

# The Alabama Municipal JOURNAL

September 2013

Volume 71, Number 3

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CMO Graduates



2013 Basic  
CMO Graduates



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# The Alabama Municipal JOURNAL

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## On the Cover:

2013 CMO Commencement Ceremonies were held on August 14th in Montgomery marking the 18th graduating class of elected officials to receive the CMO designation and the 15th graduating class to receive Advanced certification.

Congratulations, graduates!

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# A Message from the Editor



## 2013 CMO Graduation Ceremony Held Last Month in Montgomery

Pictured on this month's cover are the 2103 Advanced and Basic CMO graduates who were able to attend the August 14th commencement ceremony. Congratulations to all the graduates! This year's ceremony was held in Montgomery's newly renovated City Hall Auditorium and we were once again fortunate to have former League Executive Director, Perry Roquemore, deliver the commencement address. Perry, who retired in 2011 with 37 years of service, understands the intricacies of local government and the daily challenges faced by elected officials. It was under his leadership that the Certified Municipal Official program was first developed in 1994. I've reprinted a small portion of his commencement speech below. It was well received and is definitely worth sharing:

*Carl Neu is President of Neu and Company and director for the Center for the Future of Local Government. He is also a former councilmember in Lakewood, Colorado. In an article printed in Texas Town and City, June 2010, Mr. Neu said that effective leaders and stewards, especially at the local level, must learn, exhibit and master at least the following seven attributes.*

1. Leaders engage people and their energies rather than give them ready answers and "quick fix" solutions.
2. Leaders inspire themselves and others to their very best efforts.
3. Leaders focus on the future and get agreement on common vision, goals, priorities, and direction.
4. Leaders empower and support – rather than control and direct – people toward achieving desired outcomes.
5. Leaders engender a perspective of "we" and partnership.
6. Leaders are principled persons possessing moral behavior, character, values and integrity.
7. Leaders promote mutual respect and civility in all relationships.

*All these essential elements, according to Mr. Neu, can be preserved, even in instances of controversy and disagreement, by discussing the issues rather than attacking and belittling those with whom we disagree or whose opinions differ from ours.*

*Mr. Neu spoke of seven essential attributes of good leadership. Similarly, in 2008, Dorothy Burton, a professional speaker, writer, and councilmember from Duncanville, Texas, spoke to the Maine Municipal Association on the "Seven Sins of Leadership". She listed those sins as follows:*

1. The first sin of leadership is the mother of them all – **Arrogance**. People admire confidence, not cockiness.
2. The second sin of leadership is **Foregoing purpose for popularity**. No one can be all things to all people. Your purpose should never be about you, but always about those you serve.
3. The third sin of leadership is **Ignoring your core** (i.e. your conscience). The depth of our conscience determines our character.
4. The fourth sin of leadership is **Lying**. While lies are cheap, the maintenance and embarrassing aftermath are so very costly.
5. The fifth sin of leadership is **Ruling out the Rules**. Follow the rules – don't bend them, don't break them and don't cover for those who do.
6. The sixth sin of leadership is **Underestimating Risk**. When confronted with a situation where there is doubt, take this simple advice because it works every time – when in doubt – don't.
7. Lastly, the seventh sin of leadership – as a public servant, you need to **Know Your Rights**. You have the right to remain silent. Every e-mail and every text can and will be used against you in the court of law or in the court of public opinion. Sometimes no response is the best response and the delete key is better than the send key.

*To quote Ms. Burton, "Public servants must lead and serve with integrity, must lead and serve with honesty, and must lead and serve with transparency. Because so many people are depending on you."*

## 2014 Quality of Life Awards Deadline: November 1, 2013

It's time to start compiling your entries for the League's 2014 Quality of Life Awards. **The deadline is November 1st.** The 2014 Call for Entries has been posted on the League's website at [www.alalm.org](http://www.alalm.org). Simply click on the link from the homepage and print the information. The Quality of Life Awards program was designed to recognize successful, innovative municipal projects that improve the quality of life for citizens and add value to the community by establishing partnerships and building community support. Winners for the three population categories will be featured in a video shown at the League's 2014 annual convention in Mobile in May. All League member municipalities are eligible to enter. Start putting your entries together now! If you have questions about this program, please feel free to contact me at [carrieb@alalm.org](mailto:carrieb@alalm.org).

Carrie

# The President's Report

Mayor Walt Maddox • Tuscaloosa



## 18th CMO Graduation Ceremony Held August 14th

**O**n August 18, the League held commencement ceremonies in Montgomery for its Certified Municipal Officials (CMO) Training Program. These graduation exercises marked the 18<sup>th</sup> group of officials to receive their Basic CMO certification and the 15<sup>th</sup> group to receive their Advanced CMO certification. My congratulations to all the graduates! As graduate of this program, I'm a firm believer in the League's municipal official training. It's specifically designed to guide and support municipal officials and to help us carry out our elected duties efficiently and effectively. I can personally attest that the information learned is invaluable to mayors and councilmember as we make critical decisions for our cities and towns. In addition, graduating from the Basic and Advanced CMO programs further signifies the commitment of Alabama's elected officials to our communities.

The League established the Certified Municipal Officials Training Program in 1994. It consists of a series of one-day continuing education programs designed for elected municipal officials – mayors and councilmembers – who voluntarily wish to receive formal training in municipal government. Officials who complete 40 credit hours of training are awarded the professional designation of Certified Municipal Official. Training sessions are generally conducted twice each year at four regional sites throughout the state. Additional hours may be earned by attending designated sessions during the annual League Convention and other approved events sponsored by the League and the National League of Cities. A limited amount of credit may be obtained by attending other approved courses. The training program can be completed in as few as two calendar years.

The Elected Officials Training Program is an ongoing project of the League to fulfill the education mandate contained in its constitution. The first session of the Elected Officials Training Program was held at the Adams Mark Hotel in Mobile on September 22, 1994. The same program was offered in Birmingham, Montgomery and Huntsville. Nearly 200 officials enrolled in the program during the first sessions. As of this year, more than 3,960 municipal officials are enrolled and have attended one or more courses.

Session topics include council meeting procedure, rules of parliamentary procedure, the Open Meetings Act, public records, ordinance drafting, powers of municipalities, ethics laws, conflicts of interests, duties of mayors and councilmembers, tort liability, annexation, zoning, subdivision regulation, municipal revenues and expenditures, the competitive bid law, personnel issues, insurance issues and regulatory powers of municipalities.

In 1998, the League added an Advanced CMO Program for those officials who had received the CMO designation and desired additional training. During its January 2000 meeting, the League's Executive Committee approved the addition of a continuing education requirement to the Program. The committee members felt the new requirement would strengthen the CMO Program. As of Jan. 1, 2000, each Advanced CMO Graduate is required to earn ten (10) credit hours of approved training within two (2) calendar years to maintain their Advanced CMO active status. Any CMO Advanced Graduate who does not earn at least ten (10) approved credit hours of training within two (2) calendar years will have their Advanced CMO status designated as "inactive" until such time as the required ten (10) hours of approved credit is earned. The continuing education credits started at the 2000 Convention in Birmingham.

This year, a total of 33 municipal officials successfully completed the requirements to receive their CMO certification and 30 officials received their Advanced CMO certification. Perry C. Roquemore, Jr., who served as the League's executive director for 25 years before retiring in May 2011, addressed the graduates at this year's ceremony. The 2013 graduating class of Certified Municipal Officials is listed on page 27. ***Congratulations!*** ■

For more information on the League's  
CMO Program, visit:  
[www.alalm.org/CMOPage.html](http://www.alalm.org/CMOPage.html)



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- Judge  
Alabama Court

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"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

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- Craig A., Defendant  
Foley, Alabama

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# Municipal Overview

Ken Smith • Executive Director



## Are Cities Still Relevant?

**T**he Bible tells us that there is nothing new under the sun. For me, that statement grows more accurate with each passing year.

Over a decade ago, I had the honor of attending a meeting of state league directors from across the United States. During a discussion period, one of the directors asked a provocative question that I've used as the title of this month's column: "Are cities still relevant?"

After a few nervous chuckles from the attendees, the dialogue that followed has stayed with me. At the time, his question was addressing a particular issue – how do you convince state and federal legislators that local governments need to be adequately funded and allowed to keep their own money local – that is, without interference from state or federal governments. His point was that municipalities needed to demonstrate their relevance so that legislators would recognize the need to fund local projects and efforts.

It's a question local officials sometimes have a difficult time taking seriously – that's why the first reaction to his question was laughter. We assume that the governments we represent are relevant. But do your citizens share that view? Does your municipality mean anything of significance to them? Does its existence mean anything to the legislature or in the national picture? So, I'd like to ask you the same question a slightly different way: "Is your municipality still relevant?"

On a national scale, we don't have to look any further than to the few municipal bankruptcies we've recently witnessed to prove that municipalities have at least some relevance today. If not, these bankruptcies would pass with little notice. But given the newsworthiness and national impact of these events, it's hard to argue that cities and towns are not relevant.

But what about your city or town? If you closed shop tomorrow, what impact would that have?

Today, the word "relevance" has been co-opted by national strategic planners who, for a fee, will help guide associations, business and other entities to a state of "relevance" for their members, citizens or customers. I have to admit, I'm always one of the last to jump on any latest trend or fad. What comes into vogue today is tomorrow's joke. You can waste a fortune in an elusive desire to stay current or in style. I know that many readers of this publication share this opinion.

But the fact that proving your "relevance" has become something of a cottage industry doesn't lessen its importance for each of us. Being relevant was important a hundred years ago, it was important a decade ago when the Director posed his question and it is just as important today.

There is nothing new under the sun.

But what does it truly mean to be "relevant?"

### Why is municipal relevance important?

In Alabama, as in most states, a municipal government is the only voluntary form of government. Under the Alabama Constitution, only citizens can create a municipality. Sections 11-41-1 through 11-41-8 of the Alabama Code spell out the process citizens have to follow to incorporate a municipality. Not even the Legislature has the power to create a municipality. This is prohibited by Section 104(5) of the Alabama Constitution.

Residents of Alabama have a choice about whether they will live in an incorporated municipality. If you own property in Alabama, obviously it is part of the state. It is also clearly part of a county within the state. But it may be outside the municipal corporate limits. Individuals can decide for themselves whether to live within a municipality.

There are, of course, many benefits to living in a municipality. If not, municipalities likely wouldn't exist in the first place. While the reasons the first civilizations sprang up are lost in obscurity and historians differ as to the purposes for which cities formed, it is clear that in the early history of mankind, people saw advantages to living in close proximity to each other.

There are also some recognized potential disadvantages. Taxes may be higher; depending on population, there may be less peace and quiet; crime rates may be higher when more people exist in a compressed space; land may be scarce, leading to higher property costs; and there may be greater restrictions on how you can use your property.

In contrast, what are the advantages? Some of these may include easier access to economic opportunity – businesses generally locate where there are larger concentrations of buyers; greater restrictions on property usage often protect property values by limiting the impact your neighbors have on your enjoyment of your property, meaning that for some, a disadvantage is actually an advantage; there is probably greater access to restaurants and cultural events; and there are often more employment opportunities.

### **Quality of Life**

For many of us who choose to live in an incorporated municipality, the bottom line for determining the relevance of a municipality boils down to quality of life issues.

How do you quantify “quality of life?” After all, what matters to one person may make little difference to another. In 2005, the Southwest Alaska Municipal Conference conducted a survey on Alaska citizens’ quality of life using the status of health and safety, the situation for children, education, community and business resources, the environment, and infrastructure as measures. Wikipedia states that “indicators of the quality of life include not only wealth and employment, but also the built environment, physical and mental health, education, recreation and leisure time, and social belonging.” The State of New Mexico even allows municipalities to assess a “quality of life tax” to support cultural programs and activities.

So, what determines quality of life can vary, but it generally relates to the way people live, job opportunities, infrastructure and recreational and cultural opportunities available.

The Alabama League of Municipalities has developed an award program designed to recognize municipal efforts to remain relevant to their citizens. Our Quality of Life awards recognize successful, innovative municipal programs in Alabama and share information about them with other municipalities. The goal is to improve the quality of life for municipal residents throughout the state. Last year’s winners were Priceville, Andalusia and Talladega, who were chosen as the winners for their population categories – under 5,000; 5001 to 12,000; and 12,001 and over, respectively. The cities of Hartford, Montevallo and Robertsdale (which tied) and Ozark were chosen as the Honorable Mentions for those same population categories.

For more information on this program, please visit our website at [www.alalm.org](http://www.alalm.org) and follow the prominent link from the homepage. I hope you’ll take the time to study the application requirements and take a close look at the projects your city or town has undertaken in the last few years. We’d love to recognize your municipality for your efforts to improve the quality of life for your citizens.

Of course, relevance is not about winning awards, and whether you win or not is, well, irrelevant. But even if you choose not to apply, or don’t win, I hope this article will encourage you to look for opportunities to improve the quality of life for your citizens and to remain relevant in their lives.

### **What is relevance?**

Change alone doesn’t mean that you are remaining relevant in the lives of your residents. In fact, relevance doesn’t always mean anything has to change. You have to ask yourself whether a change helps or hurts, or even whether it accomplishes anything at all. In fact, doing the same thing the same way for many years may be exactly what your citizens demand. On the other hand, it never hurts to examine your services, policies and procedures to be sure they continue to satisfy their needs, or if some improvement is possible.

We can assume, as a starting point, that your municipality was relevant the day it was incorporated. Relevance means being important in someone’s life. When you incorporated, enough citizens felt strongly enough about the issue to vote your municipality

*continued on page 22*





# The Legal Viewpoint

By Lori Lein  
General Counsel



## Municipalities and the Workers Compensation Law

**A**labama statutes on workers compensation are codified in Chapter 5 of Title 25, Code of Alabama 1975. Workers compensation is an alternative to employee/employer adversary court proceedings under common law. Simply stated, workers compensation is a system under which an employee who has become diseased, injured or killed in the line of duty is entitled to monetary compensation as a matter of right and without regard to who or what was responsible for the injury.

Under workers compensation, an employer forfeits the right to common law defenses and automatically assumes, as an inherent cost of doing business, the financial liability for an employee's injuries or death. The employee, in turn, forfeits the right to sue and recover any amount greater than is stipulated by the law. Properly implemented, workers compensation should establish an equitable balance – the worker receives timely compensation for injuries, while the employer is protected by limitations on the amount of claims for which he or she is liable.

A secondary benefit of the system is the promotion of occupational safety through economic incentives for employers. If the incidence of work-related injuries is low, the improvement is reflected in the reduction of compensation insurance costs. Thus, efforts by the employer to create a safer work environment can reduce the total cost of doing business.

### Co-Employee Provisions

Sections 25-5-1(4), 25-5-11, 25-5-51 and 25-5-53, Code of Alabama 1975, restrict the right to bring co-employee lawsuits to cases involving willful conduct which results in, or proximately causes, an injury or death.

“Willful conduct” is defined in Section 25-5-11, Code of Alabama 1975, to include:

- A purpose or intent or design to injure another;
- The willful and intentional removal from a machine of

a safety guard or safety device provided by the manufacturer of the machine with knowledge that injury or death would likely or probably result from such removal if the removal did, in fact, increase the danger in the use of the machine and was not done for the purpose of repair of the machine or was not part of an improvement or modification of the machine which rendered the safety device unnecessary or ineffective;

- The intoxication of another employee of the employer if the conduct of that employee has wrongfully and proximately caused injury or death to the plaintiff or the plaintiff's decedent, but no employee shall be guilty of willful conduct on account of the intoxication of another employee or other person; or

- Willful and intentional violation of a specific safety rule of the employer after written notice of the violating employee by another employee who, within six months after the date of receipt of the written notice, suffers injury resulting in death or permanent total disability as a proximate result of the willful and intentional violation. The written notice to the violating employee shall state with specificity all of the following:

- a) the identity of the violating employee;
- b) the specific written safety rule being violated and the manner of the violation;
- c) that the violating employee has repeatedly and continually violated the specific written safety rule referred to in section (b) above with specific reference to previous times, dates and circumstances;
- d) that the violation places the notifying employee at risk of greater injury or death.

A notice that does not contain all of these elements shall not be valid notice for purposes of the law.

An employee shall not be liable for his or her willful conduct if the injured employee personally violated a safety rule or otherwise contributed to his or her own injury. No employee shall be held liable under this section of the law

for the violation of any safety rule by any other employee or for failing to prevent any violation by any other employee.

An employee's acceptance of workers' compensation benefits triggered immunity provisions for an action against a co-employee. *Brunson v. Lucas*, 5 So.3d 1274 (Ala.Civ. App.2008).

### Who is Covered by the Law?

All cities of 2,000 or more in population and all incorporated municipal boards, regardless of the population of the municipality, are covered by the workers compensation law.

### Exemptions

Following are exceptions to the workers compensation law:

- Cities with populations of 250,000 or more and their boards and agencies.
- Any employer who regularly employs less than five employees in any one business.
- Persons whose employment at the time of injury is casual and not in the usual course of the trade, business, profession or occupation of the employer.
- Where an injury or death was caused by the willful misconduct of the employee or the employee's intention to bring about the injury or death of himself or another, by an accident due to the injured employee

being intoxicated from the use of alcohol or impaired by the use of illegal drugs, or by the employee's willful failure or willful refusal to wear safety appliances provided by the employer or due to the willful refusal or willful neglect of the employee or the willful violation of the law by the employee or his or her willful breach of a reasonable rule or regulation of the employer of which rule or regulation the employee has knowledge.

### Benefits Payable

Alabama law provides for the payment of:

- All hospital, medical and surgical expenses of the injured employee. If vocational or physical rehabilitation is required, the law requires the employer to pay the costs of such rehabilitation.
- If the employee is disabled, either temporarily or permanently, totally or partially, the law requires the employer to make weekly compensation payments to the injured employee.
- In cases where the employee dies as a result of an on-the-job injury, his or her dependents or personal representatives are entitled to receive death benefits and burial expenses in such amounts as provided by the law.

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## **Responsibilities of Employers Covered by the Law**

An employer subject to the provisions of the law – either by law or by election – has several alternative methods of covering the risks. The employer can:

- Insure the risk with a workers compensation insurance carrier authorized to do business in the State of Alabama;
- Become a self-insurer and pay all workers compensation claims when they occur;
- Purchase an excess and aggregate policy to cover all claims above a certain monetary amount and self-insure all claims or a portion of claims below that amount; or
- Join with other employers in a plan of pooled coverage.

If an employer elects to insure the risk with a private insurance company, premiums are based on the payroll of the employer. The idea is that if one business has a \$500,000 payroll and another has a \$50,000 payroll, then the former is 10 times as big and is likely to have 10 times as many accidents. A rate per \$100 of payroll is used. The rate varies according to the risk of the job involved. Occupations with a bad history of accidents will have a higher assigned risk, creating a higher premium per \$100 of payroll for that employee. For example, in one state the rate for office workers is 16 cents per \$100 of payroll. For stunt fliers and parachute jumpers the rate is \$17 per \$100 of payroll. All rates and classifications are strictly controlled by state law. Most insurance carriers use the rate classifications furnished by a rating bureau.

Section 25-5-8, Code of Alabama 1975, requires all employers who elect not to cover their risks by insurance to furnish satisfactory proof to the director of the Department of Industrial Relations of their financial ability to pay directly such compensation in the amount and manner and when due as required by law. If the director is satisfied, he or she shall authorize the employer to operate as a self insurer. This privilege can be revoked by the director whenever the employer fails to meet the obligations under the law.

In November 1976, the Municipal Workers Compensation Fund (MWCF) was formed as a separate corporation to give Alabama municipalities and their incorporated boards the opportunity to pool their workers compensation obligations at a savings. This program is available to all member municipalities and boards regardless of population. For more information please contact MWCF at (334)262-2566.

## **Procedures Following an Injury**

Section 25-5-78, Code of Alabama 1975, requires every injured employee to give or cause to be given, to the

employer written notice of the accident within five days after the occurrence. If an injured employee, or his or her personal representative in case the injury caused the death of the employee, fails to give such notice to the employer, the worker shall not be entitled to physician or medical fees or to any compensation due under the Act, unless it can be shown that the person required to give notice was prevented from doing so by reason of physical or mental incapacity, other than minority or by fraud, deceit or equally good reasons. However, no compensation shall be payable unless written notice is given within 90 days after the occurrence of the accident or within 90 days after death in cases where death occurs.

Upon receiving notice of the injury, the employer should immediately notify the insurance carrier regarding the injury. If the employer is self insured, the Department of Industrial Relations should be immediately notified of the injury using forms approved by the Department. As the claim is administered, several other reports are required to be filed with the Department of Industrial Relations. These reports should be filed by the employer's insurance carrier. However, if the employer is self-insured, the employer must file these reports.

Section 25-5-4, Code of Alabama 1975, requires all employers to keep records of all injuries – fatal or otherwise – received by his or her employees in the course of their employment, for which compensation is claimed or paid.

## **Safety Committees**

Section 25-5-15, Code of Alabama 1975, states that upon the written request of any employee, each employer subject to the law shall appoint a safety committee. The safety committee shall consist of not less than three committee members, one of whom must be a non-supervisory employee. The safety committee shall advise the employer regarding safety in the workplace, including suggestions from employees regarding safety conditions in the work place. Any employee shall have the right to notify the committee of an unsafe condition in the work place. The safety committee shall develop procedures by which an employee may give such notification. The provisions of the law relating to safety committees shall not apply to any employer who now or in the future has an established safety committee pursuant to contract or agreement with its employees or their representative.

## **Actions Against Employees**

Section 25-5-11.1, Code of Alabama 1975, states that no employee shall be terminated by an employer solely because the employee has instituted or maintained any action against the employer to recover workers

*continued following page*

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compensation benefits as provided by the law. No employee shall be terminated by an employer solely because the employee filed a written notice of a safety rule as provided by law.

## Responsibilities of Employers Not Covered by the Law

A municipality with less than 2,000 inhabitants which elects not to cover its employees with workers compensation is subject to common law remedies. Under common law, the employer owes certain legal duties of protection to employees:

- To provide and maintain a reasonably safe place to work, as well as safe appliances, tools and equipment;
- To provide a sufficient number of suitable and competent fellow employees to permit safe performance of work; and
- To establish and enforce proper safety.

If a municipality refuses to pay an injured employee's claim for damages resulting from job injuries, the only recourse for the employee is to sue the employer for damages in court. In suing, the employee has the burden of proving that the employer's negligence caused the injury. In defense, the employer could invoke one or more of three common law defenses:

1. **Contributory Negligence:** That the accident was the result of contributory negligence on the part of the employee – that is, the employee was either partially or wholly responsible for the accident;
2. **Fellow Servant Doctrine:** That the accident resulted from negligence on the part of the employee's co-workers; or
3. **Assumption of the Risk:** That the accident resulted from an understood risk of the job, and the employee knew of the hazard when employment was accepted.

If a judge or jury hearing the case agrees that the employee's injury or death occurred under one of these three conditions, the employer could be held free from any obligation to compensate the worker for the injury and the worker would receive nothing.

Municipalities in Alabama without worker's compensation coverage must also provide their employees with a safe workplace. Although Alabama municipalities are not subject to OSHA regulations, Section 25-6-1, Code of Alabama 1975, makes employers liable to employees who are injured in the workplace if:

1. the injury was due to a defect in equipment, etc., used in the workplace;
2. the injury was caused by the negligence of a supervisor appointed by the employer;

3. the injury was caused by the negligence of another employee acting pursuant to orders or directions of the employer; or

4. the injury was caused by the negligence of another employee or other person acting in obedience to instructions given to someone who has been delegated that authority by the employer.

An exception states that employers are not liable for conditions known to the employee that are not communicated to the employer. This law is generally superseded by the worker's compensation laws, except in cases where an exception is created in the worker's compensation laws. *C.F. Halstead Contractor v. Lowery*, 51 Ala. App. 86, 282 So.2d 909 (Ala. App. 1973). Thus, municipalities with worker's compensation coverage are, generally, not subject to this statute.

In *Birmingham v. Waits*, 706 So.2d 1127 (1997), a sharply-divided Alabama Supreme Court held that the city of Birmingham could be found liable for failing to provide a safe workplace for its jail employees. In *Waits*, the plaintiff, a city of Birmingham correctional officer, was injured during an altercation between two jail inmates who were returning to their cell following a cleaning detail. The plaintiff testified that she twice radioed for help when the fight began but did not receive a response. After she radioed for help, the radio was knocked from her hand and kicked under a table. Other inmates joined in the fight. The plaintiff testified that she was intentionally assaulted by three inmates when she attempted to retrieve her radio. The fight continued until inmates in another section of the cellblock yelled that guards were coming.

The plaintiff's supervisor testified that she did not hear the first two transmissions from the plaintiff but did eventually receive a radio call for help. The supervisor immediately sent help, which apparently reached the plaintiff within 30 seconds. Other guards did hear the plaintiff's radio calls and also responded. The responding officers controlled the disturbance and sent the plaintiff to the hospital. She was treated and released but was referred to a specialist because of an injury to her jaw. She also saw a psychologist because of emotional problems which resulted from the disturbance.

The plaintiff sued the inmates, several police officers, and the city of Birmingham. She contended that the inmates were liable for assault and battery, the police officers were liable for negligent supervision and performance of duties and that the city was liable for negligently hiring and supervising police employees. The plaintiff received a default judgment against the inmates. Several of the police

continued page 17

# LEGAL CLEARINGHOUSE

**NOTE:** Legal summaries are provided within this column; however, additional background and/or pertinent information will be added to some of the decisions, thus calling your attention to the summaries we think are particularly significant. When trying to determine what Alabama law applies in a particular area or on a particular subject, it is often not enough to look at a single opinion or at a single provision of the Code of Alabama. A review of the Alabama Constitution, statutory law, local acts, administrative law, local ordinances and any relevant case-law may be necessary. We caution you *not* to rely solely on a summary, or any other legal information, found in this column. You should read each case in its entirety for a better understanding.

## ALABAMA COURT DECISIONS

**Courts:** A defendant can be ordered to pay restitution to the victim of his crime only if one of two conditions exists: (1) defendant's victim suffered direct or indirect pecuniary loss as a result of the criminal activity of which defendant has been convicted, or (2) defendant admitted to other criminal conduct during the proceedings that was the proximate cause of the victim's pecuniary loss or damages. An order requiring a defendant who pleaded guilty to theft based on the theft of a gun to also pay restitution to the victim for cash allegedly stolen by the defendant was improper, where the defendant was not charged with theft of cash and the defendant did not admit to theft of cash. *Heupel v. State*, 113 So.3d 695 (Ala.Crim.App.2012)

**Courts:** Civil and criminal rules of procedure allowing courts to correct clerical errors at any time do not authorize the court to render a different judgment. *Lamb v. State*, 113 So.3d 677 (Ala.Crim.App.2010)

**Courts:** When the accused takes the stand to testify in his own behalf, he does so in a dual capacity: (1) as the accused, and (2) as a witness. A defendant, who testifies for himself as a witness, may be impeached in the same manner as other witnesses, by showing that he has been convicted of a crime involving moral turpitude, or that he has made contradictory statements, or that he is a person of bad character. A prosecutor's line of questioning of a defendant on cross-examination and related statements in closing argument regarding why the defendant did not come forward with his exculpatory story at any time before trial

was not an improper use of post-*Miranda* silence or a due process violation in a prosecution. *Reynolds v. State*, 114 So.3d 61 (Ala.Crim.App.2010)

**Courts:** A hearing is required as a prerequisite to the revocation of probation. (See §12-14-13, Code of Alabama for municipal courts.) A "hearing" ordinarily is defined, in matters not associated with full trials, as a proceeding in which the parties are afforded an opportunity to adduce proof and to argue, in person or by counsel, as to the inferences flowing from the evidence. *Singleton v. State*, 114 So.3d 868 (Ala.Crim.App.2012)

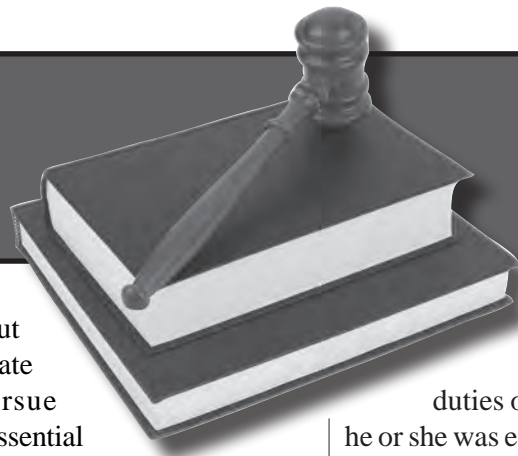
**Jails:** Deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain, and is a violation of the Eighth Amendment right to be free from cruel and unusual punishment. *Murray v. Prison Health Services, Inc.*, 112 So.3d 1103 (Ala.Civ.App.2012)

**Searches and Seizures:** State statutes may narrow the scope of permissible wiretapping, but may not broaden the scope of permissible wiretapping beyond that contemplated by the federal Wiretap Act. Wiretapping pursuant to the federal Wiretap Act did not constitute "eavesdropping" in violation of the state criminal eavesdropping statute. By creating an exception in the definition of eavesdropping and permitting the collection of private communication as "otherwise provided by law", the legislature intended to permit the collection of electronic communication as provided for under federal law, including the lawful regulations for federal wiretaps found in the Wiretap Act. *Cabble v. State*, 114 So.3d 855 (Ala.Crim.App.2012)

## UNITED STATES COURT DECISIONS AFFECTING ALABAMA

**Gasoline Tax:** Alabama's tax scheme which required rail carriers pay sales and use taxes on the purchase and consumption of fuel, but exempted motor and water carriers, was discriminatory, for purposes of an interstate rail carrier's action alleging that the scheme violated the Railroad Revitalization and Regulatory Reform Act because rail carriers paid a tax that competitors did not pay. *CSX Transp., Inc. v. Alabama Dept. of Revenue*, --- F.3d ----, 2013 WL 3286156 11<sup>th</sup> Cir.2013)

**Zoning:** The government may choose whether and how a land use permit applicant is required to mitigate the impacts



of a proposed development, but it may not leverage its legitimate interest in mitigation to pursue governmental ends that lack an essential nexus and rough proportionality to those impacts. So long as a permitting authority offers the landowner at least one alternative that would satisfy the requirement that a government's demand should have an essential nexus and rough proportionality to the impacts of a proposed development, the landowner has not been subjected to an unconstitutional condition. *Koontz v. St. Johns River Water Management Dist.*, 133 S.Ct. 2586 (U.S.2013)

#### DECISIONS FROM OTHER JURISDICTIONS

**Housing:** A city ordinance's rental provisions, requiring prospective tenants to obtain an occupancy license disclosing their citizenship and immigration status and requiring the police department to verify that information with federal authorities, were not preempted, as intruding on the federally occupied field of alien registration, where the rental provisions required all prospective tenants, including United States citizens and nationals, to obtain an occupancy license, and excluded non-tenants. *Keller v. City of Fremont*, --- F.3d ---, 2013 WL 3242111 (8<sup>th</sup> Cir.2013)

#### ATTORNEY GENERAL'S OPINIONS

**Ad Valorem Taxes:** Pursuant to section 40-10-28 of the Code of Alabama, the mortgagor, as owner, and the person against whom ad valorem taxes are assessed is entitled to excess funds received as a result of a tax sale. AGO 2013-059

**Appropriations:** Public funds may not be expended for the purchase of distinctive clothing for employees of a public entity where there is no specific law authorizing the use of public funds for the purchase of such clothing, and where employees therein are not tasked with duties that would impliedly require such distinctive clothing such as performing compliance, regulatory or enforcement duties. AGO 2013-060

**Employee – Disability Benefits:** "Totally disabled" and "total disability," as used in the "Police Officer's and Firefighter's Survivors Educational Assistance Act," section 36-21-102 of the Code of Alabama, means that the

injured party is medically disabled to the extent that he or she cannot perform the duties of the job occupation or profession in which he or she was engaging at the time the injury was sustained. AGO 2013-061

**Waterways:** Pursuant to section 9-11-80 of the Code of Alabama, if a dam, lock, or impoundment device is placed across a navigable waterway, the impounded waters are public waters that may be used by the public for hunting and fishing. AGO 2013-057

#### ETHICS COMMISSION ADVISORY OPINIONS

**AO No. 2013-07:** A City Council member may vote on a matter that directly affects the financial interests of an individual who contributed to his campaign, as the action will adversely affect the individual, and when the campaign contribution was made in the ordinary election cycle. A City Council member may vote on a matter that would adversely affect the financial interests of an individual when that individual is a former employee, business associate and/or commercial tenant of the Council member, but those business relationships no longer exist. A City Council member who, served on the Planning Commission when an issue to be voted on by the Council was before the Planning Commission, may not vote, attempt to influence or otherwise participate in the matter as a Council member, as he may either be a witness or a party to any litigation arising out of the vote, and may not use his Council seat to affect his standing in that litigation. **NOTE:** This opinion does not address the laws outside of the Ethics Law, such as section 11-43-54, Code of Alabama 1975. Questions relating to other laws should be submitted to the Attorney General.

**AO No. 2013-08:** A County Commission may rent an office building from a limited liability company owned by the District Attorney and his parents for temporary facilities, provided, the County initiated the transaction, that it is the best available location, that it is an otherwise arms-length transaction and provided further, that the terms of the lease do not exceed the actual time of occupancy and the square foot value of the lease is consistent with the fair market value. ■



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defendants were dismissed from the lawsuit. The jury, though, returned a verdict against several other defendants, along with the city of Birmingham, for \$100,000.

On appeal, the city argued that it should not be found liable because the fight and resulting injury were not foreseeable, and because the city was not negligent. The city also argued that by imposing liability in this case, the court would, in effect, place on the city the impossible burden of insuring that inmates would not attack jail personnel. The city also contended that the plaintiff violated jail procedures by entering a cellblock alone.

A majority of the court disagreed. Although the majority recognized that working in a jail carries with it an inherent risk of injury, after reviewing evidence that the city did, in fact, have notice of dangerous conditions that existed at the jail, the court stated:

“Holding the City responsible pursuant to the requirements of §25-6-1 does not place on the City a burden that is not shared by all employers, and a holding to the contrary would contravene the purpose of that section. Despite being given warnings and notices regarding the conditions at the jail, the City failed to take action to prevent the kind of incident that resulted in this lawsuit, and the evidence of that failure supports the imposition of liability under §25-6-1 ... [I]t was not unreasonable for the jury to conclude that if [the plaintiff’s] radio had worked correctly, she would have been aided by a quicker response ... In other words, the jury was justified in concluding that the problems at the jail — understaffing and malfunctioning equipment — were the proximate cause of her injuries.” *Birmingham v. Waits*, at 298.

The dissenting justices disagreed, pointing out that as a general rule, a person has no duty to protect another from the criminal acts of a third party. A narrow exception to this rule allows a defendant to be held liable for the criminal acts of a third party where there are “special circumstances,” which may include situations where an employee is injured on the job. The dissenters noted that these rules apply as a common-law guide in determining the scope of

the city’s statutory duty to protect the plaintiff. This being the case, they stated that:

“the scope of the City’s duty to protect its employee-guards should be defined in light of the risks associated with operating the jail and the ability of the City to reasonably avoid those risks ... It would be unreasonable to administer a jail in such a way as to expose a guard to potentially hostile inmates with inoperable equipment or insufficient backup ... A reasonable municipality, however, does not have the duty to protect its guards from the very risk that necessitates their employment ... Jails contain violent prisoners. A reasonable municipality cannot be required to prevent all potential assaults [on guards].” *Birmingham v. Waits*, at 304. (Citations omitted.)

The dissenters said that the only breaches of the duty to protect employees that the city may have committed, failing to provide adequate radios and adequate staffing, did not cause the plaintiff’s injuries. Although some radios may not have operated properly, evidence showed that the plaintiff’s radio did work and several guards heard her calls for help and responded. Additionally, although the jail may have been understaffed, the number of guards on hand was sufficient to end the disturbance. In a footnote, the dissenters note that the chief jail administrator testified that the city tested every radio on the market but could not find one that operated in the jail without interference, due to the steel construction of the jail. Therefore, the dissenters felt that the city should not have been found liable for the plaintiff’s injuries. Under the majority opinion, though, municipalities may be liable for failing to provide a safe workplace for their employees, which would include employees who, like police officers must sometimes confront potentially violent – and dangerous – circumstances.

## Additional Information

More information can be obtained from the League; from Millennium Risk Managers, P.O. Box 26159, Birmingham, Alabama 35260; or from the Workers Compensation Division, Department of Industrial Relations, Industrial Relations Building, Montgomery, AL 36130. ■



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# Federal Grants:

## A Strategic Approach for Project Funding

By C. Britton Bonner • Adams and Reese, LLP

What was once considered the “old reliable” method for funding municipal projects changed significantly for many cities in 2010.

### Grant Process Altered by Earmark Ban

The “earmark”<sup>1</sup> ban, put in place by Congress in 2010, and extended into the current 113<sup>th</sup> Congress, effectively “moved the decision-making power Congress used to have to the executive branch.”<sup>2</sup> In doing so, it altered what had been the common method for accessing federal dollars for specific projects for many municipalities. Instead of working with Congressional office staffers at the local or field office level, municipalities are now forced to deal with professional staff in executive agencies in Washington who set the criteria for awarding funds that were once appropriated directly by a municipality’s Representative or Senator.

With the earmark ban, the dynamics for municipalities seeking federal funds shifted and, in many respects, changed the way things operate on Capitol Hill. Although the pros and cons of direct Congressional appropriations can be debated on multiple levels, and any internet search will prove that statement true, the fact of the matter is federal funds for municipal programs and projects are now primarily available only through competitive funding awarded through the executive branch. This is a process which is becoming more and more “competitive,” and which may at times seem an onerous undertaking for some municipalities.

Appropriations bills in Congress no longer include direct appropriations; instead, they typically provide generic big-picture direction with “varying degrees of guidance on how to spend” the money.<sup>3</sup> Indeed, instead of asking for direct funding for projects, many municipalities are now asking for legislative or report language which will help



guide the executive branch in the direction they want or need the agency to go in order to potentially enhance a particular grant application.

### Federal Dollars Are Available

Even though the process for accessing the federal dollar for certain projects has changed, the amount of money available to cities and towns today is higher now than it was five years ago. For example, federal outlays for grants to state and local governments increased from \$443 billion in 2007, before the earmark ban, to now well over \$600 billion.<sup>4</sup> As a result, the competition for those federal dollars is much greater than it was in the past. The process is far more structured than it was pre-earmark ban, but the federal funds are still there.

The federal government currently appropriates and spends about \$1 trillion a year on “operation and program” costs.<sup>5</sup> Of that amount, over \$600 billion is made available through competitive grants designated for state and local governments,<sup>6</sup> with over \$315 billion for state and local projects.<sup>7</sup> Last fiscal year, the federal government had more than 200 grant programs for state and local governments which were administered by over 30 different federal departments and agencies.<sup>8</sup> As seen in the most recent appropriation bills, project grants and competition-based allocations are likely to continue to grow. However, even though the pot of money continues to grow, the Foundation Center, which maintains the most comprehensive database of federal grants in the country, estimates the average success rate for a grant application is 17%.

So the real question is not “How does my city access federal dollars?” but “How can my city increase its chances

of success?” The answer to the question is simple: develop a comprehensive grants strategy and approach.

### Seven-Step Strategy

When developing a comprehensive grants program and strategy at the municipal level, these seven steps should be at the forefront:

**1. Devote Resources.** A comprehensive approach to seeking federal grants is not a simple process. It is more than simply writing a polished and focused application. To be effective, a municipality has to be willing to devote resources and develop a comprehensive grant strategy, and then to execute that strategy. The research component is just as important as the writing component. A town or city has to know what is out there this quarter, what has been available in prior years and be able to anticipate what will become available each quarter to come before the municipality can even get to the nuts and bolts of the application phase. Waiting until an application period is announced is not a recipe for success. The only way to access grant funds is to compete; and the only way to successfully compete is to know what is out there now, what has been available in the past and what will likely become available in the upcoming fiscal year.

**2. Identify Projects.** All too often, a municipality resigns itself to going after the “low-hanging fruit” and a quick win, often regardless of the big picture need. While there is a time and a place for such an approach, the best approach is to work with a comprehensive plan that seeks to address the overall goals of the municipality and the needs of its citizens. By identifying projects early on, a city or town can take a project-by-project approach to

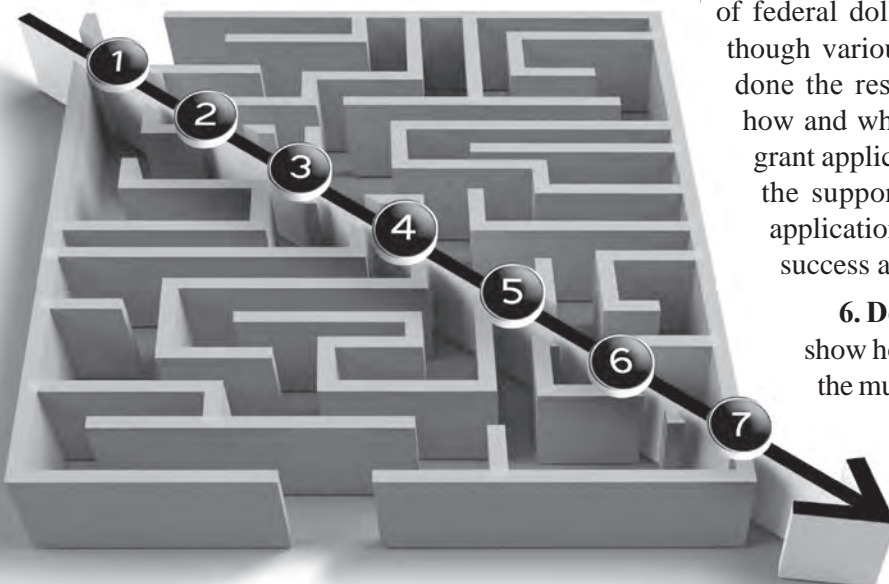
funding and, in turn, look at multiple funding sources for each project. Very rarely does a successful project have only one source of funding. Most successes come from looking at funding options from multiple agencies as well as funding various components of each project from multiple sources.

**3. Be Diligent.** Persistency is often the key to victory and sometimes it takes multiple applications to the same pot of money before success is found. In a town’s search for grants, the key is to be constantly researching what is available and anticipating what will be announced in the upcoming quarter. Further, when an application is not successful, it is important to follow-up and find out why the grant was not awarded and what needs to be addressed in the next application process to increase the chances of success. Never hesitate to follow up with the agency and get a clear understanding of where an application was deemed deficient and where the applicant can improve its application.

**4. Coordinate with Congressional Offices.** Have an open line of communication with your Congressional Representative. Each House Member and Senator have devoted resources in their office to assist municipalities in the grant process. Use those resources and be prepared to call on them to assist on behalf of the municipality. Make sure their office is aware of the city’s comprehensive grant program and of all specific grant applications. Although the days of earmarks are over, the support of Senator Shelby, Senator Sessions and your Congressman or Congresswoman can never be discounted as a key element to any successful comprehensive municipal grant program.

**5. Look for the State Component.** Be sure to look at both state and federal grant sources as a substantial portion of federal dollars are made available to municipalities through various state agencies. Make sure the city has done the research on the frontend and has identified how and where a state agency may play a role in any grant application or project funding effort. Often times the support of the appropriate state agency in the application process can be the difference between the success and failure of an application.

**6. Demonstrate Leverage.** As often as possible, show how you are leveraging the federal dollar and the multiplier effect that one dollar of federal funds will have for the success of a project. This includes being willing to partner with other groups or municipalities for a regional approach when appropriate. Not only must a city demonstrate it is



a good steward of the federal funds, it also should show how it is utilizing those funds for the greatest return possible.

**7. Economic Development and Governmental Relations.** Always be cognizant that economic development and governmental relations go hand-in-hand – not only in the project development phase, but also as a component of a comprehensive grant strategy. More often than not, a successful economic development effort will require the city or town to take an active role to make the effort a success. Most successful economic projects today utilize and tap into grant funding at multiple levels and with multiple state and local agencies. If the city has identified and prioritized projects at the outset, the governmental relations and grants team should fully and seamlessly integrate into the city’s economic development efforts.

### Conclusion

In sum, although the dynamics have changed, and the method for accessing funds has changed, federal funds are still out there and available for municipal projects. To be successful in today’s ultracompetitive world of federal grants, it is not enough for a municipality to have a well-written, polished and focused grant application alone. That is the minimum and will result in obtaining the average 17% measure of success. To increase the likelihood of victory in this competitive world, it is incumbent upon the municipality to have a comprehensive strategy in place to research and develop grant funding opportunities for specific projects. The key to measurable success lies in the process put in place. ■

*Britton Bonner serves as Partner in Charge of the Mobile office of the regional law firm of Adams and Reese, LLP, and also maintains an office in the firm’s Washington DC office. His primary practice area is in state and federal governmental relations and economic development with a focus on municipal and higher education clients.*

### (Endnotes)

1 According to the Office of Management and Budget, earmarks are “funds provided by the Congress for projects, programs, or grants where the purported congressional direction (whether in statutory text, report language, or other communication) circumvents otherwise applicable merit-based or competitive allocation processes, or specifies the location or recipient, or otherwise curtails the ability of the executive branch to manage its statutory and constitutional responsibilities pertaining to the funds allocation process.” <http://earmarks.omb.gov/earmarks-public/>

2 Brendan Greeley, “Earmarks: The Reluctant Case for Ending the Ban” (<http://www.businessweek.com/articles/2013-01-10/earmarks-the-reluctant-case-for-ending-the-ban>). Bloomberg Businessweek, January 10, 2013.

3 Kate Brannen, “Congressional Earmark Ban Changes Business on Capital Hill” (<http://www.defensenews.com/article.20120705/DEFREG02/307050003/congressional-earmark-ban-changes-business-capital-hill>) Defensenews.com, July 5, 2012.

4 Government Accountability Office, Report to Congressional Requesters, “Grants to State and Local Governments,” September 2012 at p. 9.

5 Congressional Budget Office, (<http://www.cbo.gov/publication/43967>) March 5, 2013.

6 Id.

7 Id. attachment p. 3.

8 Id.



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into existence. That alone is enough to prove relevance at that stage.

But how do you remain relevant? Every good golfer knows that in golf, as in life, the most important shot is always the next one. Whether the previous shot left you in the middle of the fairway, in the rough, or even the bunker, the only thing that matters is what you do next. Dwelling on how you got where you are is the single worst thing you can do at that moment.

All that matters is what you do next.

In, 2011, I asked a group of Alabama city clerks to identify what made their city or town uniquely relevant. One replied: “If it’s burning, call the Fire Department. If someone is coming in the window, call the Police Department. If there’s a snake under the house or a squirrel in the attic, call Animal Control. If it won’t flush, call the Sewer Department. If it won’t flush twice, call the Water Department. If the kids are driving you up the wall, call the Recreation Department. If someone stole the Robert E. Lee street sign for the 100th time, call Public Works. If you need a phone number or want to whine, call City Hall. If life is wonderful and you want misery, call Code Enforcement.”

I think we can all identify. Most municipalities provide one or all of these services. This is one of the reasons municipalities incorporate – to provide greater services to their citizens. But it is often important to do more than provide the basics. Your citizens likely don’t care what makes municipalities in general relevant; they care about what makes YOUR city or town relevant to them.

In January, 2012, an EF-3 tornado struck Clay, Alabama. The *Birmingham News* ran an article about the efforts of Clay’s elected officials to deal with the aftermath. I found some of the reader comments following the on-line article inspiring:

*Hats off to the city officials of Clay.....JOB WELL DONE! As an 18 year resident of Polo Downs, I could not be more proud of the community/city we call home. “Neighbor helping Neighbor” is a tremendous understatement regarding how all residents worked together in these times of need and devastation.*

*Thank you City of Clay officials and employees. Also, a BIG thank you to the Jefferson County deputies and Center Point Fire. All have done a great job of search*

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and rescue, assessing the damage, organizing volunteers and donations, securing the disaster areas to protect homeowners from looters and scammers and keeping everyone informed of needs and rules with frequent updates on both web/FB (Facebook) pages. I was most impressed with Tuscaloosa's mayor and city officials during their time of need but I must say I am equally impressed with Clay's. With the generous, resilient attitude of our community, we will overcome this set back and be stronger than ever.

And there was one comment that Clay's officials may have appreciated seeing even more. I bolded the portion I found particularly significant:

***City officials were on the ground this weekend hands on in debris removal. Working together as a team, diligent to meet the needs in every damaged community. In 1999 I voted to stay unincorporated as another layer of govt. made no sense to me. I am now proud that our city government has shown its value, not only in material, labor and time, but in compassion.***

The City of Clay incorporated in 2000 and by their efforts in the face of a disaster, city officials had managed to convince at least one former opponent to incorporation that he or she was wrong. To that person and many others, the City had proven its continued relevance.

Relevance isn't something we can take for granted. We have to continually work at and demonstrate our relevance. Comments like those above make the effort worthwhile. Relevance doesn't have to be that dramatic, though. Sometimes simply making the effort to make your city safer, easier to travel and provide jobs is enough.

In response to my question to the city clerks mentioned above, another stated that: "I had a former City Councilman who always said the purpose of a city was to provide to its citizens those things that they could not provide for themselves. I have a current City Councilman who says that the duty of a City Councilmember is to keep property values up."

From a position of proving relevance, there is nothing wrong with either viewpoint. What you do to accomplish that goal proves your relevance.

Another city clerk noted that her city is very tied to its history. As an example, she pointed to a housing development that was built nearly 80 years ago. The development was built during the depression as a WPA project. It has become one of their most desirable residential areas. She stated: "At the time they were built, each home was wired for electricity, had indoor

plumbing, a heat source and a backyard large enough for a family garden, which was very progressive at the time. Oak trees were planted along the streets and now form an inviting canopy throughout the area."

Progressive, forward thinking, recognizing a need and responding to that need have, over the years, created an area that has helped turn the municipality from an entity into a community.

Another clerk put it this way: "A city should be developed for its citizens. We are here for the comfort and safety of the citizens. All of them are our 'so-called' clients and/or customers. We are here to serve them on a daily basis. Customer service is our number one priority; and if it isn't we should take a look at what we are doing and why we are doing it."

Another clerk replied that: "A City becomes relevant to its citizens when: the elected officials remember your name on the street, the team members working for the City remember your name on the street. When a City has City officials that can motivate their city workers enough to where city workers use their own time to help the Senior's in their community with cutting their grass or carrying a grocery bag to their front door, and, they

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never ask for any recognition but they helped.... because it was from their hearts.”

Sometimes relevance just amounts to putting a human face on your municipality.

What makes – and keeps – your municipality relevant? No one can answer these questions for you. You may have an excellent riverfront and a vibrant nightlife. You may have safe streets where neighbors walk at night without fear and greet each other by name. All of these and uncountable other goals define your relevance. As one clerk explained, municipal relevance depends on: “... sustainability of excellent quality of life; clean, safe neighborhoods; progressive, accessible City government. All this starts at the top with the Mayor’s leadership and Council guidance. Citizens can decide what kind of city they want, then get elected or elect like-thinking officials who pass ordinances to regulate what can and cannot go on to define the type of city they want (planning and zoning regulations, control signage, well trained police and fire departments, streets, traffic, garbage, no smoking in public places, leash law) which creates sense of community created by the people.”

Ultimately, building and sustaining the quality of life that matters to your citizens will keep your city or town relevant. Creating the sense of community your citizens desire is crucial. You must keep them in mind when it comes to defining your own relevance. In the end, what makes your municipality relevant is up to them.

And how do you determine the needs and desires of your citizens? If they re-elect you, doesn’t that mean they agree that you are staying relevant? Perhaps. Or you may feel the need for more input. These days, there are innumerable methods, ranging from your own observations, social media, citizen surveys (see the August 2013 issue of the *Municipal Journal* for more on citizen surveys), holding public hearings, to simply asking individuals their thoughts. But however you do it, relevancy is important. Every municipal official wants to see his or her municipality remain strong, continue to grow and remain vibrant. They want to see their citizens working, happy and safe. The efforts you take to accomplish these and other goals will determine your success or failure. And, ultimately, your citizens will decide whether you were successful. ■

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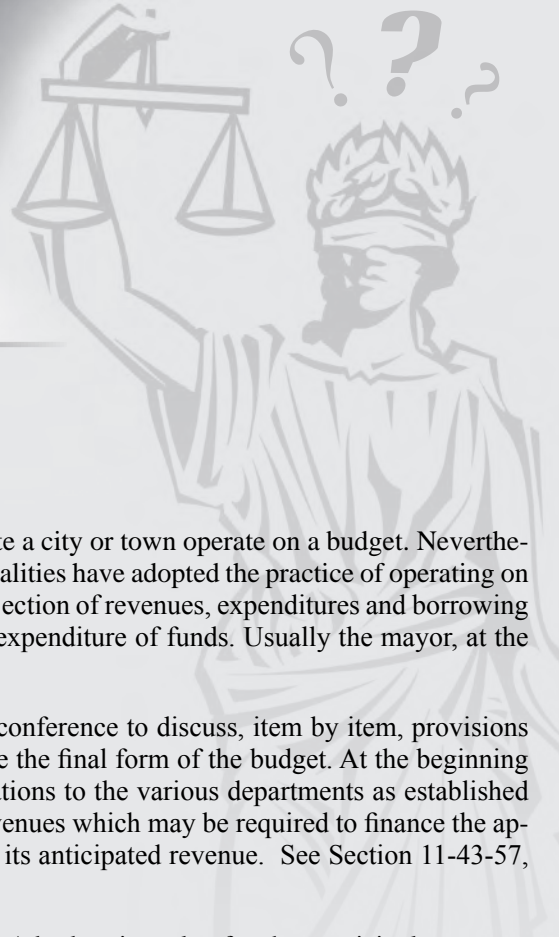
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# F.A.Q.

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



## Budgets

### What is the process for adopting the municipal budget?

For most municipalities, there are no legal requirements that mandate a city or town operate on a budget. Nevertheless, municipal administration has become so complex that most municipalities have adopted the practice of operating on a budget. Budgeting consists of financial planning involving detailed projection of revenues, expenditures and borrowing for a specified fiscal period, and will often determine authorization for expenditure of funds. Usually the mayor, at the council's request, submits a tentative budget for the coming fiscal year.

Customarily, the mayor, as budget officer, and the council meet in conference to discuss, item by item, provisions of the tentative budget. After the conference, the council must determine the final form of the budget. At the beginning of the fiscal year, the council must adopt a resolution making appropriations to the various departments as established in the budget and adopt new ordinances needed to provide additional revenues which may be required to finance the appropriations. A municipality can only "budget" ninety percent (90%) of its anticipated revenue. See Section 11-43-57, Code of Alabama 1975.

The importance of a solid municipal budget cannot be overemphasized. A budget is a plan for the municipal economy for the coming year. In the budget process, the council must review the efficiency of operations during the past year. This review often reveals ways to save money – money that could be used for improvement projects and other capital requirements. ■

## Do you what's happening *This Week*?

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# This Week

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Councilmember Joseph N. Watson, Brewton  
Councilmember Ernest Montgomery, Calera  
Councilmember Adam L. Bourne, Chickasaw  
Councilmember Billy L. Lester, Childersburg  
Councilmember Bobby R. Cook, Clanton  
Councilmember Becky G. Johnson, Clay  
Mayor Don Kyle, Decatur  
Mayor Mike Grayson, Demopolis  
Councilmember Vera J. Quaites, Foley  
Mayor Allen J. Dunavant, Glen Allen  
Councilmember Bobbie A. Curtis, Greensboro  
Mayor Kenneth E. Nail, Hanceville

Councilmember Hubert Terry Bearden, Irondale  
Councilmember N. Craig Sanderson, Irondale  
Councilmember Truman Norred, Jacksonville  
Councilmember Tammie B. Williams, LaFayette  
Councilmember Rebecca S. Looser, Lanett  
Councilmember James M. Barefield, Ozark  
Councilmember Charles E. Black, Priceville  
Councilmember Larry P. Keenum, Rainbow City  
Councilmember Veronica S. Hudson, Saraland  
Councilmember Thomas H. Williams, Satsuma  
Councilmember Mary C. Stevens, Sheffield  
Councilmember Mike Thompson, Sylvan Springs  
Mayor Saint T. Thomas, Jr., Union Springs  
Councilmember Frank Braxton, Uniontown  
Mayor Ray H. McAllister, Vincent

## 2013 Basic Certified Municipal Officials

Councilmember Betty J. Yoder, Abbeville  
Councilmember Anthony J. Brooklere, Adamsville  
Councilmember Robert Wilder, Aliceville  
Councilmember Carole M. Barfield, Ashford  
Councilmember Cornell Torrence, Atmore  
Councilmember Christopher E. Walker, Atmore  
Councilmember Donna Thigpen, Bessemer  
Councilmember Maxine Herring Parker, Birmingham  
Councilmember Lonnie Murry, Sr., Brighton  
Mayor Barbara E. Watkins, Brighton  
Councilmember Alex L. Moses, Clayton  
Councilmember Andrew J. Page, Cullman  
Councilmember Robert D. Powers, Eufaula  
Mayor Kenneth Coachman, Fairfield  
Councilmember John W. Trawick, Foley  
Councilmember Deverick B. Williams, Gadsden  
Councilmember Clementine P. Pugh, Georgiana

Councilmember Evelyn J. Chambers, Greensboro  
Mayor Ken Sunseri, Haleyville  
Councilmember Bobby Joe Wilson, Irondale  
Mayor Tim Tubbs, Killen  
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Councilmember James T. McNair, Oneonta  
Councilmember Bobby Ray Owens, Opp  
Councilmember Anita W. Bedwell, Rainbow City  
Councilmember Percy Matthews, Reform  
Councilmember Lanny H. Hubbard, Russellville  
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Councilmember Marquetta L. Madden, Valley  
Councilmember Joe Nathan Brown, York



# Fall CMO Sessions Will Feature Special “Listening” Element



We want your input on how the League should move forward and how we can best shape services that will enhance our ability to make local government efficient and effective. Sign up for one of the Fall CMO sessions. **Bring your ideas. The staff will be listening!**

## Fall CMO Session Schedule

September 19, 2013	Loxley	Loxley Civic Center
September 24, 2013	Montgomery	Embassy Suites
October 9, 2013	Huntsville	Embassy Suites
October 10, 2013	Tuscaloosa	Hotel Capstone

Contact Cindy Price at [cindyp@alalm.org](mailto:cindyp@alalm.org) for information about these sessions, or go to [www.alalm.org/CMOUcomingTraining.html](http://www.alalm.org/CMOUcomingTraining.html)

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# Call For Entries

## 2014 Municipal Quality of Life Awards

Information and entry form available online: [www.alalm.org](http://www.alalm.org)



### This awards program has three main objectives:

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.

### ONE winning entry and ONE honorable mention will be chosen from each of the three population categories:

- under 5,000
- 5,001 – 12,000
- over 12,001

### Entries for each population category should focus on one of four subject areas:

- Economic Development (community development and planning projects)
- Public Safety (includes emergency service projects)
- Public Works (includes infrastructure projects)
- Public Service (anything not covered in the three subject areas listed above)

### How Do I enter my municipality in the 2014 Quality of Life program?

1. Download and thoroughly read the Call For Entries Brochure ([www.alalm.org](http://www.alalm.org))
2. Complete the Entry Form
3. Include all required information and materials (See requirements in the Call For Entries Brochure)
4. Mail your entry to: *Municipal Quality of Life Awards  
Alabama League of Municipalities  
P.O. Box 1270  
Montgomery, AL 36102*
5. Entries should be sent certified mail and must reach the League office by **November 1, 2013**. Please see Call For Entries Brochure for complete information regarding entries. **Projects MUST be completed. Projects still under development/construction are not eligible. Download the entry form and program information at [www.alalm.org](http://www.alalm.org)!**



**DEADLINE FOR ENTRIES: Friday, November 1, 2013**

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