANNUAL MUNICIPAL GOLF TOURNAMENT:**

**May 19, 2013 • Lagoon Park Golf Course • Montgomery, Alabama**

The fee is \$40 for each participant, including riding cart, green fees and lunch. The deadline for refund requests is May 3, 2013. You will return in plenty of time for the Roundtable Discussions.

**For additional information go to [www.alalm.org](http://www.alalm.org).**

- \$ 40 per player
- All skill levels welcome
- Great networking with fellow officials
- Door Prizes
- Best team score. Everyone plays their own ball
- 9-Hole Golf Tournament
- Awards Luncheon following Tournament
- Must be registered for the Convention

**Prize Eligibility/Awarding Prizes:** All prizes will be awarded at the Awards Luncheon. You must be present to win a door prize. All players are presumed to know their eligibility for prizes. Other than door prizes, no player will be awarded more than 1 individual prize. To be eligible to win an individual prize, a participant must be a municipal official, a municipal employee or their spouse, and the participant must be registered for the convention. A complete listing of Prize Eligibility and Awarding Prizes information is available at [www.alalm.org](http://www.alalm.org). **Additional information will be sent to you upon receiving the paid registration fee.**

*Golf Teams must be as equal as possible. Use this list of Player Categories to help form a foursome. Each team registering as a foursome must consist of an A, B, C, and D player. Please list your category in the appropriate place on the registration form.*

**A Player** = Average Score 80 or below  
**B Player** = Average Score 81 - 90  
**C Player** = Average Score 91 -100  
**D Player** = Average Score 101 +



# 2013 Annual Convention Registration

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

## DELEGATE REGISTRATION FORM

(Mayors, Councilmembers and Clerks) Please print or type all information

Mail completed application to: Alabama League of Municipalities, Attn: 2013 ALM Convention, P O Box 1270, Montgomery, AL 36102

Name \_\_\_\_\_ Municipality \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_  
(to appear on badge)

Daytime Phone # \_\_\_\_\_ E-mail \_\_\_\_\_

Address \_\_\_\_\_ City/Town \_\_\_\_\_ Zip \_\_\_\_\_

Spouse Name: First \_\_\_\_\_ Last \_\_\_\_\_  
(see registration fees below)

### Through April 12, 2013

- \$300 Delegate Registration (Cancellation request must be received in writing by May 3, 2013)
- \$ 40 Golf Registration Choose Category A, B, C, or D Category \_\_\_\_\_ (Email required for Foursome Info)
- \$ 20 Spouse Registration (Non-refundable)

### April 13 - April 26, 2013

- \$325 Delegate Registration (Cancellation request must be received in writing by May 3, 2013)
- \$ 40 Golf Registration Choose Category A, B, C, or D Category \_\_\_\_\_ (Email required for Foursome Info)
- \$ 30 Spouse Registration (Non-refundable)

### After April 26, 2013 (On-site registration only)

- \$375 Delegate Registration (Cancellation request must be received in writing by May 3, 2013)
- \$ 40 Golf Registration Choose Category A, B, C, or D Category \_\_\_\_\_ (Email required for Foursome Info)
- \$ 50 Spouse Registration (Non-refundable)

Golf Teams must be as equal as possible. Use this list of Player Categories to help form a foursome. Each team registering as a foursome must consist of an A, B, C, and D player. Please list your category in the appropriate place on the registration form.

**A Player** = Average Score 80 or below  
**B Player** = Average Score 81 - 90  
**C Player** = Average Score 91 -100  
**D Player** = Average Score 101 +

## PAYMENT INFORMATION

Check  Visa  MC  AmEx

Card # \_\_\_\_\_ Expiration Date \_\_\_\_\_

Name on card \_\_\_\_\_ Signature \_\_\_\_\_

Billing Address \_\_\_\_\_

### For Office Use Only

Notes:

Date Received

Amount Paid

Check #



*Would you use a doctor who  
never attended medical school?*

**Don't expect your citizens to settle either.  
Become a Certified Municipal Official.  
Visit [www.alalm.org](http://www.alalm.org) for details.**



# 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

**Alcoholic Beverages:** The decision of the municipality in denying an application for a liquor license is subject to judicial review and is reversible if it is shown that the municipality acted arbitrarily in denying the application for a liquor license. *Ensley Seafood Five Points, LLC v. City of Birmingham*, 98 So.3d 1149 (Ala.Civ.App.2012)

**Arrests:** During a custodial interrogation, if the suspect unequivocally requests counsel at any time before or after the suspect waives his *Miranda* rights, the interrogation must cease until an attorney is present. A defendant's statement to police that it would be time to call an attorney if he needed one was not an unequivocal assertion of his right to counsel. *Thompson v. State*, 97 So.3d 800 (Ala.Crim.App.2011)

**Bankruptcy:** Alabama municipalities that do not have outstanding bonds are not excluded from eligibility to file for bankruptcy. *City of Prichard v. Balzer*, 95 So.3d 1 (Ala.2012)

**Courts:** A mandamus petitioner failed to show that there was an imperative duty of the trial judge to perform, accompanied by a refusal to do so. Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner to the order sought, (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so, (3) the lack of another adequate remedy, and (4) properly invoked jurisdiction of the court. *Wolfe v. Wal-Mart Stores, Inc.*, 93 So.3d 937 (Ala.2012)

**Courts:** There is no limit on the time to begin a proceeding to set aside a void judgment. A void court order is a complete nullity. Typically, a court retains jurisdiction to modify a sentence for a limited period after the sentence is pronounced, however, probation may be granted at any time before execution of the sentence. An order granting a defendant's request for probation after the defendant started serving his sentence was void. *State v. Uitley*, 94 So.3d 414 (Ala.Crim.App.2012)

**Courts:** The prosecution cannot open the door to rebuttal prior bad act evidence by cross-examining a defendant

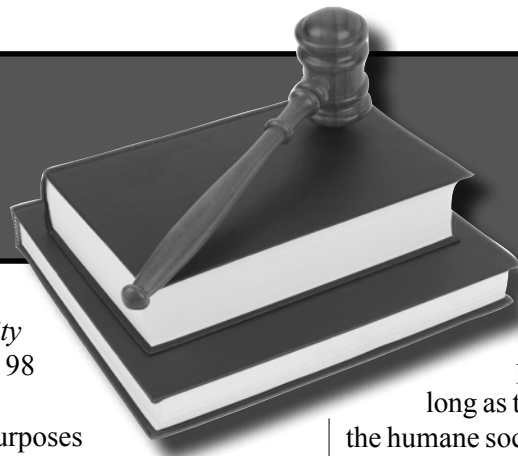
about his character. *Hammond v. State*, 94 So.3d 418 (Ala.Crim.App.2012)

**Courts:** Revocation of a community corrections sentence for possession of marijuana based on the defendant's possession of contraband violated due process where the defendant did not admit to the violation, the trial court's decision was based on an officer's unsworn statements, and the defendant was not given an opportunity to cross-examine witness or present evidence. *Reese v. State*, 97 So.3d 184 (Ala.Crim.App.2012)

**Courts:** It is incumbent upon the prosecution to present evidence independent of the accomplices' testimony which connects the defendant to the commission of the crime, or else, any guilty party is apt to implicate an innocent party in exchange for a grant of immunity from prosecution. The test for determining whether there is sufficient corroboration of the testimony of an accomplice consists of eliminating the testimony given by the accomplice and examining the remaining evidence to determine if there is sufficient incriminating evidence tending to connect the defendant with the commission of the offense. *Jackson v. State*, 98 So.3d 35 (Ala.Crim.App.2012)

**Ethics Laws:** The offense of using an official position or office for personal gain (36-25-5, Code of Alabama) may be committed intentionally, knowingly, recklessly, or as the result of criminal negligence. The absence of an express statement in a statute as to the requisite mental state did not render that statute unconstitutionally vague. The statute defining the offense simply increases the degree of the offense or its punishment if there is a higher level of mental culpability. Also the statute was not unconstitutionally vague on the basis that it allegedly gave law-enforcement officers virtually complete discretion in determining whether a person had violated it. The statute objectively defined the conduct that was proscribed, provided explicit standards to those who apply the laws, and nothing in the statute gave any discretion to law-enforcement officials. *State v. Turner*, 96 So.3d 876 (Ala.Crim.App.2011)

**Licenses and Business Regulations:** A municipality has broad discretion to approve or disapprove the issuance of liquor licenses with respect to locations within the municipality. Notwithstanding the absence of restrictions in a statute or ordinance, liquor licensing authorities have, as a general rule, been permitted to deny licenses where the proposed location is improper by reason of the location and



its surroundings. *Montgomery City Council v. G & S Restaurant*, 98 So.3d 1 (Ala.Civ.App.2011)

**Open Meetings Act:** For purposes of the Open Meetings Act, e-mail that one member of a city board of education sent to other members concerning the member's dissatisfaction with a proposed change to board policy, without evidence of responses from the other members, did not involve "deliberation" and thus did not constitute a "meeting." The e-mail was a unilateral declaration of the member's ideas or opinions, not an exchange of information or ideas among a quorum of board members. *Lambert v. McPherson*, 98 So.3d 30 (Ala.Civ.App.2012)

**Taxation:** Online travel companies were not engaged in the business of renting or furnishing any room or rooms in any hotel as required for them to be liable for municipal lodgings tax. *City of Birmingham v. Orbitz, LLC*, 93 So.3d 932 (Ala.2012)

**Taxation:** Like tax exemptions, tax refunds are to be construed in favor of taxing authority. *Magee v. Home Depot U.S.A., Inc.* 95 So.3d 781 (Ala.Civ.App.2011)

#### DECISIONS FROM OTHER JURISDICTIONS

**Americans with Disabilities Act (ADA):** The Americans with Disabilities Act did not require a city to provide a deaf motorist with a sign language interpreter during his traffic stop or when he was handed the written charges against him, but the city may have violated the statute by not providing him an interpreter during a post-arrest interrogation. *Bahl v. County of Ramsey*, 695 F.3d 778 (8<sup>th</sup> Cir.2012)

#### ATTORNEY GENERAL'S OPINIONS

**Appropriations:** A Board of Education may transfer real property in exchange for various services related to educational and community development and/or monetary consideration, as long as the value to be derived is more than nominal consideration. The Board is responsible for determining the value of any non-monetary services to be received. Section 94 of the Alabama Constitution is not violated when the questioned transfer or action promotes some public purpose and is consistent with the goals and the authority or power of the public entity. AGO 2013-008

**Conflicts of Interest:** Section 11-43-12 of the Code of Alabama does not prohibit a city employee from holding the

position of president of the humane society providing contractual services to the city, so long as the employee receives no compensation from the humane society. Whether such action may be prohibited pursuant to the State Ethics Law is a matter that should be submitted to the Ethics Commission AGO 2013-002

**Conflicts of Interest:** Section 11-43-12 of the Code of Alabama prohibits the receipt of federal grant funds by a municipal employee when the grant program is administered by the municipality for which the employee works. A municipal employee, who is otherwise qualified, may not participate in a Community Development Block Grant program administered by the municipality he works for. AGO 2013-010

**Elections:** To implement the Help America Vote Act, the Alabama Legislature repealed the challenge-ballot procedure and instituted the provisional-ballot procedure. Alabama law authorizes an inspector to challenge a person's right to cast a regular ballot based upon knowledge that the person is not entitled to vote at that precinct or in that election. An inspector shall act to challenge a voter based upon actual personal knowledge. The inspector is not required to accept challenges from other qualified electors. An inspector's challenge of a voter based upon constructive, indirect knowledge must be based upon information that is (1) readily verifiable; (2) subject to objective determination; and (3) sufficiently credible to instill, in the inspector, a good-faith belief that the voter is not qualified to vote in the precinct. AGO 2013-003

**Expenditures:** A municipality may not pay compensation to a private citizen that is not for a public purpose authorized by a local act or other law. AGO 2013-005

**Fire Districts:** A Fire District ("District") may contract with a Water Authority ("Authority") for the use, installation and maintenance of fire hydrants. The Authority and District should cooperate to enable the District to provide the most effective fire protection for a reasonable cost for its residents. If the District enters into a contract that requires the District to install and maintain the hydrants, the District is subject to the Public Works Bid Law. However, the contract between the District and the Authority is not required to be competitively bid. AGO 2012-092

**Licenses and Business Regulations:** A County License Commissioner is not authorized to send advertisements within the license renewal mail-outs. AGO 2012-090



**Licenses and Business Regulations:** Pursuant to subsections (4) and (5) of section 34-27C-17 of the Code of Alabama 1975, a security company must maintain an employer-employee relationship with collectively less than 100 security officers at all times during the calendar year for the company and its security officers to be exempt from the Security Regulatory Act. AGO 2013-004

**Public Works Bid Law:** A contract for project management and planning of a housing development, not including construction services between a municipal housing authority and a developer, is exempt from the Public Works Law under section 39-2-2(d) of the Code of Alabama. A private entity is not subject to the Public Works Law. AGO 2012-089

**Surplus Property:** Section 11-47-20 of the Code of Alabama prohibits a municipality from disposing of real property while such property is being currently used by the municipality. AGO 2012-091

**Utilities:** A Water Authority formed pursuant to section 11-88-1, *et seq.*, Code of Alabama 1975, may not deny or discontinue water service to a new owner of property purchased at a foreclosure sale for the delinquent charges of a former owner. AGO 2013-007 ■

**Do you know what's  
happening *This Week*?**  
**We do!**

**This Week**

From  
the  
League



Stay informed by subscribing to *This Week*, the League's weekly e-newsletter, which is emailed every Tuesday morning.

**Subscriptions are free** – visit [www.alalm.org](http://www.alalm.org), click on the link at the top of the home page and complete the form.

You will also receive the League's weekly legislative e-newsletters, *State House Advocate* and *Legislative Bulletin*, when the Legislature is in session.

# F.A.Q.

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

## ETHICS

**Once a public official is sworn in, how much time does the official have to obtain ethics training?**

Alabama law requires that all municipal mayors and council members must obtain training within 120 days of being sworn into office. Training may be conducted either online or in person. Evidence of completion of the training shall be provided to the Alabama Ethics Commission via an electronic reporting system provided on the official website. *See* Section 36-25-4.2(a)(4), Code of Alabama 1975.

To simplify training of public officials, the Alabama Ethics Commission has provided an on-line video. This 55 minute video satisfies the training requirement. Public officials must watch the entire video and complete the form following the video in order to be certified. Public officials and employees can access this video on the Alabama Ethics Commission website at [www.ethics.alabama.gov](http://www.ethics.alabama.gov).

**NOTE:** The Ethics Commission has agreed to waive the 120-day training requirement for officials who attend the Ethics training seminar at the League Convention in Montgomery (May 18-21) at which time Ethics Commission Director Jim Sumner and General Counsel Hugh Evans will provide in-depth training on how the Ethics Law affects municipal officials and employees. This training at the League's convention will satisfy the Ethics Law requirement. *Municipal mayors and council members who do not plan to attend the seminar at the League's convention are still bound by the 120-day requirement to complete ethics training.* ■

# Dangerous Damages Exposure — continued from page 7

The employee is sued because he or she performed the act that allegedly led to liability. The municipality is sued because it employed the person.

If the alleged action is ultimately found to be negligence, damages will be assessed to compensate the person or entity that was injured by the action. Damages against the municipality are capped at \$100,000 for an individual plaintiff. In extreme cases, damages against the municipality may exceed the cap limit. In other words, the court may find that the injured party was damaged beyond the limit. But to protect the taxpayers from paying what could be devastating damage claims, the most the injured plaintiff can recover against the municipality is \$100,000.

The problem is that Alabama follows what is called joint and several liability. “In Alabama, damages are not apportioned among joint tortfeasors; instead, joint tortfeasors are jointly and severally liable for the entire amount of damages awarded.” *Matkin v. Smith*, 643 So. 2d 949, 951 (Ala. 1994). In other words, if there are two defendants, both are liable for the full amount of any damages awarded.

Making an employee personally responsible for the damage award in a municipal case contradicts a number of other legal principles that courts have followed in the past. For example, courts have previously held that an action against a municipal officer or employee who acted in the line and scope of his or her duties is, in actuality, an action against the municipality, not the individual. Additionally, courts have also ruled that the tort cap limits apply even where a municipality may have to pay for the employee’s torts because it is indemnifying the employee.

Under federal law, employees who act in good faith in the line and scope of their duties are protected by qualified immunity from any liability claims in federal court. The purpose behind qualified immunity is to free public employees and officials from fear that their actions will be second-guessed by the courts, which may determine there was a “better” course of action. If the public employee can demonstrate that he or she acted in good faith and there was no violation of a clearly expressed court order or statute, the actions are protected from federal liability. The court is not going to second guess their actions.

The purpose behind qualified immunity should guide our state courts in this instance. Municipal employees should know when they act that they have the protection of the caps so that they will feel free to act without undue fear of being sued. The public has the right to expect municipal employees to perform their duties to the best of their abilities. At times, these functions require the exercise

of discretion or decision-making skills. Often, there are a number of potential outcomes. Which course of action is best is not always clear at the outset.

No one disputes the need to hold municipal agents individually liable for their own wanton or intentional torts. That is not the issue here. Instead, the court’s line of reasoning in *Suttles v. Roy* makes these agents personally liable even when they perform these duties faithfully and to the best of their abilities.

Accidents are part of life and we cannot guard against all eventualities. The courts and the Legislature have determined that municipalities should compensate injured parties when this occurs. But when a public employee acts in good faith and in the line and scope of his or her job duties, the employee should not be subjected to individual liability if an error occurs. The Legislature has determined that, in order to help make a plaintiff whole in a lawsuit against the municipality, damages should be capped. Employees have to know that these caps protect them as well in order for them to act without undue fear of lawsuits.

## Significant Financial Impact on Municipalities

The damage caps were intended to protect municipal taxpayers. If the courts continue to follow the present line of reasoning, in order for municipal governments to protect their employees from individual damage awards against them for actions they perform while they serve the public, municipalities will have to explore ways different avenues to pay claims that exceed the statutory caps. Any solution will, necessarily, have a financial impact on municipalities.

It is also important to note that this protection cannot be afforded by indemnification. In *Birmingham v. Benson*, 659 So.2d 82 (Ala.1995), the Alabama Supreme Court stated that “a municipality may indemnify a negligent employee only up to the limits” of the damages cap. To do otherwise would, in the court’s opinion, impact the municipal treasury and defeat the purpose of the damages caps.

So, alternatives must be explored. If municipalities have to purchase additional insurance to cover their employees, this will also cost the taxpayers money. These damage awards will exceed those against the municipality itself, since the caps do not apply. As President Bradford indicated in his article, actuarial studies indicate that increased insurance costs without the caps in place will exceed 300 percent. Thus, taxpayers will be impacted by this line of cases.

The League will continue to follow developments in this area and work to protect municipalities and their employees. ■

# MUNICIPAL LEGISLATIVE ADVOCACY

Alabama Judicial Building, 300 Dexter Ave • February 19 & 26 • 8:30 a.m. until 5:00 p.m.  
Registration - \$100 • Five (5) CMO Credit Hours (Basic, Advanced, Continuing)

**T**he Annual Municipal Legislative Advocacy CMO is your opportunity to share your voice with the state's political leadership. It is important that the vital role our municipalities play in economic development, community enhancement and quality of life is repeatedly articulated to our state representatives.

Municipal Legislative Advocacy Day is the one day each year when you as a municipal leader have the opportunity to take your message to the State House so the power of our membership's collective voice is heard. A strong municipal presence at the State House demonstrates the effectiveness of the state's cities and towns in building a stronger Alabama economy.

8:30 – 9:15 a.m.	Registration
9:15 – 9:30 a.m.	Welcome
9:30 – 10:15 a.m.	Constitutional Revision Commission Update: Constitutional Articles being proposed during the 2013 Legislative Session and future Articles for the 2014 Regular Session
10:15 – 10:30 a.m.	Refreshment Break
10:30 – 11:15 a.m.	State Financial Outlook: Alabama General Fund and Education Trust Fund Budgets
11:15 – Noon	Legislative Panel Legislative Leadership and Governor's Legislative Office will discuss legislative initiatives
Noon – 1:00 p.m.	Lunch – Effective Advocacy: “Best Practices”
1:00 – 1:30 p.m.	League Advocacy Publications: How to Stay Informed and How Technology is Changing the Methods Through Which We Communicate
1:30 – 1:45 p.m.	Refreshment Break
1:45 – 2:30 p.m.	Action Alert: Legislation Affecting Municipalities
2:30 – 5:00 p.m.	Group Photo on Capitol Steps (weather permitting) Legislative Visits at the Alabama State House

## ATTENTION!

**Please make appointments to visit with your representatives on February 19 or 26  
between 3:00 and 4:00 p.m.**

**To Visit House Members Call 334-242-7600**

**To Visit Senate Members Call 334-242-7800**





**Apparatus  
Repair**

**Parts  
Department**

**SCBA  
Services**

**Rescue Tool  
Services**

**Compressor  
Services**

See Events, Recent Deliveries & Specials on [Facebook.com/NAFECO](https://www.facebook.com/NAFECO) >

# Recent Delivery

## Quick Attack Truck

**Ford F-550  
4x4 Super Cab**



**Kussmaul Battery Charger  
& Auto Eject Receptacle**

**Rear Wall Cab Storage for SCBA's,  
Flashlights & Thermal Image Camera**

**300 Gallons Water Tank**

**Warn 12,000 lb. Winch**

**3,000 Watt Power Inverter  
& Receptacles**

**12' Aluminum Rescue Style  
Skid Body**

**Transverse Roll-Out Tool  
Board & Tray With Custom  
Backboard Storage**

**Hose Trays  
Built Into Body**

**Folding Ladder Storage**

**LED Tripod Lights**



**Hale HPX300 Pump  
With Diesel Engine**

**Underbody Storage  
For Long Handle Tools**



**Akron Forestry Monitor**

©2012 On-Fire Marketing F111012\_ALA020\_EastFr\_RW\_rev1

See More Products & Services at [NAFECO.COM](http://NAFECO.COM) >

Click to Follow Us On:



**NAFECO**

**800-628-6233  
256-353-7100**

**info@nafeco.com  
www.nafeco.com**



**NAFECOcard**  
Gift Card Available  
[Learn More](#)



# Committee on State and Federal Legislation Annual Meeting December 13, 2012 • League Headquarters • Montgomery





## Low-interest loans ideal for:

Equipment Financing • Capital Improvement Projects • Refinancing

## Simple two-page application process:

Straight-forward • Quick Turnaround • No Obligation

**Congratulations to the Town of Priceville for choosing AMFund to finance its recent property acquisition!**



*This is our fourth loan with AMFund and we continue to be impressed with the program's quick, efficient process and competitive financing. AMFund has helped Priceville finance our newest fire truck, refinance our municipal buildings and purchase land for quality-of-life projects that will directly impact our community. – Mayor Melvin Duran, Priceville.*

# It's that simple.

[www.amfund.com](http://www.amfund.com)

Another value-added service provided by your Alabama League of Municipalities



Alabama League of Municipalities  
PO Box 1270  
Montgomery, AL 36102

Presorted Std.  
U.S. POSTAGE  
**PAID**  
Montgomery, AL  
PERMIT NO. 340

# Add Peace of Mind

The Municipal Worker's Compensation Fund has been serving Alabama's Municipalities since 1976 and is the second oldest league insurance pool in the nation!



- Directed by veteran Municipal Officials from Alabama
- Over 625 Participating Municipal Entities
- New Member Discounts
- Dividends as Renewal Credit. Over the past 15 years, MWCF has returned \$36,000,000 to its members
- Loss Control Services, Including:
  - Skid Car Training Courses
  - Fire Arms Training System
- Personalized Service
- Accident Analysis
- Free Safety Video Library
- Monthly Status Reports
- Safety Discounts Available

Photo by Elmore DeMott 2011 ©

**Contact Us!**  
Quick Quotes  
available online.  
[www.almwcf.org](http://www.almwcf.org)

**Steve Martin**  
Operations Manager, MWCF  
P.O. Box 1270  
Montgomery, AL 36102  
334-262-2566

**Terry Young**  
Marketing Manager, MWCF  
P.O. Box 43769  
Birmingham, AL 35243  
1-888-736-0210  
email: [terry@alalm.org](mailto:terry@alalm.org)