

The Alabama Municipal JOURNAL

September/October 2015

Volume 73, Number 2



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

Richard Buttenshaw
Assistant 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

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Editor: CARRIE BANKS

Staff Writers: KRISTLE BELL, ROB JOHNSTON, LORI LEIN

Graphic Design: KARL FRANKLIN

For a complete list of the ALM staff, visit www.alalm.org.

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On the Cover:

This issue of the *Alabama Municipal Journal* reviews several significant legal topics including Alabama's Open Meetings Act, Affordable Care Act IRS reporting requirements and what municipal employers need to know about the Supreme Court's ruling on same-sex marriage.

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A Message from the Editor

During the 2013 Regular Session, the Alabama Legislature created the Alabama Bicentennial Commission, a 12-member committee chaired by Senator Arthur Orr and co-chaired by Representative Mike Ball and Lee Sentell, Director of the Alabama Tourism Department. The Commission has established three specific committees – Education, Statewide Initiatives and Local Activities – as well as an Advisory Committee to guide the state’s Bicentennial Commemoration efforts (ALABAMA 200), which will begin in 2017 to mark Alabama’s nearly two-year territorial period before Congress approved it as the nation’s 22nd state on December 14, 1819.

ALABAMA 200

Launching in March 2017 in Mobile and St. Stephens (Alabama’s territorial capital) and culminating in December 2019 in Huntsville, where Alabama’s constitutional convention convened in early 1819, ALABAMA 200 will include all 67 counties and stretch from the Shoals to the shores. Organized around specific themes celebrating *place, people* and *story*, this multi-year Bicentennial endeavor will begin in 2017 by “Discovering Our Place”, which coincides with Alabama’s Territorial Bicentennial. 2018 is the year for “Honoring Our People”, which will explore the experiences and stories of those who made Alabama home. “Sharing Our Story” will be the theme of 2019 and the conclusion of ALABAMA 200 – an invitation for all communities and Alabamians to continue celebrating our past and what makes our state distinct while encouraging us to honor the years to come through a historical perspective.

Jay Lamar, formally of Auburn University, is the Director of the Commission and has begun the process of directing all Bicentennial initiatives, including the launch of a comprehensive website at www.alabama200.org, which will grow



exponentially over the next year and provide resources and ideas to help local governments and other organizations begin thinking about bicentennial options and opportunities. In addition, a social media presence is being established via Facebook (facebook.com/Alabama200), Twitter (twitter.com/al200) and Instagram (instagram.com/Al200Official/). Through 2019, Jay’s office will be housed in the Alabama Tourism Department in Montgomery. She can be reached at 334-353-3163 or via email at jay.lamar@bicentennial.alabama.gov.

I was appointed by Sen. Orr to serve on the Bicentennial Advisory Committee and to co-chair the Bicentennial’s Local Activities Committee (LAC) along with Tami Reist, President/CEO of the Alabama Mountain Lakes Tourist Association, who is also a member of the Commission. Over

the past few months, Tami and I have attended several meetings and been active in the early planning stages of the Commission’s efforts. The LAC has met three times in Montgomery and will begin to evolve more quickly as the Commission’s calendar becomes more structured.

One of the first major goals of the Commission was to form a 501c3 nonprofit Foundation to raise money to support its efforts throughout the three-year celebration period. Now that the Foundation is operational, a full-scale fundraising campaign is underway which will, in part, enable the Commission to designate a small grants program to support local efforts to commemorate the state’s 200th anniversary. Once grant information is available, it will be posted to the Bicentennial website. The League will also distribute it to our members. **That being said, in order to apply for grants – or to be eligible for ALABAMA 200 branding and promotional materials – your municipality *must* designate**

continued on page 40

The President's Report

By Councilwoman Sadie Britt, Lincoln



A Guide to Global Leadership: Everything I Need to Know I Learned in Kindergarten

As many of you know, I was an elementary school teacher for 30 years. I loved being in the classroom and am absolutely convinced that many of life's most important lessons begin with our earliest teachers – those individuals who are tasked with the enormous responsibility of engaging and inspiring young minds while also serving as mentors and leaders.

For the past 20 years, serving on the Lincoln City Council has been my second “full-time” job. It's also one I truly love because I love my community. In many ways, it's similar to being a teacher because elected officials are also tasked with enormous responsibility – listening to our constituents; understanding and addressing their concerns; and making difficult decisions that affect many people. It's not an easy job. There are times when tempers flare and heated exchanges take place. Sometimes this happens for the right reasons; sometimes not. There are times when we as elected officials need to step back, take a breath, regroup and remember *who* we serve and *why* we serve. Sometimes we should step all the way back to kindergarten.

In 1988, Robert Fulghum, a minister, released his first book of short essays, *All I Really Need to Know I Learned in Kindergarten*. Nearly 30 years later, the book's first entry remains an important guide to global leadership – one worth sharing:

All I really need to know about how to live and what to do and how to be I learned in kindergarten. Wisdom was not at the top of the graduate school mountain, but there in the sand pile at school. These are the things I learned:

- Share everything.
- Play fair.
- Don't hit people.
- Put things back where you found them.
- Clean up your own mess.
- Don't take things that aren't yours.
- Say you're sorry when you hurt somebody.
- Wash your hands before you eat.

- Flush.
- Warm cookies and cold milk are good for you.
- Live a balanced life - learn some and think some and draw and paint and sing and dance and play and work every day some.
- Take a nap every afternoon.
- When you go out in the world, watch out for traffic, hold hands and stick together.
- Be aware of wonder. Remember the little seed in the Styrofoam cup: the roots go down and the plant goes up and nobody really knows how or why, but we are all like that.
- Goldfish and hamsters and white mice and even the little seed in the Styrofoam cup - they all die. So do we.
- And then remember the Dick-and-Jane books and the first word you learned - the biggest word of all - LOOK.

Everything you need to know is in there somewhere. The Golden Rule and love and basic sanitation. Ecology and politics and equality and sane living. Take any one of those items and extrapolate it into sophisticated adult terms and apply it to your family life or your work or government or your world and it holds true and clear and firm. Think what a better world it would be if we all - the whole world - had cookies and milk at about 3 o'clock in the afternoon and then lay down with our blankies for a nap. Or if all governments had as a basic policy to always put things back where they found them and to clean up their own mess. And it is still true, no matter how old you are, when you go out in the world, it is best to hold hands and stick together. (Source: All I Really Need to Know I learned in Kindergarten (1988) by Robert Fulghum, www.robertfulghum.com.)

As we serve our cities and towns making the difficult decisions necessary to improve the quality of life for our constituents, let's remember the lessons outlined above. Perhaps a visit to the kindergarten classes in our districts would be a worthy endeavor! ■



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Municipal Overview

By Ken Smith, Executive Director



League Adds New Convention Location

One of my proudest moments as a League employee came this past May when the staff of the Alabama League of Municipalities accomplished something truly remarkable. Your staff worked hard, along with the City of Tuscaloosa, the Tuscaloosa Sports and Tourism Commission, the University of Alabama, numerous hotels – and others – to do something that has not been done at the League in over half a century. For the first time in memory, a new municipality hosted the League’s annual Convention, as Tuscaloosa joined Birmingham, Huntsville, Mobile and Montgomery as host locations.

While the event did not go off without a hitch – no League Convention, or event of this magnitude, for that matter, ever does – we at the League were very satisfied with our experience in Tuscaloosa and the overall success of this Convention compared to previous years.

Our annual Convention is, by far, the largest single gathering of Alabama municipal officials and employees. Over four days, attendees have the chance to share information and ask questions, learn best practices and gain new insight while they network with each other and those who provide products that will benefit their community. Although this wasn’t the first time Tuscaloosa has hosted the League Convention – the League’s 1961 Convention was also held in Tuscaloosa – current-day Convention is a massive undertaking that far outpaces the requirements that existed back in 1961. Although – contrary to popular belief – I wasn’t present at the 1961 Convention, it seems that in those days, the Convention was mostly a business session that incorporated updates on important legislative issues.

Currently, more than 1,000 municipal mayors, councilmembers and staff members attend each of our annual Conventions to receive training; to update themselves on developments that will impact municipalities; and to conduct the business of the League. These attendees are joined by over 450 exhibitors and others. As you can imagine, an event this large can stress the facilities and infrastructure capabilities of any city. A host municipality has to be able to offer sufficient hotel rooms, meeting space, exhibitor space and so on to

accommodate our annual Convention for four days – and, because League attendees must be able to easily walk from event to event in a very short time span, meeting and expo facilities must be fairly close to each other.

It is important to remember that the League staff doesn’t select locations for our Convention. Future locations are chosen by our members at the Business Session during each Convention. Tuscaloosa Mayor Walt Maddox has told me many times how proud he is that our members had enough faith and trust in Tuscaloosa’s capability to select them as the site of the 2015 Convention.

For Tuscaloosa, hosting the 2015 Convention reflected more than 20 years of hard work by Mayor Maddox and former Mayor Al DuPont, who both worked tirelessly with many others to make this possible. Over the years, several proposals by Tuscaloosa were deemed inadequate to address the significant requirements of our Convention before our members in 2011 selected the City as a future location. While there were always plenty of hotel rooms available, other infrastructure needs had to be in place before our members could feel comfortable with Tuscaloosa as a host site. It would have been easy for Tuscaloosa to give up. Instead, they dedicated themselves to work even harder. We feel that Tuscaloosa did a great job fulfilling our members’ trust.

With Tuscaloosa now set to host the 2020 Convention, I thought this would be great time to look back at the success of the Tuscaloosa Convention, and at what it takes for a city to consider hosting a future League Convention.

Survey Results

Evaluations of the Tuscaloosa event largely reflect the successful impact this event had on our members. Eighty-five percent (85%) of respondents reported having a good or excellent experience in Tuscaloosa. Sixty-three percent (63%) attended all four days of the Convention, while 23% attended three days. In addition, sixty-four percent (64%) have attended four or more previous Conventions, so the survey results reflect the opinions of a broad, experienced group of participants. The educational sessions are the reason most respondents cited for attending the League Convention.

Discussion opportunities and networking was a close second. Other listed reasons lag far behind.

Only 45% of the respondents reported using the League's Convention app. This low result is likely a combination of two factors. Unawareness that the League even had a Convention app is the most likely reason. But there may be some residual reluctance to new technology. Even some who downloaded the app admitted that they didn't understand how to best use apps. Those who did use it, though, found it to be a very effective tool. The use of apps as a means of communicating information about the Convention and other events will likely grow as our members become more familiar with the technology.

Facilities are always a concern in new locations. We were particularly concerned with transportation to and from hotels and several respondents cited this as their least favorite aspect of the Convention. This experience seemed to be mixed, though. Overall, we were satisfied with our members' stated experience in this part of the survey, as well as the comments many made on-site during the Convention.

Eighty-eight percent (88%) of respondents reported being either satisfied or very satisfied with the Convention facilities. In fact, several respondents rated facilities as their favorite part of the Convention. This is probably due to the fact that several events – notably the Expo Hall and President's Banquet – were in facilities not generally accessible by the public. This added

an additional element of excitement to these events.

Many respondents took time to commend the City of Tuscaloosa for their hospitality, which was, indeed, first-class. It seemed that everyone, even those who raised concerns about certain parts of the Convention, were pleased with this aspect of the Convention.

Of course, there is always room for improvement. Where legitimate concerns were raised, we will work hard to improve those areas. We have shared the results of our surveys with the City of Tuscaloosa, and I know they will be working hard to make sure Tuscaloosa will be ready when we return in 2020.

What does it take for a city to host the Convention?

First, I hope it goes without saying that the host city must be a member of the League in good standing. This is our showcase event. It is being held to promote the interests and goals of the League and its members. Because our members are municipalities, it makes no sense for us to meet in a city that is not a member. Additionally, because it does take several years to plan each Convention, that member would need to remain a member during the years of planning. If a potential host city withdrew from League membership, we would be forced to seek a new venue.

It's important to note that planning for each Convention starts at least five years before the actual event is held. We

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The Legal Viewpoint

By Lori Lein, General Counsel



Alabama Open Meetings Act

As a result of changes made to the Alabama Open Meetings Act (OMA) during the 2015 Legislative session, this article is an update to the Open Meetings Act article in *The Selected Readings for the Municipal Official* (2012 ed.). Act 2015-340 is effective on September 1, 2015, and one of the most significant changes made to the OMA is the addition of a specific prohibition on serial meetings. This change was prompted by an Alabama Supreme Court decision which held that under certain narrow situations, back-to-back serial meetings were not specifically prohibited by the OMA. See *Slagle v. Ross*, 125 So.3d 117 (Ala. 2012).

In addition to the definition and prohibition of serial meetings, several other changes were made to the OMA. Those changes are incorporated into this article. Unfortunately, some of the changes, and the language used, leave unanswered questions about the application of the OMA. Until such time as there are Attorney General Opinions or case law helping to interpret the new language, each meeting situation should be considered carefully in light of the new law. For the most part, it is the opinion of the League that little has changed in how the OMA operates from the standpoint that you start with the presumption that any discussions involving a quorum of the council or a council committee – whether all together at one time or via a series of meetings – and involving city business must be conducted pursuant to the OMA unless there is an exemption or exception found in the OMA.

The League’s legal staff is always available to discuss specific situations arising in your municipality should you have questions. The League would also like to thank the City of Huntsville’s legal department staff for input and analysis of the new OMA. They have been a valuable resource on this issue.

The Open Meetings Act (OMA)

The Alabama Open Meetings Act (OMA), codified at Sections 36-25A-1 through 36-25A-11, Code of Alabama 1975, was originally passed in 2005 and was most recently amended by the Alabama Legislature in 2015. As originally passed, it replaced what was commonly known as the Sunshine Law, Section 13A-14-2, Code of Alabama 1975. Although the OMA specifically repealed the former Sunshine Law, all specific references in the Code of Alabama 1975 to Section 13A-14-2, are preserved and are now considered to refer to the OMA instead. The idea behind this is to preserve any exclusion or inclusion from the requirement to hold public meetings that existed prior to the change in the law. This

article summarizes the OMA and its impacts on how municipalities conduct business.

Who is covered?

Meetings of all “governmental bodies” are subject to the OMA. While there is no question that municipal governing bodies must conduct open meetings pursuant to the requirements of the OMA, what other municipal entities must hold open meetings? And which gatherings of these entities are subject to the new law? With regard to municipalities, the OMA defines governmental bodies to include the following:

1. All municipal “boards, bodies, and commissions” which “expend or appropriate public funds”; and,
2. All municipal “multimember governing bodies of departments, agencies, institutions, and instrumentalities “including, without limitation, all corporations and other instrumentalities whose governing boards are comprised of a majority of members who are appointed or elected by” the municipality.

Thus, any municipal board or agency that has the power to expend or appropriate municipal funds must conduct open meetings pursuant to the requirements of the OMA. Additionally, the OMA applies to any instrumentality, including separate corporations, whose membership is composed of at least a majority of members who were appointed by the municipality. The term “governmental body” does not include “voluntary membership associations comprised of public employees, retirees, counties, municipalities, or their instrumentalities which have not been delegated any legislative or executive functions by the Legislature or Governor.” Section 36-25A-2(4)(c), Code of Alabama 1975.

A volunteer fire department certified by the Alabama Forestry Commission is subject to the OMA. AGO 2006-108. Further, the provisions of the OMA apply to community action agencies that are established by a county, a municipality, a combination thereof, or a private, nonprofit agency newly established by local ordinance. Such entities may either voluntarily or as a result of requirements placed on the agency by the Department of Economic and Community Affairs follow the requirements of the OMA. AGO 2007-039.

Section 36-25A-2(6), Code of Alabama 1975, defines a “meeting” as any of the following:

1. “The prearranged gathering of a quorum of a governmental body, a quorum of a committee or a quorum of a subcommittee



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of a governmental body at a time and place which is set by law or operation of law”;

2. “The prearranged gathering of a quorum of a governmental body, a quorum of a committee or a quorum of a subcommittee of a governmental body during which the full governmental body, committee or subcommittee of the governmental body is authorized, either by law or otherwise, to exercise the powers which it possesses or approve the expenditure of public funds”;

3. “The gathering, whether or not it was prearranged, of a quorum of a governmental body during which the members of the governmental body deliberate specific matters that, at the time of the exchange, the participating members expect to come before the full governmental at a later date” and

4. “The gathering, whether or not it was prearranged, of a quorum of a committee or subcommittee of a governmental body during which the members of the committee or subcommittee deliberate specific matters relating to the purpose of the committee or subcommittee that, at the time of the exchange, the participating members expect to come before the full governmental body, committee, or subcommittee at a later date.”

The term “meeting” does *not* include the following:

1. “Occasions when a quorum of a governmental body, committee, or subcommittee attends social gatherings, conventions, conferences, training programs, press conferences, media events, association meetings and events or gathers for on-site inspections or meetings with applicants for economic incentives or assistance from the governmental body, or otherwise gathers so long as the subcommittee, committee, or full governmental body does not deliberate specific matters that, at the time of the exchange, the participating members expect to come before the subcommittee, committee, or full governmental body at a later date”;

2. “Occasions when a quorum of a subcommittee, committee, or full governmental body gathers, in person or by electronic communication, with state or federal officials for the purpose of reporting or obtaining information or seeking support for issues of importance to the subcommittee, committee, or full governmental body.”; and

3. “Occasions when a quorum of a subcommittee, committee, or full governmental body, including two members of a full governmental body having only three members, gathers to discuss an economic, industrial, or commercial prospect or incentive that does not include a conclusion as to recommendations, policy, decisions or final action on the terms of a request or an offer of public financial resources.”

In addition, the OMA specific provides that two members of a governmental body may talk together, without deliberation and that nothing in the OMA prevents a mayor, who is not a voting member of the council, from talking or deliberating with a member of the municipal council. This provision, in the League’s opinion, would allow a mayor of a municipality over 12,000 population, to discuss any municipal matters with individual council members even if he or she ultimately discusses the same matter with every individual council member. We would advise caution here, however, to make sure that the provisions of the OMA with regard to serial meetings are taken into account.

These definitions make it clear that there must be a quorum present for there to be a “meeting” under the OMA unless it is

covered by the serial meeting provisions discussed below. The quorum requirement applies to both the governing body itself and all subcommittees and committees of the governing body. However, a quorum alone is not the full requirement for a meeting under the Act. A “meeting” under the OMA would include a quorum gathered at a “prearranged gathering” such as a regular or special called meeting. Under the definition, a meeting would also include any gathering, prearranged or otherwise, of a quorum where members engage in deliberations of actions that are expected to come before the subcommittee, committee or full governmental body at a later time.

Fortunately, the OMA also makes it clear that there are certain types of get-togethers that are not covered, even if a quorum is present. This allows members to attend social events or conventions, or similar activities, together, provided that they do not deliberate matters that are expected to come before the body later.

With regard to serial meetings, the Alabama Supreme Court, in *Slagle v. Ross*, 125 So.3d 117 (Ala. 2012), narrowed the scope of the definition of a meeting by holding that a “meeting” occurs only if a committee or subcommittee meets for the purpose of deliberating on a matter that will come back before *that* particular committee or subcommittee. Further, the Court determined that a plain reading of Section 36-25A-2(6)(a)(3), Code of Alabama 1975, yielded the conclusion that a “meeting” occurs when a majority of the members of a governmental body come together at the same time. As such, the Court held that in the case of the back to back meetings as presented under the facts of the case, there was no gathering of a majority of board so as to constitute a meeting of the board within the meaning of Section 36-25A-2(6)(a)(3) because there was not a quorum present “at the same time.” While this case has a fairly narrow holding, it ultimately resulted in the Legislature making changes to the OMA in 2015 with the passage of Act 2015-340. In fact, one of the primary motivations for the 2015 amendments to the OMA was to specifically prohibit “serial meetings”

Act 2015-340 defines a “serial meeting” as “any series of gatherings of two or more members of a governmental body, at which:

1. Less than a quorum is present at each individual gathering and each individual gathering is attended by at least one member who also attends one or more other gatherings in the series.

2. The total number of members attending two or more of the series of gatherings collectively constitutes a quorum.

3. There is no notice or opportunity to attend provided to the public in accordance with the Alabama Open Meetings Act.

4. The members participating in the gatherings deliberate specific matters that, at the time of the exchange, the participating members expect to come before the subcommittee, committee or full governmental body at a later date.

5. The series of gatherings was held for the purpose of circumventing the provisions of this chapter.

6. At least one of the meetings in the series occurs within seven calendar days of a vote on any of the matters deliberated.”

Four types of gatherings are specifically exempted from the definition of a “serial meeting”. Of interest to municipal government, the following do not constitute a serial meeting:

1. Gatherings, including a gathering of two members of a full governmental body having only three members, at which no deliberations were conducted or the sole purpose was to exchange background and education information with members on specific issues...;

2. A series of gatherings related to a search to fill a position required to file a statement of economic interests with the Alabama Ethics Commission pursuant to Section 36-25-14 until the search has been narrowed to three or fewer persons under consideration.

3. A gathering or series of gatherings involving only a single member of a governmental body.

The Attorney General has opined that a quorum of a governing body may attend a committee meeting, where notice was properly given for the committee meeting under the OMA, without also providing notice of a meeting of the governing body, as long as the governing body does not deliberate matters at the committee meeting that it expects to come before the governing body at a later date. If a quorum of the governing body has prearranged a meeting to occur in conjunction with the committee meeting, the governing body must provide notice of this meeting under the OMA. A quorum of the governing body may not hold an impromptu meeting at the committee meeting, at which it deliberates specific matters expected to come before the governing body at a later date, without violating the OMA. AGO 2011-014

To be counted towards establishing a quorum, members of a governing body covered by the OMA are required to be physically present. There is no provision for obtaining a quorum by telephone conference. AGO 2006-071. Further, even if a quorum is physically present, additional members of a governmental body that are not present may not participate or vote in meetings through electronic means. A member of the governmental body may, however, listen to a meeting through electronic means. AGO 2010-070.

For purposes of the OMA, an e-mail sent by one member of a governing body to other members expressing an opinion on a matter before the body does not, in and of itself constitute a meeting under the OMA so long as there is no "deliberation." If an e-mail is a unilateral declaration of a member's idea or opinion then it is not a "deliberation" and without deliberation there is no meeting under the OMA. *Lambert v. McPherson*, 98 So.3d 30 (Ala.Civ. App. 2012).

Meeting Notice

The public must be provided notice of meetings which are subject to the OMA. See Section 36-25A-3, Code of Alabama 1975. Municipal governing bodies provide notice of regular meetings by posting notice on a public bulletin board at city hall at least seven days prior to the date of the regular meeting. A separate corporation where a majority of the membership is appointed by the municipality which has an office at a location other than city hall may instead provide notice on a public bulletin board in the principal office of the corporation. All other governmental bodies must post notice of each meeting in a location that is reasonably accessible by the public, or in some other method that is convenient to the public.

It should be pointed out that there is a small ambiguity in the notice requirements under Section 36-25A-3(a)(3). Separate

corporations are permitted to post notice at their principal office, if they have one separate from the city hall. The notice provision then states that the public bulletin board must be at the office of the corporation or other instrumentality. It is unclear what other instrumentalities are covered. The League recommends that unless the entity in question is a separate corporation with an office at a location other than city hall, notice should be posted on a public bulletin board at city hall. Note that any entity may satisfy the notice requirement by posting at city hall. Additional notice may also be provided if desired.

Any change of the location or method for posting notices must be approved by the members of the governmental body at an open meeting and announced to the public at an open meeting. Section 36-25A-3(a)(5). Note that this is a two-step process. Both steps, though, can be performed at the same open meeting.

Section 36-25A-3(b), Code of Alabama 1975, sets out notice requirements for meetings other than regular meetings. For special called meetings, notice must be posted as soon as practicable after a meeting is called. The notice must be posted no less than 24 hours before the scheduled start of the meeting, unless: 1. Notice cannot be given due to emergency circumstances requiring immediate action to avoid physical injury to persons or damage to property; or 2. The notice relates to a meeting to be held solely to accept the resignation of a public official or employee.

In these instances, notice must be given as soon as practical, but in no case less than one hour before the meeting is to begin.

The Attorney General has ruled that at least seven days' notice is required by the OMA, for a regularly scheduled meeting of the city council or standing committee of the city when a meeting is established by organizational ordinance or resolution. As to meetings of the city council or standing committee that do not have regularly scheduled meetings set by ordinance or resolution, as well as meetings that are called pursuant to Section 11-43-50 of the Code of Alabama 1975, notice is to be posted as soon as practicable after the meeting is called, but in no event less than 24 hours before the meeting is scheduled to being. AGO 2006-027.

Section 36-25A-3(c) provides that the notice must include the time, date and place of the meeting. If a preliminary agenda is created, the agenda must be posted as soon as practicable in the same location or manner as the notice. AGO 2006-027. If a preliminary agenda is not available, the posted notice shall include a general description of the nature and purpose of the meeting. Please note, though, that the OMA specifically provides that the governing body may still discuss at a meeting additional matters not included in the preliminary agenda. The Alabama Supreme Court has held that a governmental body did not violate the OMA by considering and voting on, at a special meeting, a resolution that was not on the agenda. *Underwood v. Alabama State University*, 51 So.3d 1010 (Ala.2010)

The posting by a municipal governing body of its organizational ordinance or resolution specifically stating the place, date, and time of regular council meetings and standing committee meetings, and a general description of the nature and purpose of those meetings is sufficient to meet the notice requirements of the OMA.

If practicable, the governing body must also provide direct notification of a meeting to any member of the public or news

media who has registered to receive notification of meetings. Section 36-25A-3(a)(6), Code of Alabama 1975. The municipality may require the person requesting notice to pay the actual cost of issuing notices, if there is one, in advance. Direct notice to persons who have registered shall, at a minimum, contain the time, date, and place of the meeting. This notice must be given at the same time the general notice is provided.

The governing body may promulgate reasonable rules and regulations necessary for the uniform registration and payment for direct notice and for the distribution of the notices. The governmental body has the authority to choose the method of providing direct notice. This may include using electronic mail, telephone, facsimile, the United States Postal Service, or any other method reasonably likely to provide the requested notice.

Minutes

The Act requires all entities subject to the OMA to keep accurate records (minutes) of all meetings. Section 36-25A-4, Code of Alabama 1975. The minutes shall include the date, time, place of the meeting, which members were present or absent, and any action taken at the meeting. These minutes must be maintained as a public record. Minutes are not required for executive sessions. It is important to note here that under the OMA, most “work sessions” or similar “pre-council” gatherings meet the definition of a “meeting” as discussed above. As such, there should be a record of work sessions and pre-council meetings.

Conducting Meetings

All covered entities must adopt rules of parliamentary procedure and follow them during the meeting. Section 36-25A-5, Code of Alabama 1975. Unless specifically allowed by statute, votes shall not be taken during an executive session, nor may the body vote by secret ballot. All votes on matters before a governmental body, including, but not limited to, votes to appropriate or to authorize an employee to spend public funds without further authorization of the governmental body, to levy taxes or fees, to forgive debts to the governmental body, or to grant tax abatements, shall be made during the open or public portion of a meeting for which notice has been provided pursuant to this act. Voice votes are allowed.

Recording Meetings

The League has frequently been asked whether members of the public may make audio or video recordings of a meeting. Section 36-25A-6 specifically allows any person in attendance at a meeting to make a recording provided the recording does not disrupt the conduct of the meeting. This does not apply to executive sessions. The governmental body may adopt reasonable rules for the implementation of this provision.

Executive Sessions

The OMA specifically states that executive sessions are not required for any reason. Section 36-25A-7(a). It does, however, permit the body to enter into executive sessions for certain specified reasons. Unlike the Sunshine Law, the OMA

provides a number of exceptions. These exceptions include the following:

1. To discuss the general reputation and character, physical condition, professional competence or mental health of individuals, or to discuss the job performance of certain public employees. The entity may not go into executive session to discuss the job performance of an elected or appointed public official, an appointed member of a state or local board or commission, or any public employee who must file a Statement of Economic Interests with the Alabama Ethics Commission pursuant to Section 36-25-14, Code of Alabama 1975. The salary, compensation, and job benefits of specific public officials or specific public employees may not be discussed in executive session.

The Attorney General has ruled that this exception permits governmental boards to convene an executive session to interview current public employees in connection with promoting these employees to fill vacant positions when those positions do not require the interviewee to file a Statement of Economic Interests with the Alabama Ethics Commission. Only the portions of the meeting that involve the general reputation and character, physical condition, professional competence, mental health, and job performance of the employee may be discussed in executive session. The professional competence of a person may be discussed in executive session only when that person’s position qualifies as



a profession as specified in Section 36-25A-2(8) of the Code of Alabama. AGO 2006-088. Further, the AG found that OMA permits the Alabama Aviation Hall of Fame Board to convene an executive session to discuss the general reputation and character of nominees for induction into the Hall of Fame and only those portions of the meeting that involve general reputation and character may be discussed in executive session. AGO 2010-011

2. To consider the discipline or dismissal of, or to hear formal written complaints or charges brought against a public employee, a student at a public school or college, or an individual, corporation, partnership, or other legal entity subject to the regulation of the governmental body, if an executive session is expressly allowed by federal law or state law.

3. To discuss with the attorney the legal ramifications of and legal options for:

a. Pending litigation;

b. Controversies not yet being litigated but imminently likely to be litigated or imminently likely to be litigated if the governmental body pursues a proposed course of action; or

c. To meet or confer with a mediator or arbitrator with respect to any litigation or decision concerning matters within the jurisdiction of the governmental body involving another party, group, or body.

Prior to voting to convene an executive session under this exception, an attorney licensed in Alabama must provide a written

or oral statement reflected in the minutes that this exception applies to the planned discussion. This declaration does not constitute a waiver of attorney/client privilege. However, any deliberation between the members regarding what action to take relating to pending or threatened litigation based upon the advice of counsel must be conducted in the open portion of the meeting.

4. To discuss security plans, procedures, assessments, measures, or systems, or the security or safety of persons, structures, facilities, or other infrastructures, the public disclosure of which could reasonably be expected to be detrimental to public safety or welfare. If the discussion involves critical infrastructure or critical energy infrastructure information, the owners and operators of such infrastructure must be given notice and an opportunity to attend the session.

5. To discuss information that would disclose the identity of an undercover law enforcement agent or informer or to discuss the criminal investigation of a person, other than a public official, who is alleged or charged with specific criminal misconduct allegations or against whom charges of specific criminal misconduct have been made or to discuss whether or not to file a criminal complaint.

Prior to entering executive session for any of these purposes, the entity must obtain a written or oral declaration entered on the minutes that the discussions would imperil effective law enforcement if disclosed outside of an executive session from a law enforcement officer with authority to make an arrest or a



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district or assistant district attorney or the Attorney General or an assistant Attorney General.

6. To discuss the consideration the governmental body is willing to offer or accept when considering the purchase, sale, exchange, lease, or market value of real property. However, the material terms of the contract must be disclosed in the public portion of a meeting prior to the execution of the contract. Only persons representing the interests of the governmental body in the transaction may be present during an executive session held pursuant to this exception. The entity cannot hold an executive session for this purpose if:

a. Any member of the entity involved in the transaction has a personal interest in the transaction and attends or participates in the executive session concerning the real property; or

b. A condemnation action has been filed to acquire the real property involved in the discussion.

7. To discuss preliminary negotiations involving matters of trade or commerce in which the entity is in competition with private individuals or entities or other governmental bodies in Alabama or other states or foreign nations, or to discuss matters or information defined or described in the Alabama Trade Secrets Act.

Prior to holding an executive session pursuant to this exception, a person involved in the recruitment or retention effort or who has personal knowledge that the discussion will involve matters or information defined or described in the Alabama Trade Secrets Act must advise the governmental body in writing or by oral declaration entered into the minutes that the discussions would have a detrimental effect upon the competitive position of a party to the negotiations or upon the location, retention, expansion, or upgrading of a public employee or business entity in the area served by the governmental body if disclosed outside of an executive session, or would disclose information protected by the Alabama Trade Secrets Act.

8. To discuss strategy in preparation for negotiations between the governmental body and a group of public employees. Prior to holding an executive session pursuant to this exception, a person representing the interests of a governmental body involved in the negotiations must advise the governmental body in writing or by oral declaration entered into the minutes that the discussions would have a detrimental effect upon the negotiating position of the governmental body if disclosed outside of an executive session.

9. To deliberate and discuss evidence or testimony presented during a public or contested case hearing and vote upon the outcome of the proceeding or hearing if the governmental body is acting in the capacity of a quasi-judicial body, and either votes upon its decision in an open meeting or issues a written decision which may be appealed to a hearing officer, an administrative board, court, or other body which has the authority to conduct a hearing or appeal of the matter which is open to the public.

Section 36-25A-7(a), Code of Alabama 1975.

Deliberations by a regional planning commission concerning credit and financial records of applicants for revolving fund loans must be conducted in an open public meeting under the OMA. There is no specific exemption under the act or under federal law that allows commissions to enter into executive session to discuss the credit and financial records of applicants. AGO 2006-068.

The OMA also spells out a specific procedure for entering into an executive session, other than one held for a quasi-judicial or contested case hearing. The procedure is as follows:

1. A quorum of governmental body must first convene a meeting as defined in the OMA.

2. A majority of the members of the governmental body present must adopt, by recorded vote, a motion calling for the executive session. The motion must state the reason for the executive session. If the stated reason requires an oral or written declaration to justify the executive session as set out above, the oral or written declaration must be made prior to the vote.

3. The vote of each member, as well as the written or oral declaration, shall be recorded in the minutes.

4. Prior to calling the executive session to order, the presiding officer shall state whether the governmental body will reconvene after the executive session and, if so, the approximate time the body expects to reconvene.

Section 36-25A-7(b), Code of Alabama 1975.

Immunity

The OMA specifically states that members of the covered entity and any of its employees participating in a meeting complying with the law have an absolute privilege and immunity from suit for any statement made during the meeting which relates to a pending action. This immunity is in addition to all others that may apply. Section 36-25A-8, Code of Alabama 1975.

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Enforcement

The process for enforcing the OMA is significantly different from that followed for enforcing the former Sunshine Law. The Sunshine Law was part of the Alabama criminal statutes, and violations were enforced as criminal offenses, specifically misdemeanors. Instead, the OMA is enforced as a civil violation as provided in Section 36-25A-9, Code of Alabama 1975.

The civil action must be brought in the county where the governmental body's primary office is located. Suit may be brought by any media organization, any Alabama citizen impacted by the alleged violation to an extent which is greater than the impact on the public at large, the Attorney General, or the district attorney for the circuit in which the governmental body is located. However, no member of a governmental body may serve as a plaintiff in an action brought against another member of the same governmental body for an alleged violation. If an action is filed by an Alabama citizen, the complaint shall state specifically how the person is or will be impacted by the alleged violation to an extent which is greater than the impact on the public at large.

An action alleging a violation of the OMA must be brought within 60 days of the date that the plaintiff knew or should have known of the alleged violation. In any event, though, any action under the OMA must be brought within two years of the alleged violation. The complaint must be verified and name in their official capacity all members of the governmental body who remained in attendance at the alleged meeting. The complaint must also specifically state one or more of the following the reasons for the complaint:

1. That the defendants disregarded the notice requirements for holding the meeting, as spelled out above.
2. That the defendants disregarded the provisions of the OMA during a meeting, other than during an executive session.
3. That after voting to go into executive session, the defendants discussed during the executive session matters other than those subjects included in the motion.
4. That the defendants intentionally violated some other provision of the OMA.

Members of a governmental body who are named as defendants must serve an initial response to the complaint within seven business days of receiving personal service of the complaint. A preliminary hearing on the complaint must be held no later than 10 business days after the date of the filing of the defendants' initial response to the complaint or, if no response is filed, no later than 17 business days after the filing of the complaint, or on the nearest day thereafter as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties.

In the preliminary hearing on the complaint, the plaintiff must establish by a preponderance of the evidence that a meeting of the governmental body occurred and that each defendant attended the meeting. Additionally, to establish a *prima facie* case the plaintiff must present substantial evidence proving the alleged violation.

If the court finds that the plaintiff has met its initial burden of proof, the court shall establish a schedule for discovery and set the matter for a hearing on the merits. If, at the preliminary hearing, the plaintiff establishes a *prima facie* case that the defendants discussed matters during the executive session other than those

included in the motion to go into the executive session, the burden of proof at the hearing on the merits shifts. The defendants must then prove by a preponderance of the evidence that the discussions during the executive session were limited to matters related to the subjects included in the motion.

During a proceeding involving claims alleging that matters beyond the motion were discussed, the court shall conduct an in camera (a private hearing) proceeding or adopt another procedure as necessary to protect the confidentiality of the matters discussed. If there is a determination that the executive session was proper, items discussed during the executive session shall not be disclosed or utilized in any other legal proceeding by any individual or attorney who attends the in camera portion of the proceedings.

Upon proof by a preponderance of the evidence of a violation, the circuit court shall issue an appropriate final order including, if appropriate, a declaratory judgment or injunction. Prior to a final determination of the merits, temporary restraining orders or preliminary injunctions may be issued upon proper motion and proof as provided and required in the Alabama Rules of Civil Procedure. The court must issue a final order on the merits within 60 days after the preliminary hearing unless all parties and the court consent to allow a longer period.

The court may invalidate any action taken during a meeting held in violation of the OMA, provided that:

1. The complaint is filed within 21 days of the date when the action is made public,
2. The violation was not the result of mistake, inadvertence, or excusable neglect, and
3. Invalidating the action taken will not unduly prejudice

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Legal Clearinghouse

Rob Johnston, Assistant General Counsel

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

Forfeiture: Default judgement holding by the Alabama Court of Appeals' that the federal court did not have jurisdiction in a federal forfeiture case, was clearly erroneous, and, thus, was not law of the case. The Supreme Court had, in an intervening decision of *Ervin v. City of Birmingham*, 137 So.3d 901 (Ala.2013), rejected the argument that default judgment in federal forfeiture proceeding was void because state district court first exercised jurisdiction over the property in question, which had been seized pursuant to search warrant issued by state district court. *Ex parte City of Birmingham*, 161 So.3d 1195 (Ala.2014)

Tort Liability: The \$100,000 municipal damages cap did not apply in action brought by driver and passenger, who were injured in automobile accident, against police officer in his individual capacity for negligence that occurred outside his employment, where accident occurred while officer was on his way to work and was late for his shift. The city was not obligated to indemnify police officer for negligent actions that occurred outside the performance of his official duties, and the city was not considered the real party in interest in the action, even though it sought to intervene to satisfy judgments against officer. *Alabama Mun. Ins. Corp. v. Allen*, 164 So.3d 568 (Ala.2014)

Streets: Owner of property 400 feet away from vacated portion of county road lacked standing to appeal vacation of road, since owner failed to show that she had suffered a special injury as a result of the vacation; although owner alleged that she had used the vacated portion of the road to access a creek and that the vacated portion of the road was now blocked with a chain and padlocks, owner did not show that there was no other convenient way to access the creek. *Crossfield v. Limestone County Comm'n*, 164 So.3d 547 (Ala.2014)

Parks and Recreation: Genuine issues of material fact, as to whether county park and recreation authority officials knew that bleachers on recreational land were in need of repair, knew that someone was likely to fall as result of condition of the bleachers, knew that a fall onto concrete from bleachers presented an unreasonable risk of death or serious bodily harm, and failed to guard the bleachers or warn the persons using the bleachers,

precluded summary judgment in action under provision of recreational use statute, which permitted owner to be held liable when, despite having knowledge of recreational use and a danger which was not apparent to recreational users, owner chose not to guard or warn. *Shirley v. Tuscaloosa County Park and Recreation Authority*, 163 So.3d 352 (Ala.Civ.App.2014)

Employees: The Teacher Accountability Act's section prohibiting actions by principals to recover damages for breach of employment contracts precluded former principal from bringing claim to recover compensatory damages for breach of covenants relating to his evaluation and contract extension. *Yance v. Dothan City Bd. of Educ.*, 163 So.3d 1070 (Ala.Civ.App.2014)

Employees: An employer may terminate a probationary teacher at his discretion prior to the employee's attaining tenured status without any prohibition that the termination not be based on political or personal reasons. *Jackson v. Geneva County Bd. of Educ.*, 160 So.3d 1221 (Ala.Civ.App.2013)

UNITED STATES COURT DECISIONS AFFECTING ALABAMA

Signs: A town's content-based sign code which subjected ideological signs to certain restrictions, subjected political signs to greater restrictions, and subjected temporary directional signs relating to events to even greater restrictions, did not survive strict scrutiny and thus violated the First Amendment. *Reed v. Town of Gilbert, Ariz.*, 135 S.Ct. 2218 (U.S.2015)

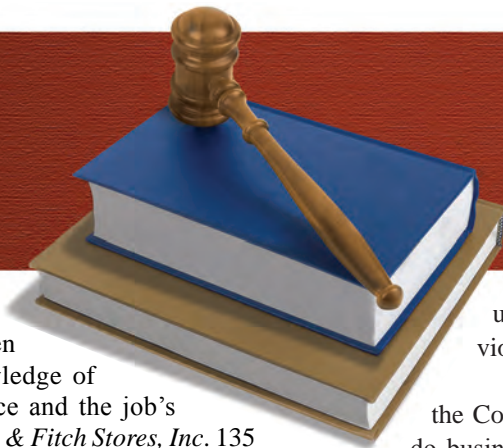
Searches and Seizures: Municipal code provision requiring hotel operators to provide police officers with specified information concerning guests upon demand did not fall within administrative search exception to a warrant requirement, and on its face violated Fourth Amendment, since it failed to provide hotel operators with opportunity for a pre compliance review. *City of Los Angeles, Calif. v. Patel*, 135 S.Ct. 2443 (U.S.2015)

Housing and Community Development: Unlawful practices under the Fair Housing Act (FHA) include zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification. *Tex. Dep't of Housing v. Inclusive Comm. Project*, 135 S.Ct. 2507 (U.S.2015)

Due Process: The right to marry is fundamental under the Due Process Clause that cannot be denied to same-sex couples. There is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character. *Obergefell v. Hodges*, 135 S.Ct. 2584 (U.S.2015)

Insurance: Federal tax subsidies under the Affordable Care Act are available to individuals who purchase their insurance on the federal health care exchange, and not just to those who purchase insurance on state-run exchanges. *King v. Burwell*, 135 S.Ct. 2480 (U.S.2015)

Discrimination: An employer may be liable for religious discrimination under Title VII of the 1964 Civil Rights Act for



failure to accommodate a job applicant's religious observance even if the employer lacks actual knowledge of a conflict between religious practice and the job's requirements. *EEOC v. Abercrombie & Fitch Stores, Inc.* 135 S.Ct. 2028 (U.S.2015)

DECISIONS FROM OTHER JURISDICTIONS

Right to Counsel: City residents plausibly stated the claim that the city's failure to appoint counsel for them or obtain waivers violated their Due Process rights, in their 42 U.S.C. 1983 claim against city. Residents alleged they were not afforded counsel at initial hearings on traffic and other offenses, nor were they afforded counsel prior to their incarceration for failing to pay court-ordered fines for those offenses. *Fant v. City of Ferguson*, --- F.Supp.3d ---, 2015 WL 3417420 (E.D.Mo.,2015)

First Amendment: City ordinance prohibiting parking vehicle on any city street for the purpose of displaying the vehicle for sale unconstitutionally restricted commercial speech, as applied to truck owner who wished to park his truck on a city street with a "For Sale" sign in the window. Owner's "For Sale" sign accurately informed the public about lawful activity, and there was no evidence that the ordinance directly advanced city's purported substantial interest in promoting traffic and pedestrian safety and regulating aesthetics. *McLean v. City of Alexandria*, --- F.Supp.3d ---, 2015 WL 2097842 (E.D.Va.2015)

Religious Land Use and Institutionalized Persons Act (RLUIPA): Municipality's prior frivolous suit in state court that had been aimed at preventing a religious organization from using its only facility imposed a substantial burden on the organization and violated RLUIPA. The violation warranted award of damages in amount that would reimburse organization for litigation expenses that it had incurred in that prior action. *World Outreach Conference Center v. City of Chicago*, 787 F.3d 839 (C.A.7 Ill.2015)

ATTORNEY GENERAL'S OPINIONS

Firearms: A city may not prohibit the carrying of firearms at a festival. Additional facts and circumstances may arise to justify the prohibition of firearms, but without those circumstances, the festival is not a "demonstration" as defined by section 13A-11-59 of the Code of Alabama. The city may not lease the public streets used for the festival to private vendors or a private entity in a way that would allow them to exclude firearms. AGO 2015-048

Officers and Offices: Alabama law does not specify the hours of operation of the Revenue Commissioner. Thus, as an elected official, the Revenue Commissioner has the authority to close the office one day a week. Public officers should keep their offices open a sufficient amount of time to adequately serve the public. If such action is taken without the consent of the county commission, care should be taken to ensure that the rights of the employees

under the personnel policy of the county are not violated. AGO 2015-050

Conflicts of Interest: Section 11-43-12.1 of the Code of Alabama permits Class 8 municipality to do business with a shop owned by a municipal officer when that shop or vendor is the only domiciled vendor within the municipality and the cost of the personal property or service offered by the vendor does not exceed \$3000 yearly. If the vendor is not the only one of its kind domiciled within the town limits, or the service will exceed \$3000 yearly, the elected official or municipal employee may bid on providing service to the town pursuant to Section 11-43-12.1(b) and in accordance with Section 41-16-50 of the Code. AGO 2015-051

Employees: A firefighter for the city who was previously a disability retiree for 18 months is entitled to restoration of prior service credit upon his return to service. The firefighter may not aggregate the years of service before and after the break in service for purposes of retirement calculation. Because the firefighter had a break in service exceeding one year, the firefighter is not entitled to an additional benefit upon later separation from service unless the firefighter serves at least 10 years after returning to service. AGO 2015-054

Conflicts of Interest: A town may not accept a gift of undeveloped lots from a limited liability company in exchange for an agreement from the town to complete and repair roads within a subdivision developed by the limited liability company where the town intends to sell the undeveloped lots to offset the cost to complete and repair roads. AGO 2015-056

ETHICS OPINIONS

Boards: Members of a county board of education, who were sued based on their official actions, may vote to use public funds to provide a defense on behalf of the other Board members and Superintendent who similarly have been sued, without violating the Alabama Ethics Law. Under the circumstances where a proper corporate interest is involved, it would not violate the Alabama Ethics Law for the Board as a whole (including those Board members being sued) to vote for the approval of the expenditure of public monies, assuming the requirements set out in *City of Montgomery v. Collins*, 355 So. 2d 1111 (Ala.1978) are complied with and assuming that the Board so decides in an official vote. While it may be logically unnecessary, in order to be in strict compliance with the terms of the Code, each of the seven Board members should abstain from voting on the issue of using public money to pay their legal fees but may vote on the issue as relates to the other members, assuming the matter is brought up as separate action items. AO 2015-07 ■

third parties who have changed their position or acted in good faith reliance upon the challenged action of the governmental body.

No action taken at an open meeting conducted in a manner consistent with the OMA shall be invalidated because of a violation that took place prior to the meeting. A final order issued against a defendant shall state specifically upon which claim or claims the ruling is based. For each meeting proven to be held in violation of the OMA, the court must impose a civil penalty, payable to the plaintiff, up to one thousand dollars (\$1,000) or one half of the defendant’s monthly salary for serving on the governmental body, whichever is less. The minimum penalty shall be one dollar (\$1). If the claim relates to improper discussions during executive sessions, monetary penalties may only be assessed against members of the governmental body who voted to go into the executive session and who remained in the executive session during the improper discussion. See Section 36-25A-9(g), Code of Alabama 1975.

Penalties imposed against a member of a governmental body found to have acted in violation of this act shall not be paid by nor reimbursed to the member by the governmental body he or she serves. If more than one cause of action is filed pursuant to this chapter, all causes of action based on or arising out of the same alleged violation or violations shall be consolidated into the action that was first filed and any party may intervene into the consolidated action pursuant to the Alabama rules of Civil Procedure, and no member found to have acted in violation of this chapter by a final court order and assessed a penalty as authorized shall be subject to further liability or penalty to the same or different plaintiffs in separate causes of action for the same violation or violations.

And finally, a governmental body is authorized to pay for or provide for the legal expenses of present or former members of the body named as defendants in any action alleging a violation of the OMA. Section 36-25A-9(h), Code of Alabama 1975. ■



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What the Municipal Employer Needs to Know about the Supreme Court's Ruling on Same-Sex Marriage

By Barbara J. Wells • Capell & Howard, P.C.

Editor's Note: This article is not intended to provide legal advice to our readers. Rather, this article is intended to alert our readers to new and developing issues and to provide some common sense answers to complex legal questions. Readers are urged to consult their own legal counsel or the author of this article if the reader wishes to obtain a specific legal opinion regarding how applicable legal standards affect their particular situation. The author of this article can be contacted at bjw@chlaw.com.

Unless you have spent the summer under a rock, you have probably heard by now that the United States Supreme Court held that same-sex couples have a constitutional right to marry. The late June decision in *Obergefell v. Hodges* rejected and invalidated all previous statutes and court decisions banning same-sex marriage. Writing for a majority of the court, Justice Kennedy recognized that the right to marry is inherent in one's personal liberty and that the Due Process and Equal Protection Clauses of the Fourteenth Amendment prohibit the government from depriving same-sex couples of that right and liberty. Because Alabama had not previously recognized or allowed same-sex marriage, all employers should be reassessing their human resources policies and practices in the wake of this decision to make sure they are compliant with this change in the law. The need for municipal employers to conduct this review is even more pressing because governmental actors are subject to suit under civil rights laws for violations of clearly-established constitutional rights. Below are some issues to consider as you conduct your review.

1. FMLA

Even before the *Obergefell* decision, the Department of Labor promulgated regulations making it clear that, in the view of the federal government, the term spouse under all provisions of the FMLA covered same-sex couples legally married under the law of any state without regard to the legality of the union in their state of residence. The *Obergefell* ruling serves to reinforce the Department of Labor's regulations which had come under fire from a handful of states. Employers must afford FMLA rights to eligible employees in same-sex marriages. Additionally, eligible same-sex parents standing *in loco parentis* to a child but not biologically related to the child also have FMLA rights to care for that child should the child suffer from a serious health condition. Employers should review their employment practices to ensure that all married couples are treated equally with regard to FMLA leave administration and policies.

2. Health & Welfare Benefits

If a municipality provides health and welfare benefits to the spouses of municipal employees, that coverage must be extended to both spouses of same-sex employees as well as to spouses of opposite-sex employees. The benefit should be tied to possession of a valid marriage license and nothing else. Be sure to check that both the municipality's personnel policies and the actual coverage agreement with the insurer provide for this.

3. COBRA

COBRA requires an employer to offer an extension of health care benefits and certain time-sensitive notifications regarding the ability to obtain such extensions to employees when they lose an employer health benefit for certain reasons (usually associated with the end of the employment relationship). When employers extend health care benefits to spouses, the spouses are also entitled to the extensions and notices. For purposes of this law, spouse means any person legally married to the COBRA-covered employee. The fact that the employee and spouse have a same-sex marriage is not grounds for denying these benefits or withholding notices.

4. 401k/Pension Plans

Prior to the court's decision in *Obergefell*, the Internal Revenue Service had already issued guidance that required plans to recognize same-sex spouses for the purposes of administering retirement plan benefits. This change came as a result of the 2012 decision from the Supreme Court in *United States v. Windsor*. If your municipality offers spousal benefits under a 401k or a pension plan, it must offer them to any legally marriage couple. Be sure to check not only employee handbooks describing such offerings to ensure they are accurate, but also the plan documents.

5. Health Savings & Flexible Spending Accounts

If a municipality offers health savings accounts and flexible spending accounts to employees, the municipality must allow an employee in a same-sex marriage to be allowed to contribute at the same levels as are allowed for

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Convention Location

continued from page 8

already have dates locked in for future Conventions through 2020. This requires hotels and Convention facilities to coordinate their calendars and allot sufficient time and space for the necessary events to take place.

Logistics and space requirements for the Convention are enormous. First, the host location must have a single open space large enough for our Expo Hall. This will require at least 50,000 square feet of covered, heated and cooled space dedicated solely to the Expo. In addition, we need meeting rooms where at least five concurrent training sessions can be held, each of which must be able to hold at least 200 attendees. We also need a separate room large enough for the President's Banquet, the Business Session and general sessions – usually another 50,000 square feet.

Other groups also meet during our Convention. The municipal clerks holds training sessions at the same time as the Convention, as do the personnel administrators. Available space must comfortably accommodate up to 200 clerks and 50 personnel administrators. Again, these space requirements are in addition to all other space needs. Usually these meetings take place at the same time as our other meetings.

Each of these locations must be within easy walking distance of each other and are, hopefully, connected by a

single roof or covered walkways. This isn't always possible, of course, but it is preferred. And, of course, facilities must be ADA compliant. Facilities must be able to provide adequate staffing and food needs for all Convention events and breaks. There must be adequate audio video equipment to simultaneously handle all Convention events.

Hotels are also a concern. While attendees express a preference for locations where the hotels are within easy walking distance from the meeting facilities, the reality is that few cities in Alabama have sufficient hotel rooms that close to the meeting space. On certain nights of the Convention, there may be more than 700 hotel rooms filled by attendees, exhibitors and others in town for the Convention. This requirement alone places enormous stress on the capabilities of most cities. If there are not enough hotel rooms near the meeting space, there must be adequate parking for over 1,000 attendees and 450 exhibitors within easy walking distance of the meeting facilities. The host municipality must also be able to provide on-site transportation, even where parking is available.

Hotels the League recommends to our members must also be of adequate quality and safety for our members.

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Fairhope City Clerk Lisa Hanks Named 2015 Clerk of the Year

Lynn Porter, City Clerk, Trussville

The Alabama Association of Municipal Clerks and Administrators (AAMCA) named Lisa Hanks as its 2015 Clerk of the Year during the Summer Conference held in her own City of Fairhope on June 18, 2015. Lisa has worked for the City of Fairhope since June 2007 and served as City Clerk since June 2008. As a happy coincidence, this award coincided with her eighth anniversary with the City.

In addition to her City Clerk duties and serving as secretary for various City committees, Lisa is FEMA National Incident Management System (NIMS) certified and helped to write the City's Hurricane Operations Plan. She has served as Fairhope's EEOC Review Officer, managed the update of Fairhope's Compensation and Job Classification Plan and helped to revise the Personnel Rules, Police and Procedures Handbook. In addition, she serves on the State Historical Records Advisory Board.

Lisa is the current President of AAMCA, having also held the offices of treasurer, secretary and president-elect. She has worked closely with the International Institute of Municipal Clerks (IIMC) to ensure various sessions would be approved for credit that can be applied toward the Certified Municipal Clerk or Master Municipal Clerk designations. In addition, she has worked with the University of Alabama College of Continuing Studies to implement the current Ideas to Actions (ITA) forms as an assessment tool for obtaining points. She is also one of the administrators for the AAMCA Clerk's listserv. Lisa has held the offices of Vice-president and President in District VIII and has served as a mentor and coach in her district.

Lisa was selected from nominees from eight of the 14 statewide districts: District II - Tracy Croom, City of Tuscaloosa; District III - Marsha Yates, City of Pelham; District IV - Penny Holloway, City of Roanoke; District VI - Ivy Harrison, City of Selma; District VIII - Lisa Hanks, City of Fairhope; District XI - Regina Long, Town of Somerville; District XII - Lora Johnson, Town of Langston; and District XIII - Kevin Fouts, City of Leeds.

Fairhope Mayor Timothy Kant attended the reception where Lisa received the Clerk of the Year award and remarked that he was going to have to go back to City Hall and redo their entire Council agenda just to list all of the awards that Lisa earned that evening. ■



Congratulations to Lisa and all the nominees!



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employees in opposite-sex marriages. Check those policies and documents establishing the accounts for accurate descriptions of those who are eligible.

6. Other Spousal Benefits

Another area to examine involves consideration of whether there are other fringe benefits offered to employees and their spouses under municipal policies. For example, if free retirement planning services are available to employees and their spouses, be sure that it is clear in such policies that all legally married couples may participate in this benefit. Any language limiting any benefits to employees in an opposite-sex marriage or in a marriage between a man and a woman must be replaced with an acknowledgement that the municipality will treat all legally married couples equally.

7. Common Law Marriage

Alabama has long recognized common law marriages as legally binding. The *Obergefell* decision does not address common law marriages. Nevertheless, the safest approach to a situation in which an employee claims to be in a common law marriage to a same-sex partner is to treat the request for the union recognition in the same way you would a similar request from any other employee claiming to have a common law marriage to an opposite-sex partner. This typically involves obtaining sworn statements and proof of shared accounts and a shared household. If you have been using a form affidavit for such purposes, be sure that it does not use gender specific terms.

8. Employment Discrimination

Even before the *Obergefell* ruling the Equal Employment Opportunity Commission had begun advocating to expand the interpretation of Title VII's protections from employment discrimination to encompass protection for employees on the basis of sexual orientation. The *Obergefell* ruling puts the Supreme Court on the path to recognize a constitutional right to equal protection of the law in employment. Our system of laws builds upon rulings in prior cases. While the *Obergefell* ruling is about a right to marry, the announced reasons for the result and the recognition of fundamental constitutional rights will no doubt form the basis of future arguments in support of a fundamental right to be free from employment discrimination on the basis of sexual orientation. Given that governmental officials and entities can face suit under 42 U.S.C. § 1983 for violations of the constitutional rights of citizens, including citizens employed in government, the safest course is never to base hiring, promotion, discharge,

or other employment actions on the sexual orientation of an applicant or employee or the fact that an applicant or employee is in a same-sex marriage. Indeed, a governmental employer should not alter or vary any term, condition, or benefit of employment on the basis either the employee's sexual orientation or the employee's marriage to a person of the same sex.

Bottom Line

When acting as a municipal official or employer, think of it all as marriage and treat all legally married persons in the same way. Make sure your policies, plan documents and insurance agreements also reflect this view. ■

Barbara Wells advises clients on matters relating to employment law and defends employers in lawsuits arising under federal employment or civil rights laws. She also writes regularly about employment related topics. Barbara practices in the Montgomery office of Capell & Howard, P.C. and welcomes you to follow her on Twitter @barbarajwells or connect with her on LinkedIn: www.linkedin.com/in/barbarajwells.

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Attendees will often spend several nights at the hotel and that experience has a large influence on their overall impression of the Convention as a whole. We try to visit each hotel location before recommending it. In Tuscaloosa, for instance, we drove several routes to and from hotel locations to determine the feasibility of traffic and transportation. We even stayed overnight at a couple of hotels we weren't familiar with when attending other meetings in Tuscaloosa to gauge our own experience.

Some Alabama municipalities may be able to provide adequate hotel space but lack adequate and convenient meeting and Expo Hall facilities. Some may have plenty of meeting space but it doesn't meet our configuration requirements. For instance, Tuscaloosa worked as a location because the Expo Hall and banquet facilities were within easy walking distance of the meeting rooms. If the Expo Hall had been slightly further away, requiring attendees to drive, it wouldn't have worked.

Even with provided busses and other transportation, these generally would not be sufficient to transfer all attendees in the short time periods available between sessions and events. It's one thing for as many as 1,000 attendees to walk across the street during a 30 minute break. It's another to expect those same attendees to board transportation, reach the second location and be in place within the same 30 minute timeframe.

All infrastructure needs must be in place when a proposal to host the Convention is made. Proposals can't be based on planned or projected facilities or infrastructure.

The host municipality also must commit to host a Welcome Reception for attendees. The location must be large enough to accommodate all our attendees at one time. Other than that, League requirements for the Welcome Reception are actually very small. Instead, this is the host municipality's opportunity to shine. They select the location, handle transportation, food and any entertainment. We, of course, are happy to work with the host city on this event. The success of the host reception reflects on all of us. But the Welcome Reception is managed and paid for by the host city.

The host city may also want to provide mobile workshops or other demonstrations of local facilities, history or culture, or events for spouses. These events must not conflict with Convention activities and must be handled by the host municipality.

What does the host city get from the Convention?

We conservatively estimate that the Convention has an economic impact of between \$1.5 and \$2 million dollars on the local economy. Hotels, restaurants, shopping centers and malls, meeting facilities and providers all stand to benefit

financially from Convention attendees. The Convention provides jobs and income to those who live and work in the host community. In addition, the host city recoups much of its up-front commitment in tax revenue.

However, financial considerations are, we hope, only a small part of the equation. Civic pride is also an important consideration. The Convention is an opportunity to showcase the host city to over 1,000 peers and to those who are not municipal officials or employees. These are officials that the local mayor and councilmembers are likely to see several times over the year, so hopefully they will want to make a good impression. These visiting officials are also likely to have input into locations for other meetings the officials are involved with. If they come away with a good impression of the host city, this may lead to future events that will bring even more revenue to the host city.

We also hope that the host city feels a connection to the League itself, and a desire to make its own organization look good in the eyes of other members. We hold the Convention only in League membership cities because of what we believe is a shared desire to improve the lives and lifestyles of Alabama's urban citizens – those who choose to live in Alabama's incorporated municipalities.

The actions of the host city also reflect on the League as an organization. When the host city devotes itself to improving its own image, it also helps improve the League's image, both in the eyes of our members and in those of non-officials who draw conclusions about us from the success of our events. We hope that this image is as important to the host city as it is to League staffers. The host city has a huge hand in leaving all involved in the Convention with a good impression of the Convention, the host city and the League itself.

Tuscaloosa did an outstanding job in fulfilling its obligation as a host of the Alabama League's annual Convention. I'm as proud of the job the staff of the City of Tuscaloosa did as I am of the work performed by your staff. From the moment our members arrived in Tuscaloosa, I think they felt welcome and appreciated. From the concierge serves available at each hotel, to the transportation around the Convention site, everyone affiliated with this year's Convention worked tirelessly to make this year's Convention a success. We look forward to working with them again as we plan the 2020 Convention.

But for now, on to Huntsville, site of the 2016 League Convention, May 14-17. Mark these dates on your calendar and make plans to attend. We are already working on the program for Huntsville and it promises to be an exciting event. See you in the Rocket City! ■

Seven Significant Supreme Court Cases for Local Governments

Lisa Soronen • State and Local Legal Center (SLLC) • Washington, D.C.



That same-sex couples have a constitutional right to marry and the Affordable Care Act remains intact will forever outshine every other decision from this Supreme Court term. But local governments will ignore the rest of this term at their peril. The Court issued many decisions affecting local governments – most of which had unfavorable outcomes. From upsetting sign codes to allowing disparate treatment claims under the Fair Housing Act this is a term for local governments to remember too. Below is a summary of the top seven cases.

Content-Based Sign Codes Unconstitutional

In *Reed v. Town of Gilbert* the Court held unanimously that Gilbert’s Sign Code, which treated various categories of signs differently based on the information they convey, violates the First Amendment. Gilbert’s Sign Code treated temporary directional signs less favorably (in terms of size, location, duration, etc.) than political signs and ideological signs. Content-based laws are only constitutional if they pass strict scrutiny – that is, if they are narrowly tailored to serve a compelling government interest. While the SLLC argued in its *amicus* brief that Gilbert’s sign categories are based on function, the Court concluded they are based on content. Gilbert’s Sign Code failed strict scrutiny because its two asserted compelling interests—preserving aesthetic and traffic safety – were “hopelessly under inclusive.” Temporary directional signs are “no greater an eyesore” and pose no greater threat to public safety than ideological or political signs. Many, if not most communities, like Gilbert, regulate some categories of signs in a way the Supreme Court has defined as content-based. Communities will need to change these ordinances.

Hotel Registry Searches Need Subpoenas

In *City of Los Angeles v. Patel* the Court held 5-4 that a Los Angeles ordinance requiring hotel and motel operators to make their guest registries available for police inspection without at least a subpoena violates the Fourth Amendment. The purpose of hotel registry ordinances is to deter crime – drug dealing, prostitution, and human trafficking – on the theory that criminals will not commit crimes in hotels if they have to provide identifying information. According to the Court, searches permitted by the City’s ordinance are done to ensure compliance with recordkeeping requirements.

While such administrative searches do not require warrants, they do require “precompliance review before a neutral decision maker.” Absent at least a subpoena, “the ordinance creates an intolerable risk that searches authorized by it will exceed statutory limits, or be used as a pretext to harass hotel operators and their guests.”

In dissent, Justice Scalia cited the SLLC’s *amicus* brief, which notes that local governments in at least 41 states have adopted similar ordinances. Eight states also have hotel registry statutes: Indiana, Florida, Massachusetts, Maine, New Hampshire, New Jersey, Wisconsin, and the District of Columbia. It is likely following this decision that other record inspections done by governments outside the hotel registry context will also require subpoenas.

Fair Housing Act Disparate Impact Claims Recognized

In *Texas Department of Housing and Community Affairs v. Inclusive Communities Project* the Court held 5-4 that disparate-impact claims may be brought under the Fair Housing Act (FHA). In a disparate-impact case a plaintiff is claiming that a particular practice isn’t intentionally discriminatory but instead has a disproportionately adverse impact on a particular group. The Inclusive Communities Project claimed the Texas housing department’s selection criteria for federal low-income tax credits in Dallas had a disparate impact on minorities.

In prior cases the Court held that disparate-impact claims are possible under Title VII (prohibiting race, etc. discrimination in employment) and the Age Discrimination in Employment Act relying on the statutes’ “otherwise adversely affect” language. The FHA uses similar language – “otherwise make unavailable” – in prohibiting race, etc. discrimination in housing.

This decision more or less continues the status quo for local governments. Nine federal circuit courts of appeals had previously reached the same conclusion. But, Justice Kennedy’s majority opinion contains a number of limits on when and how disparate impact housing claims may be brought.

Reasons for Cell Tower Denials Must Be in Writing

In *T-Mobile South v. City of Roswell* the Court held 6-3 that the Telecommunications Act (TCA) requires local governments to provide reasons when denying an

application to build a cell phone tower. The reasons do not have to be stated in the denial letter but must be articulated “with sufficient clarity in some other written record issued essentially contemporaneously with the denial,” which can include council meeting minutes. The TCA requires that a local government’s decision denying a cell tower construction permit be “*in writing* and supported by substantial evidence contained in a written record.”

Local governments must provide reasons for why they are denying a cell tower application so that courts can determine whether the denial was supported by substantial evidence. Council meeting minutes are sufficient. But, because wireless providers have only 30 days after a denial to sue, minutes must be issued at the same time as the denial. Following this decision, local governments should not issue any written denial of a wireless siting application until they (1) set forth the reasons for the denial in that written decision, or (2) make available to the wireless provider the final council meeting minutes or transcript of the meeting.

No Dog Sniffs after Traffic Stops

In a 6-3 decision in *Rodriguez v. United States* the Court held that a dog sniff conducted *after* a completed traffic stop violates the Fourth Amendment. In *Illinois v. Caballes* the Court upheld a suspicionless dog search conducted *during* a lawful traffic stop stating that a seizure for a traffic stop “become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission” of issuing a ticket for the violation. Officers may lengthen stops to make sure vehicles are operating safely or for an officer’s safety. A dog sniff, however, is aimed at discovering illegal drugs not at officer or highway safety. In dissent, Justice Alito suggests savvy police officers can skirt the Court’s ruling by learning “the prescribed sequence of events even if they cannot fathom the reason for that requirement.”

Objectively Unreasonable is the Standard for Pretrial Detainee Excessive Force Claims

In *Kingsley v. Hendrickson* the Court held 5-4 that to prove an excessive force claim a pretrial detainee must show that the officer’s force was *objectively* unreasonable, rejecting the *subjectively* unreasonable standard that is more deferential to law enforcement. Pretrial detainee Michael Kingsley claimed officers used excessive force in transferring him between jail cells to remove a piece of paper covering a light fixture that Kingsley refused to remove.

The objective standard applies to excessive force claims brought by pretrial detainees because in a previous case

involving prison conditions affecting pretrial detainees, the Court used the objective standard to evaluate a prison’s practice of double bunking. And the objective standard applies to those who, like Kingsley, have been accused but not convicted of a crime, but who unlike Kingsley are free on bail. A standard more deferential to law enforcement applies to post-conviction detainees, who are housed with pretrial detainees, making this ruling difficult for jails to comply with. Following this decision it will be easier for pretrial detainees to bring successful excessive force claims against corrections officers.

Tax on Internet Purchases

In *Direct Marketing Association v. Brohl* Justice Kennedy wrote a concurring opinion stating that the “legal system should find an appropriate case for this Court to reexamine *Quill*.” In 1992 in *Quill Corp. v. North Dakota* the Court held that states cannot require retailers with no in-state physical presence to collect use tax. To improve tax collection, Colorado began requiring remote sellers to inform Colorado purchasers annually of their purchases and send the same information to the Colorado Department of Revenue. The Direct Marketing Association sued Colorado in federal court claiming that the notice and reporting requirements are unconstitutional under *Quill*. The question the Court decided was whether this case could be heard in federal court (as opposed to state court). The Court held yes unanimously. This case is significant for local governments because the Court’s most influential Justice expressed skepticism about whether *Quill* should remain the law of the land.

Conclusion

While this article ends on a high note, overall, this Supreme Court term will require many, if not most, local governments to make some changes to keep in compliance with the law. ■

Lisa Soronen is the Executive Director of the SLLC, which files amicus curiae briefs in support of States and local governments in the U.S. Supreme Court, conducts moot courts for attorneys arguing before the Supreme Court and provides other assistance to States and local governments in connection with Supreme Court litigation. Since 1983 the SLLC has filed over 300 amicus briefs in the Supreme Court. Learn more by visiting www.statelocalllc.org.

MERGING INTO THE

MOBILE FAST LANE

By James Kunke, CPC • Community Relations Director • City of Lewisville
Past President, Texas Association of Municipal Information Officers

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Smartphones and tablets have brought change to our world, and it goes far beyond the discovery of Angry Birds and Candy Crush.

City governments are entering the world of mobile applications at a rapid pace, and our residents and visitors are taking notice. Just as municipal websites started slowly in the 1990s but soon became commonplace, mobile applications for cities are the new frontier for two-way communication with residents and visitors.

Whether your city already has a mobile application, or is just now thinking about one, chances are that your residents are looking for you through their mobile devices – and doing so far more often than you might think.

Making the Case for Mobile

Digital communication experts have pointed to 2014 as the year mobile users surpassed traditional users on the Internet. Current data shows more people own smart phones than own desktop or laptop computers, and Internet traffic in many sectors documents that mobile is now the preferred means for going online.

Lewisville's own website traffic shows 60 percent of visitors are using mobile platforms.

Survey results released in

April 2015 by Pew Research Center demonstrated that a majority of smartphone owners use their devices to follow breaking news (68 percent, 33 percent doing so frequently) and to find and share information about their local community (56 percent, 18 percent frequently). Users are particularly fond of sharing photos, videos, and comments about their community (67 percent, 35 percent frequently).

Among smartphone owners specifically, Pew Research Center found that 89 percent use their devices to access the Internet (trailing only text and phone calls in frequency of use). That includes an impressive, and perhaps surprising, 40 percent who said they had used their smartphone within the past year to look up government services or information.

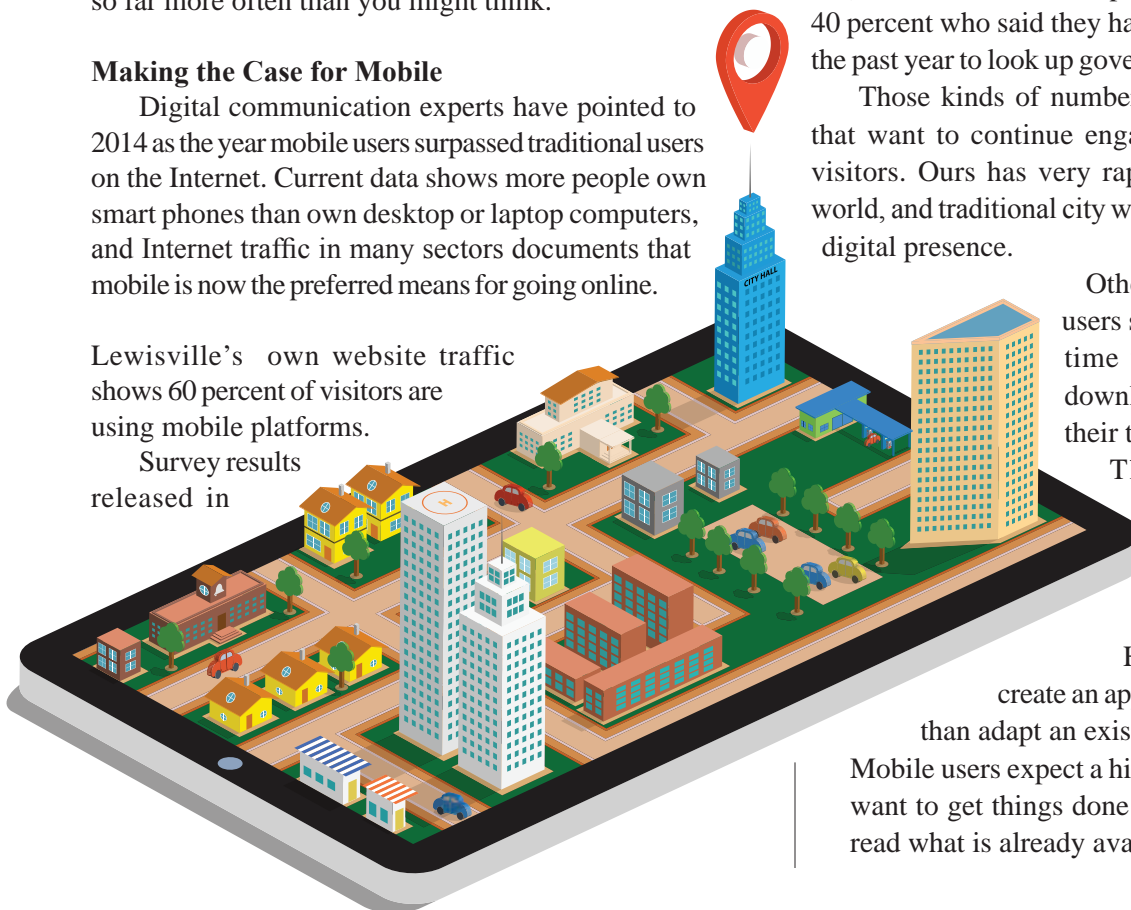
Those kinds of numbers cannot be ignored for cities that want to continue engaging with their residents and visitors. Ours has very rapidly become a mobile-driven world, and traditional city websites are no longer a sufficient digital presence.

Other research shows that mobile users spend 80 percent of their online time using applications they have downloaded, and only 20 percent of their time using traditional browsers.

This means even a mobile-enhanced city website can expect about one-fourth as much use as a dedicated mobile app.

However, it would be a mistake to create an application that does nothing more than adapt an existing website to a new platform. Mobile users expect a higher level of interactivity. They want to get things done through a mobile app, not just read what is already available.

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Municipal Intercept Services (MIS) aka “Debt Setoff Program”

www.alintercept.org

In 2014 the Alabama Legislature enacted an amendment allowing municipalities and counties to attempt to recover delinquent debts owed by individuals to local governments by collecting this debt from the individual’s state tax refund. (**Note:** The current law does **not** permit the same collection attempts against delinquent businesses.) This same process that has been in force for many years for several state agencies.

As part of the 2014 legislation, the Alabama Department of Revenue agreed to process these debts through only two clearinghouse entities: the Alabama League of Municipalities (ALM) for municipal entities and the Association of County Commissions of Alabama (ACCA) for county entities. In 2015, ALM formed Municipal Intercept Services, LLC (MIS) as its clearinghouse entity to act as a conduit between participating Alabama municipal entities and the Department of Revenue. In order to be sure MIS adequately addresses the needs of ALM’s members while protecting the rights of citizens, we are proceeding slowly with the implementation of this new service as there are many legal details to be addressed before a program of this nature can be launched statewide.

The MIS system does **not** serve as a debt collection service or agency. It only exists as the conduit between participating entities and the Department of Revenue and is designed to complement any existing collection efforts. It is ALM’s goal in providing this program that, when all other efforts fail, the MIS system will often allow local governments to recover a portion of the money they are owed.



The MIS system is currently undergoing in-house development and ALM is pleased to announce that we anticipate entering the final testing and verification phase in September followed by a full launch targeted for early December. There will be no charge for eligible participating entities to use the MIS system.

Once this program is live, participating entities will input their delinquent debt information into a web-based system and then submit it to MIS thereby certifying that the debt data is correct, the debts are, indeed, delinquent and the debts are final. **The MIS system will not have any ability to validate this data and it will be solely the responsibility of participants to ensure their submitted data is correct.** All other traditional forms of debt collection should be attempted by the participating entity before using MIS.

The data submitted to the MIS system is then formatted to the Department of Revenue's specifications and submitted to the department for processing. The Department of Revenue will then use this data to attempt finding a matching Alabama State tax refund for the debtor based on the debtor's Social Security Number. This process of matching and collecting a debt from a refund is what the Department of Revenue calls an "intercept". **NOTE:** if the debtor is not eligible for an Alabama State tax refund, no money can be collected.

How does an entity participate?

Once the system is launched, you will be able to access all the necessary documentation, such as the Memorandum of Understanding and Agreement, via the MIS website: www.alintercept.org. In addition to the website, regional training sessions will be held around the state to train users on how to use the MIS system.

While waiting for the system launch, here is a checklist of things you will need to secure in order to participate in the program:

1. You **MUST** have the Social Security Numbers (SSN) of the debtors you want the system to attempt to collect from. **This is a requirement of the Department of Revenue system.** If you do not already have the SSNs of these individuals, there are several companies that offer easy and relatively inexpensive methods for obtaining SSNs. For example, Lexis Nexis currently charges less than 50 cents per SSN search.
2. You will need to have a checking account at a bank into which the MIS system can directly deposit any intercepted funds. **MIS will not produce or mail paper checks.**
3. You must have a current email address for notifications from the MIS system. These notifications will include a copy of the intercept letter sent to the individual debtor informing him or her of the intercept from their State tax refund. It will also include notifications of any intercepted disbursements directly deposited into your bank account. **NOTE: Since the number of these notifications could be very high for some participants, we recommend you have a dedicated email address solely for the MIS system.**

ALM is excited about this new program and will keep you informed regarding further developments as we approach the official launch date. For additional information regarding the MIS system, please contact Richard Buttenshaw, MIS President, at recovery@alintercept.org

Developing a Mobile App

Once your city decides to explore a mobile application, the first step should not be calling a developer. Just as a savvy vehicle buyer does some research before visiting a dealership, it is important to start the process by looking at your current digital presence – namely, your city website.

Take a careful look at your website. Is the content current and regularly updated? If not, that should be addressed before entering the mobile world. Mobile users are even more intolerant of outdated content than traditional online users.

Is your website mobile enhanced? You can check this easily by using a smartphone or tablet to call up your city website. If what you find is your regular website, but on a smaller screen, then your site is not mobile enhanced.

Is your website mobile responsive? If you open it on a smartphone or tablet and the site does not automatically adjust to the width of your screen, then it is not mobile responsive.

In either case, an upgrade to the website should be considered before creating a mobile platform.

Another important consideration is the operating software for your website (commonly called the Content Management System). Some older websites might not be able to provide the interactive options desired in a mobile application. And in the digital world, “older” can mean as little as a year or two depending upon software.

It is also good to look beyond the website and identify what other digital information your city has available. While the prospect of “open data” might seem daunting, that wave is on the horizon and a mobile application might be a chance to dip a municipal toe into those waters.

The next step (or concurrent with the website review) is to develop a list of information and interactive features you want for your mobile app.

The next step (or concurrent with the website review) is to develop a list of information and interactive features you want for your mobile app.

Website traffic (through Google Analytics or a similar tool) can tell you what current website content is drawing the most traffic. If a certain page or feature on your website is popular with traditional users, it should be considered for the mobile application. There’s no need to start completely from scratch!

As stated earlier, cloning your existing website is not likely to satisfy your audience. Mobile users want and demand interactivity, so think of ways you can let users actively participate in your mobile app.

Be creative. It is easy to think of including bill payments and code enforcement requests in a mobile app, but cities around the country are finding new ways to make their mobile apps relevant to mobile users. Check out what your neighbors around Texas are doing. There’s no shame in borrowing an idea already proven to work.

Consider a brainstorming session that involves your communication team and other creative thinkers from across the organization. Your public interacts with all areas of your organization, so your mobile app should provide access to multiple areas as well.

Not every idea will be feasible, of course. Your existing website or digital data might not support a particular idea, or conversions among various pieces of software might be an obstacle. Just pick the best ones for your community and move forward – but keep the list of attractive ideas that are not used. In the digital world, obstacles can disappear with a single software update, and good ideas never go out of style.

Ultimately, if you launch a mobile app that does not include everything you want, that’s okay. Having even a limited mobile presence has value, and sometimes you will get some great new ideas from your early users. Lewisville’s mobile app launched with about 60 percent of its desired features, but it was better to launch early rather than waiting six months for a website redesign. Mobile applications update frequently, and mobile users know it.

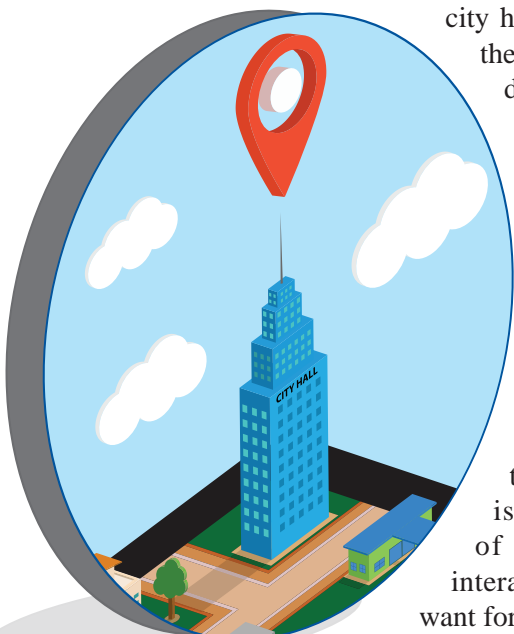
Once you have reviewed your current digital presence, and developed a list of content and features, it is time to develop the mobile application itself.

There are several options. If your city has a large information technology office, there might be someone on staff with the knowledge and training to develop a mobile app. For most cities though, the most viable option is to hire outside help.

An independent developer can design an application that is customized for your organization. This can cost more than other options, but if you have the resources it can produce a truly original application that stands out from the crowd.

The easiest and quickest entry into the mobile world is to work with a company that has developed a mobile

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2015 Policy Committee Resource Advisor Reports

By Krystle Bell • Training and Professional Development Administrator

During the months of June and July, the League's five policy committees met to discuss updates to the *Policies and Goals*. As a part of the policy development process, representatives from state and federal agencies spoke on topics pertinent to each committee. Summaries of each committee and their resource advisors' remarks have been provided below. The complete Policies and Goals are posted online at alalm.org.

Committee on Transportation, Public Safety and Communication (TPSC)

The Committee on Transportation, Public Safety and Communication (TPSC) met on Thursday, June 18, 2015. TPSC reviews and develops policy on transportation programs and their revenue sources and allocations; public works programs, particularly those related to infrastructure development; public and private utilities, including telecommunications; and public safety issues, including crime prevention, law enforcement, fire prevention and protection, emergency medical services, emergency management and response, motor vehicle safety and animal control. The chair and vice chair of TPSC are Mayor Kenneth Coachman and Mayor Melton Potter, respectively.

Art Faulkner, Director of the Alabama Emergency Management Agency provided information regarding the April 2011 tornadoes. Following the April 27, 2011

outbreak, 43 counties and 167 municipalities received assistance. There was a significant amount of debris. Governor Bentley took the initiative and had the State of Alabama pick up 100 percent of the cost for the first 30 days following the tornadoes. Mr. Faulkner also talked about the importance of funding the State Disaster Fund to help offset the costs of smaller disasters. Hal Taylor with the Alabama Law Enforcement Agency spoke on the consolidation of 12 state agencies that took effect January 1. There are currently 431 troopers on the road due to the consolidation. He also stated that now an individual can go online to renew his or her driver's license. Online scheduling for the CDL license is also available. In the future, renewals via smart phone devices will be available. He said the agency is in need of funding or they will have to lay off troopers. Billy McFarland, Commissioner with the Southern Rail Commission (SRC) explained that SRC promotes the safe, reliable, and efficient movement of people and goods to enhance economic development along rail corridors; provide transportation choices; facilitate emergency evacuation routes; and enhance rail safety at grade crossings. SRC has also completed Passenger Rail Study Phase 1 which is the Restoration of Gulf Breeze Montgomery to Birmingham route. Some of the future activities include securing funding to develop the Statewide Intercity Passenger Rail Economic Impact



The League's five policy committees met at ALM Headquarters in Montgomery this past June and July with a total of 112 in attendance.

Study; complete Phase 2 of the Gulf Breeze Passenger Rail Planning-Montgomery to Mobile segment; and administer \$750,000.00 of earmarked Congressional funds to worthy projects to improve current passenger rail infrastructure.

Dr. John Eagerton, Chief of the Aeronautics Division of the Alabama Department of Transportation reported that his department works with airports in the state to secure funding and there is currently \$3-\$3.5 million in the budget. Dr. Eagerton discussed the Policies and Goals as it relates to airports as well as informed the committee about Unmanned Aerial Systems (drones) and how municipalities should be ready to respond to this matter. Waymon Benifield, Safety Administrator with the Alabama Department of Transportation, reported that 2014 had the lowest number fatalities within the last 10 years. He also said that the Strategic High Safety Plan is designed to reduce the number of injuries and deaths on the roadways. In the future, the department wants to establish regional safety plans. Scott Pilgreen, Assistant State Fire Marshal with the State of Alabama Fire Marshal's Office, said it is important to educate family and friends about fire prevention. He also reported that under the 2009 Building and Fire Code, smoke detectors need to be changed every 10 years. He further reported that buildings need to be built correctly, and it is important that proper codes and

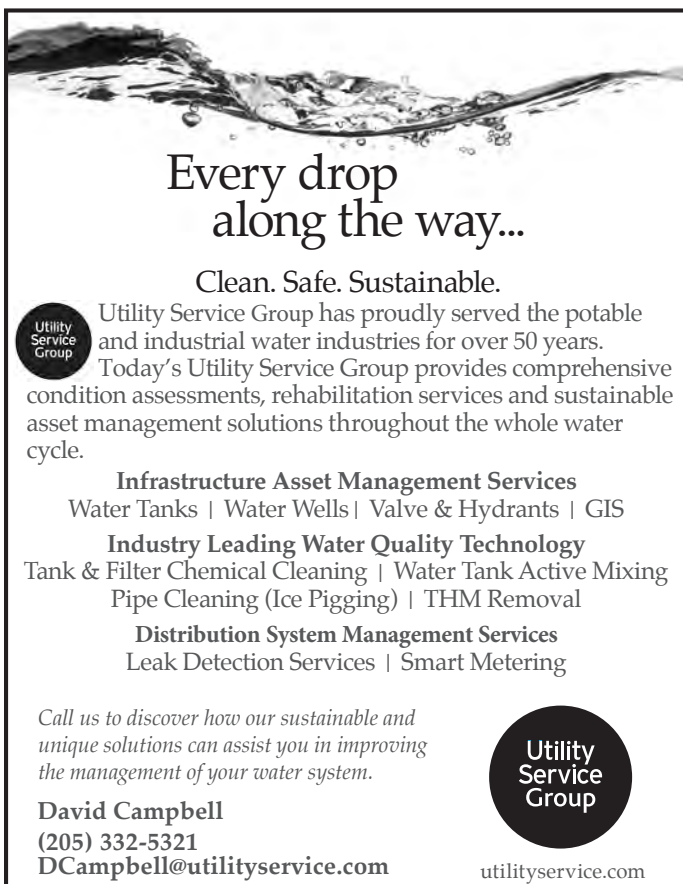
laws are in place. Allan Rice, Executive Director of the Alabama Fire College, discussed Policies Goals as it relates to fire safety and training. He highlighted PP-7.9, which encourages public fire departments to utilize courses offered by the National Fire Academy. Mr. Rice said these courses are free to members. He also presented to the committee a list of suggested policies and goals relating to fire and emergency services for possible inclusion.

The following committee members were present: Mayor Kenneth Coachman, Fairfield, Chair; Mayor Melton Potter, Scottsboro, Vice Chair; Councilmember Fred Barton, Brewton; Mayor Tim Kant, Fairhope; Councilmember Roger Adkinson, Flomaton; Mayor Jonathan Grecu, Ashford; Councilmember Charlie Johnson, Luverne; Councilmember Fred Watts, Millbrook; Councilmember Steve Gantt, Wetumpka; Councilmember Jerry Parris, Jacksonville; Councilmember Michael Ellis, LaFayette; Mayor Allen Dunavant, Glen Allen; Mayor Kenneth Nail, Hanceville; Councilmember Donald Livingston, Priceville; Councilmember Tommy Perry, Priceville; Councilmember Allen Noles, Muscle Shoals; Mayor Paul Jennings, Argo; Mayor Billy Joe Driver, Clanton; Councilmember Sammy Wilson, Clanton; Councilmember Stan Hogeland, Gardendale; Councilmember Michael Hallman, Homewood; and Mayor Gena D. Robbins, York.

Committee on Energy, Environment and Natural Resources (EENR)

The Committee on Energy, Environment and Natural Resources (EENR) met on Tuesday, June 23, 2015. EENR reviews and develops policy on environmental issues, energy initiatives and quality of life considerations, including water and air quality, solid waste, hazardous/toxic wastes and pollution control. The Committee also reviews Alabama trends relating to hazardous and solid waste disposal and air and water pollution as well as garbage disposal methods, regional disposal areas, incineration, land fill and rodent and vector control. The chair and vice chair of EENR are Councilmember Hermon Graham and Mayor Leigh Dollar, respectively.

Lisa Hicks with ADEM Air Division discussed primary and secondary standards. Primary standards protect public health; secondary standards protect the public welfare. She also discussed nonattainment status, which is a formal designation established by EPA where an area does not meet a standard. Some of the consequences of nonattainment status are unhealthy air and obstacles to growth of large new industries. Attainment status can change due to new standards or to long-term weather. Dennis Harrison, Chief of the ADEM Drinking Water Division, began his presentation by informing the committee that there is no maximum contaminate level for grease in drinking water



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– and drinking water can be lubricated with vegetable oil. He also said that if a water system meets criteria, the only way one can sue is due to negligence. He spoke on SB-391, which is a bill that would provide civil immunity to water suppliers who have complied with regulations established by ADEM. Jeff Kitchens, Chief of ADEM Stormwater Management Branch, discussed MS4 – a conveyance used to collect storm water. MS4 Permittees are divided into Phase I and Phase II. Phase I permittees are medium and large cities or counties with populations of 100,000 or more; Phase II permittees are small MS4s less than 100,000 population located in urbanized areas. He reported that municipalities can charge a stormwater fee and 5 percent goes to the state. He spoke on the importance of municipalities having litter ordinances and that recycling aids in complying with an MS4 permit. Emily Anderson, Chief of the Municipal Section of the ADEM Water Division, reported that municipalities have 180 days to submit permits. She also mentioned sanitary sewer overflow and the importance of notifying ADEM within 24 hours. The public and county health department must be notified as well.

Gavin Adams, Chief of ADEM Materials Management, discussed the solid waste fund which is a fund that cleans up illegal dumps. ADEM has obligated about \$11 million for solid waste clean-up projects and over 350 sites in Alabama have been remediated/abated. He also discussed the Alabama Recycling Fund Grants Program. Local governments and governmental nonprofits are eligible to apply, and the application deadline is March 1. Many of the grant awards are over \$200,000. Samantha Sims with ADEM SRF Section gave an overview of the State Revolving Fund. SRF is a low interest loan program designed to finance public wastewater and drinking water infrastructure improvement. Funding comes from a blend of state and federal funds. Any local governmental unit, including water boards and authorities can apply for SRF financing. The application deadline is December 31. Dionne Delli-Gatti, Congressional Liaison with the Environmental Protection Agency (EPA), reported that EPA has seven priorities, two of which relate to municipalities. One involves launching a new area of state, local and tribal partnerships. She also mentioned the College/Underserved Community Partnership Program (CUPP) – a program that targets underserved communities by partnering smaller communities with universities. This program will also partner with USDA. She also informed the committee of the challenges of the Alabama and EPA budgets, and that SB-391 is on their list of priorities.

The following committee members were present: Councilmember Hermon Graham, Florence, Chair; Mayor Leigh Dollar, Guntersville, Vice Chair; Councilmember

Vera Quaites, Foley; Councilmember George McCall, Jr., Prichard; Councilmember Kenneth Mount, Andalusia; Councilmember Elliot Whitton, Columbia; Councilmember Jerry Sipper, Luverne; Councilmember Darrell Wilson, Tallassee; Councilmember Robert Cleckler, Jr., Childersburg; Mayor Johnny Smith, Jacksonville; Councilmember Billy Pearson, Lincoln; Councilmember Lawrence Haygood, Jr., Tuskegee; Councilmember Jill Oakley, Albertville; Mayor Jerry Bartlett, Good Hope; Mayor Wade Williams, Hamilton; Councilmember Wayne Harper, Athens; Councilmember Joseph Pampinto, Muscle Shoals; Mayor Dennis Stripling, Brent; Councilmember Bobby Cook, Clanton; and Councilmember Ron Mason, Butler.

Committee on Human Development (HD)

The Committee on Human Development (HD) met on Thursday, June 25, 2015. HD reviews and develops policy on social service and educational issues affecting municipalities. The Committee also reviews ways municipalities may improve the local environment for health care, mental health programs, juvenile and senior citizen programs, developing training and employment opportunities, welfare reform, Medicare and Medicaid programs, education and library services. The chair and vice chair of HD are Councilmember Marva Gipson and Councilmember Bridgette Jordan Smith, respectively.

Dennis Coe, Director of Office of Supporting Programs with the Alabama Department of Education, reported on the Community Eligibility Provision. This is a new option to allow high-poverty schools to feed more students and focus on meal quality rather than on paperwork. High-poverty schools provide free breakfasts and lunches to all students without collecting applications. A school, group of schools or a school district with a 40 percent “Identified Student Percentage” can qualify. Identified students are those students who are certified for free meals without submitting a school meal application. These children live in households that participate in the Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families Cash Assistance (TANF), Food Distribution Program on Indian Reservations (FDPIR) or Medicaid. It also includes children who are in foster care, in Head Start, are homeless or migrant. Mr. Coe also encouraged the committee members to have their municipalities create summer food service programs.

Robyn James, Public Relations Manager with the Alabama Department of Senior Services, spoke on the Aging and Disability Resource Center which is a paid partnership with Medicaid. This center offers Medicaid support by providing 519 counselors that counsel on Medicaid. She also mentioned the Senior RX Program which is a no cost

or low cost medication program for seniors. She reported that the Alabama Department of Senior Services is a leading organization for Elder Justice and Advocacy and concluded her presentation with information regarding the Pilot Care Giver Training and Support Institution, which is designed to teach caregivers about the red flags.

Jamey Durham, Director of the Bureau of Professional and Support Services with the Alabama Department of Public Health, began by giving an overview of the Policies and Goals that related to public health. HL-1.8 discusses the need for the state's commitment to fund the Medicaid Program. Mr. Durham stated there has been a 5 percent reduction in funding. HL-1.9 discusses West Nile virus. West Nile Virus can be prevented by spraying DEET on exposed skin. He also reported on the heroin and prescription drug problem in Alabama and said the most popular prescription drug on college and high school campuses is Adderall. He mentioned flu vaccines (which became available beginning August 1). The last item he covered was the Autism Spectrum Disorder Card, which aids autistic individuals with their interactions with law enforcement and first responders.


The following committee members were present: Councilmember Marva Gipson, Aliceville, Chair; Councilmember Dollie Mims, Bay Minette; Mayor James Adams, Mount Vernon; Mayor Howard Rubenstein, Saraland; Councilmember Will Sconiers, Andalusia;

Councilmember Sadie Britt, Lincoln; Councilmember Mack Arthur Bell, Roanoke; Councilmember Jennifer Smith, Jasper; Mayor Icie Wriley, Millport; Councilmember Tonya Rogers, Oneonta; Councilmember Larry Keenum, Rainbow City; Councilmember Tayna Rains, Dutton; Councilmember Mike Lockhart, Muscle Shoals; Councilmember Bilbo Johnson, Clay; Councilmember Wendy Bush, Coaling; and Mayor Jason Ward, Lisman.

Committee on Finance, Administration and Intergovernmental Relations (FAIR)

The Committee on Finance, Administration and Intergovernmental Relations (FAIR) met on Tuesday, July 14, 2015. FAIR reviews and develops policy on fiscal matters affecting municipalities, including municipal administration, intergovernmental mandates, personnel policies, liability, public records retention/destruction, workers and unemployment compensation and revenues and finance. The Committee also reviews trends relating to consolidation of jurisdictions and redirecting functions that threaten the integrity of local government. The chair and vice chair of FAIR are Councilmember Charles Black and Mayor Bud Kitchin, respectively.

Bob Hill, Attorney with the Alabama Alcoholic Beverage Control (ABC) Board, began by informing the committee that there are currently 25 dry counties with 52



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- Oscar Wilde

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wet municipalities within these counties. Clay County is the only completely dry county. He also gave an overview of the book *Toward Liquor Control* which discusses the three tiers of suppliers, distributors and retailers. The ABC Board's role is to be fair, independent and keep control between the three tiers. There are currently 13,000 licensed establishments in the State of Alabama. About \$15 million of ABC Board's net revenue went to the cities and counties and \$75 million was distributed to the state's General Fund. Mr. Hill also informed the members that well over 100 members of the ABC law enforcement were combined with the Alabama Law Enforcement Agency.

Bob Young, President of the Frazer Lanier Company, reported that long-term interest rates are low but sales taxes are up. Long-term interest rates are dictated by inflation, and inflation erodes the buying power. He also said that investors flock to safe industries such as municipal bonds, and these safe investments bring interest rates down. He also spoke on the bond buyer average. The bond buyer average had a low of 3.05% in 1961 and up to 13.3% in 1981. The average is 5.81%, and the rate today is 3.76%. He informed the committee that audits need to be completed by March 31 and continuing disclosure filed by March 31.

Will Martin with the Property Tax Division of the Alabama Department of Revenue (ADOR), began by highlighting some of the Policies and Goals that specifically deal with property taxes and revenue. FL-1.21 states that property tax appraisers should be adequately trained and qualified. Mr. Martin said there are programs set up for four different tracks with required classroom hours for each track. He also mentioned FP-1.5 and FP-8.1, which encourage municipalities to notify the Alabama Department of Revenue of any new tax rates and boundary changes resulting from annexation or deannexation of property so that proper taxes can be collected. He mentioned ADOR legislation such as the expansion of abatement laws and the Optional Personal Property Assessment Link (OPPAL). OPPAL is a centralized online filing system for business personal property tax returns.

The following committee members were present: Councilmember Charles Black, Priceville, Chair; Councilmember Annette Johnson, Bayou La Batre; Councilmember Adam Bourne, Chickasaw; Councilmember John Lake, Daphne; Councilmember Veronica Hudson, Saraland; Councilmember Terry Powell, Andalusia; Councilmember Ralph Wells, Andalusia; Councilmember Jason Bennett, Eufaula; Councilmember Winston Jackson, Ozark; Mayor Fred McNab, Pinckard; Mayor Tony Wilkie, Centre; Councilmember Jenny Folsom, Cullman; Mayor Elmo Robinson, Double Springs; Councilmember Dink Myers, Guntersville; Councilmember Wayne Whitt, Hokes Bluff; Mayor David Grissom, Russellville; Councilmember

Carl Flemons, Somerville; Mayor Don Kyle, Decatur; Councilmember Steve Stanley, Sheffield; Mayor Brenda Bell Guercio, Indian Springs; Mayor Bruce Wade, Lake View; Councilmember Karyl Rice, Pelham; Mayor Hoyt Sanders, Pinson; Mayor Lee McCarty, Wilsonville; Councilmember Shelia Smith, Eutaw; Councilmember Darnell Gardner, Fairfield; Councilmember Craig Sanderson, Irondale; Mayor Louvenia Lumpkin, Orrville; Mayor Loxcil Tuck, Tarrant; and Councilmember Charles Allen, Thomasville.

Committee on Community and Economic Development (CED)

The Committee on Community and Economic Development (CED) met on Tuesday, July 21, 2015. CED reviews and develops policy on factors affecting the physical development of cities and towns, including community, industrial and economic development; tourism and recreation; housing; planning and zoning; code enforcement; enterprise zone development and regulation; and downtown redevelopment. The chair and vice chair of CED are Mayor Alberta McCrory and Councilmember Jocelyn Tubbs-Turner, respectively.

Michael German, Birmingham Field Office Director with the U.S. Department of Housing and Urban Development, discussed that during FY 2015, \$21 million came from the Community Development Block Grants. He also spoke on the importance of municipalities supporting the Homeless Veterans Initiative. Currently, 89 municipalities are supporting the initiative. Mr. German mentioned the Choice Neighborhood Grant program, competitive grant program for housing authorities, and that Mobile won grants totaling over \$1 million for planning. Shabbir Olia, CDBG Program Director with the Alabama Department of Economic and Community Affairs, gave a historic overview of the CDBG Program, which began in 1982 and was funded at \$33 million. Today the funding is much lower at \$21.5 million which is divided among large cities, small cities and counties. Approximately, one out of every four applications gets funded. Mr. Olia also spoke about the community enhancement grants, which total \$2.5 million and can be used for projects such as senior centers, parks and recreation, Boys and Girls Clubs and volunteer fire stations.

Mary Shell, Certified Local Government Coordinator with the Alabama Historical Commission, reported that the organization is designed to protect historic and cultural sites. She also presented information regarding the National Alliance of Preservation Commission (NAPC) Forum 2016, Your Town Alabama and Alabama Communities of Excellence (ACE). NPAC Forum is a national conference focusing on issues facing local historic preservation

commissions and historic districts. Forum 2016 will take place July 27-31, 2016, in Mobile, Alabama. Your Town Alabama is a planning and design training program for citizen leaders of Alabama working to protect and capitalize on the development opportunities afforded by our unique history, environment, location and people. ACE is an organization that provides technical assistance to communities with populations 2,000 to 18,000. Ms. Shell encouraged the committee members to get involved with these events and programs. Beverly Helton, Assistant to the State Director with USDA Rural Development, highlighted several programs that finance and support community and economic development in rural communities and towns. She discussed the Business – Loan Guarantees which can be used for expansion, equipment and working capital. She also discussed the Rural Business Development Grants (RDBG) and Rural Energy for America Program (REAP). RDBG are grants for business and nonprofit assistance. REAP is a program for energy efficiency used by agricultural producers and small businesses.

The following committee members were present: Mayor Alberta McCrory, Hobson City, Chair; Councilmember Jocelyn Tubbs-Turner, Marion, Vice Chair; Councilmember Carolyn Doughty, Gulf Shores; Councilmember Brentley Kendrick, Robertsedale; Councilmember Wayne Biggs, Saraland; Councilmember Newton Cromer, Saraland; Councilmember Terry Allums, Abbeville; Councilmember Terrel Brown, Tallassee; Councilmember Michele Whisman, Childersburg; Mayor Charles Gilchrist, Glencoe; Mayor Vivian Holt Covington, Hurtsboro; Councilmember Shelly Barnhart, Lincoln; Councilmember Charlotte Hubbard, Oxford; Councilmember Ben Reed, Gadsden; Mayor Donald Hall, Hartselle; Mayor Mickey Haddock, Florence; Mayor Troy Trulock, Madison; Councilmember Cris Nelson, Helena; Councilmember Priscilla McWilliams, Pleasant Grove; Mayor Alberto Zaragoza, Jr., Vestavia Hills; Councilmember Lonnie Murray, Sr., Brighton; Councilmember James Prestage, Pennington; Councilmember Frank Braxton, Uniontown; and Councilmember Berlinda Hood, York. ■

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It's All About Effective Relationships

Reaching millennials in your community

By M. Michelle Bono • City of Tallahassee

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Unattached. Distrustful. Technologically savvy. These are words often used to describe millennials. So what's a government to do to engage its future leaders? In **Tallahassee**, the answer has been to learn to speak their language, build relationships, and provide relevant and meaningful ways to be involved.

Tallahassee is a city of 180,000 with more than 60,000 college students. As part of the city's commitment to community engagement, there was a decision made more than 15 years ago to specifically monitor the tools being used by young adults and to add them to the city's outreach toolkit. From an engaging and useful website to directly connecting with customers via email, and from making government access television interesting to the foray into social media, the city's communication has continued to evolve.

Today, the city's social media includes 21 Facebook accounts with more than 33,000 fans, 12 Twitter accounts with over 28,000 followers and three new Instagram accounts. Government access television includes not only traditional meetings and talk shows, but also fast-paced shows taped across the community with production techniques similar to popular broadcast television shows. Shows are available on YouTube and have generated more than half a million views. The city's website includes the ability to turn on utility services on line, a chat function, and direct feeds from city social media accounts.

And the strategy is working! In a just-released, 2015 statistically valid, random-sample survey, city residents were asked from which sources they received information about city news, services and programs (with the ability to select multiple sources).

In the age group of 18-24 year olds, 60 percent said they received information from the city's TV station, 53 percent cited the city's website and 45 percent said the city's social media such as Facebook and Twitter. By comparison, in the age group of 65 plus, 40 percent cited the city's TV station, 30 percent the city's website, and only 11 percent said social media. Not surprising, 78 percent of seniors said the local newspaper was a source of information about city news.

The greatest challenge for government communications is that you can't simply stop using the tried and true forms of communication, as they are still needed to reach boomers

and seniors. Instead, you have to add additional resources and tools to address the communication needs of millennials.

Once you have the platforms in place, the next step is using them effectively. What information do you have that is relevant to young adults? In Tallahassee, it includes everything from power outages to traffic impacts to promoting events for engagement to responding to customer service issues. Social media, in particular, is a place where a more relaxed approach can often be deployed.



A recent example was in April of this year when a strong storm blew through Tallahassee causing major power outages, downed lines and broken poles. The city's communications staff were tweeting outage and restoration information and saw a major increase in interactions with local college students, who were in their last week of classes. With assignments due and the pressure of finals mounting, losing power – meaning no Internet access and limited use of computers – was like hitting a brick wall at 50 miles per hour for them.

While Internet access was down, cell networks were fully functional, and students took to Twitter like gangbusters to get information, report outages and complain. City staff not only provided updates, but also maintained the focus on humanizing government. About six hours into the outage, the city received a string of tweets from a student, asking if the city would write her professor a note when she couldn't finish her paper because the power was out. Matching her sarcasm LOL for LOL, staff wrote her professor a note.

Seeing our tongue-in-cheek olive branch to the student, the Twitter account manager for one of the student housing complexes that had been impacted by prolonged outages tweeted asking if city staff would write a note for their residents, too. Staff happily obliged. That tweet had three times the impressions of the other replies sent that day and received good feedback.

One user responded, “<3 you guys! Good to see some lighthearted communications between the city and residents!” While there was no way to confirm that any professors actually received – or honored – the notes, the city did win a few hearts during an otherwise very bad day.

Often a few interactions like this mean students begin following the city on Twitter or Facebook because they see value in the information being provided. That provides the opportunity to use those communication tools to provide other information about city programs, services and engagement opportunities that those same young adults might not otherwise know about.

A note of caution, however: Do not overuse the tools with too many tweets or posts that don’t share useful information. Some “boosterism” is tolerated by millennials if they see a value to the relationship over all, but too much and they are quick to jump ship.

Effectively engaging our next generation of leaders is a challenge, and a responsibility, for local governments. It takes research, the commitment of staff and resources, and a focus on following the technology to stay on top of the latest tools. The outcome is the opportunity to build a sense of community with these young leaders – a connection to their local government – that can create long-term benefits for your city. ■

M. Michelle Bono is assistant to the city manager for the City of Tallahassee, FL and directs the Communications Department. In 2013, she was recognized as the Communicator of the Year by the City-County Communications & Marketing Association.

ALABAMA 200

continued from page 4


an official Community Celebration Committee approved by the Mayor and Council via a special resolution available at alabama200.org.

Community Celebration Committees

Alabama’s Bicentennial is a unique opportunity for our municipalities to participate in a very specific historical milestone. For example, if your community has an annual festival, you could use the ALABAMA 200 branding to broaden your festival by incorporating the history of the festival, the history of your community and highlighting elements that make your community unique and historically significant. Some communities may decide to take on a special project for the Bicentennial, such as a cemetery restoration, painting a mural on a downtown building or renovation of a historic structure. The options and opportunities are endless, which is why the Alabama Bicentennial Commission wants an accurate database of what communities are doing throughout the state.

It is the Commission’s goal to have a small grants program in place in 2016 to support local programs and projects from 2017 to 2019 that are open and accessible to the public, related to the Bicentennial and educational. *In order to apply for grant funding or to receive promotional and branding materials from the Bicentennial Commission, your municipality must designate an official Community Celebration Community that is approved via special resolution by the Mayor and Council.* Download a copy of the necessary resolution at www.alabama200.org. A copy of the resolution, as well as the contact information for the Chair of your Community Celebration Committee, must then be submitted to the Commission, which is forming a database to enable the Commission to send relevant information to the correct people. Community Celebration Committees can be composed of anyone from your community, especially people from historical, educational, cultural and/or civic/community organizations such as schools, libraries, history/heritage groups, tourism/economic development organizations, etc. We encourage you to engage your community leaders, activists and historians in this process.

You will hear much more about the Bicentennial in the coming months; however, the League encourages every city and town to be part of the Bicentennial process and consider immediately forming a Community Celebration Committee (additional information on this process is also available at alabama200.org.) Send a copy of your resolution as well as your committee chair person’s contact information to: Hannah J. Garmon, Alabama Bicentennial Commission, 401 Adams Street, Suite 126, Montgomery, AL 36104. If you have questions, Hannah can be reached at: Hannah.Garmon@bicentennial.alabama.gov or 334-242-4514. ■



application template for cities. This also can be an easily affordable option, with development costs under \$10,000 in many cases. Most website development companies offer mobile applications. Start with the company that built your current website (assuming you like your website, of course).

If your city website includes a Customer Relationship Management (CRM) component for online code enforcement and other requests, check with that service provider also. Many of those companies have started offering mobile applications that integrate seamlessly with your existing CRM. This turned out to be the best option for Lewisville, but every city is different so examine all your options.

Launching a Mobile App

Expect a window of three to six months for development and testing of a new mobile application. It can be done more quickly, but it's important to leave ample time for testing before launch.

When the mobile application is ready, enlist people within your organization to test it. If you used a brainstorming group during early development, this is a chance to keep those people involved. Make sure the application is tested in multiple platforms – smartphones and tablets – on as many different brands and devices as you can manage. You probably won't find all the bugs, but you should be able to find and correct the big ones.

After you've tested and revised (and tested and revised) your mobile application, your developer can submit it to the Apple and Android online stores for approval. This process can take a couple of weeks. Once your application is approved, you get to decide when it is "turned on" for public access.

Try to make a splash when you launch the application. Post information and a hyperlink on your website, send a notice to your local news media outlets, broadcast it through social media, and any email distribution list you maintain. You want as many people as possible to hear about it.

Tell your elected officials about the mobile app launch before it goes live. They likely will help you spread the word to their constituents. Open and interactive communication tools are a form of transparency, and these days elected officials are very familiar with that term and its benefits in the public eye.

At the same time, keep your expectations reasonable. Lewisville's application was downloaded by 325 people during the first week (evenly divided between Apple and Android). We were initially disappointed with that number, but our vendor showed us comparable launches in larger cities that had drawn fewer early users. People are busy, so

plan on telling your residents about the mobile application multiple times before it is widely adopted.

Finally, as stated earlier, mobile users have a higher expectation than traditional website users that the content and features will be updated regularly. Don't be afraid to make tweaks, even small ones, when they are needed. Mobile users are accustomed to updating their applications (if they do not already have their device set up to update automatically). In fact, frequent updates often are seen as a good thing by mobile users because it shows that the application is continuing to evolve.

Cities can use mobile applications in a variety of ways to deliver timely and important information to the public, and to gather input from residents and visitors. Any effort that shows thought and good intent is likely to get a positive reception.

It is doubtful any city mobile application will ever gain more users than those addictive mobile games, but the benefits are tangible and the public expectation is growing daily. ■



The advertisement for Civil Southeast Engineering Group features a logo at the top consisting of a stylized four-pointed star or compass rose. Below the logo, the company name "CIVILSOUTHEAST" is written in a large, bold, sans-serif font, with "engineering group" in a smaller font underneath. The background of the advertisement is a light gray with a subtle geometric pattern of overlapping triangles. The main body of text describes the company's services: "Civil Southeast provides professional civil engineering services for municipal, utility, private, and transportation markets. Services include project development, engineering design, and construction management. The Civil Southeast Team strives to deliver prompt and defined solutions which meet their client's objectives." At the bottom, there are two lines of text: "CIVIL DESIGN | PROJECT MANAGEMENT" and the contact information "866.245.0584" and "civilse.com".

CMO Sessions

Scheduled for October and December!



CMO Session 50: Topical Roundtable Discussions with Ask Your Attorney Session

Are you looking for answers to questions? Would you like to know how your fellow officials handle the problems and issues facing their community? Do you have answers you think would benefit your peers?

If so, join us in October for flexible, open Topical Roundtable Group Discussions and seek advice from your peers and our League attorneys. The Roundtable Group Discussions will include subject matters such as revenue/finance, public safety, and transportation.

Date: Thursday, October 29, 2015 **Registration Opening Date:** September 14, 2015

Time: 12:30 p.m. - 3:45 p.m. (12:30 p.m. - 1:00 p.m. Registration)

Location: Alabama League of Municipalities, 535 Adams Avenue, Montgomery, Alabama 36104

Who Should Attend: All municipal officials

Cost to attend: \$25.00 (Lunch will not be served.)

This session has been approved for two (2) Basic, Advanced or Continuing hours in the Certified Municipal Official Program. Any municipal personnel may register, but only elected officials will be awarded credit hours in the CMO Program.

Agenda

12:30 p.m. - 1:00 p.m.	Registration
1:00 p.m. - 2:30 p.m.	Roundtable Discussions
2:30 p.m. - 2:45 p.m.	Refreshment Break
2:45 p.m. - 3:45 p.m.	Ask Your Attorney Session

Registration forms are available at www.alalm.org.

Questions? Contact Krystle Bell at 334-262-2566 or krystleb@alalm.org

CMO Session 51: Municipal Leadership Institute

In December, the League will host a new, two-day training event and expo in Montgomery. The Municipal Leadership Institute will provide you with the training you need to solve and plan for problems before they arise. Included will be advice on newly adopted legislation that impacts you and your municipality, along with presentations on other timely issues that confront today's local elected officials. Exhibits will open at 8 a.m. Wednesday. This unique showcase will offer an excellent opportunity for vendors and municipal officials to meet. Plan to connect with exhibitors and discover valuable tools for solutions to problems and new innovative ideas for future planning.

Date: December 9 - 10, 2015

Registration Opening Date: October 1, 2015

Location: Embassy Suites, 300 Tallapoosa Street, Montgomery, Alabama 36104

(Hotel information will be posted at www.alalm.org/upcoming-training.html)

Who Should Attend: All municipal officials

Cost to Attend: \$225.00 (Single day registrations cannot be accommodated.)

This institute has been approved for nine (9) Basic, Advanced or Continuing hours in the Certified Municipal Official Program. 2 of the 9 approved hours meet core curriculum requirements. If you have already taken the core courses that will be offered at the Institute, duplicate core hours will not be awarded. Any municipal personnel may register, but only elected officials will be awarded credit hours in the CMO Program.

Planned Topics include:

- Bicentennial Events/Endeavors
- The New Law Regarding the Municipal Police Jurisdiction
- The Role of Local Police in Terrorism
- Recent Bid Law Changes
- The Open Meetings Act
- Municipal Intercept Services (MIS) Program
- Where Did this BIG Liability Come From? The Effects of GASB 68
- Local Government Services
- Legislative Overview

(Additional Topics May Be Added)

Third Level Designation in the CMO Program: CMO Emeritus

You asked, and we delivered! Elected officials now have the opportunity to earn a third level designation in the CMO Program known as the CMO Emeritus.

The CMO Emeritus designation recognizes mayors and councilmembers who have excelled beyond the requirements of the Basic and Advanced CMO Programs. CMO Emeritus is awarded to officials who have acquired a minimum of 120 credit hours of Continuing CMO Education plus 15 points. Points can be earned by the following:

- ALM Policy Committee Membership and Meeting Attendance
- Attendance at the ALM Convention
- Attendance at the NLC Congress of Cities
- Attendance at the NLC Congressional City Conference
- Attendance at the Municipal Legislative Advocacy Session and meeting with Legislators
- Attendance at the Municipal Leadership Institute

The above items are worth 1 point each. Questions: Contact Krystle Bell at 334-262-2566 or krystleb@alalm.org



Affordable Care Act

Are You Preparing to Meet the IRS Reporting Requirements?

Under the Affordable Care Act, employers across the US – *including municipalities* – will be required to file information returns with the IRS (forms 1094 & 1095) and also provide statements to full-time employees about health coverage offered to them (form 1095). To be prepared to report this information to the IRS and your employees, you'll need to:

- Determine if your organization is an applicable large employer.
- Determine the kind of health insurance coverage you offered to full-time employees and their dependents, if any.
- Identify who your full-time employees are for each month and track health coverage information in 2015 to help complete new IRS forms.

All applicable large employers must file information returns with the IRS and also provide statements to full-time employees. An applicable large employer is an employer that employed an average of at least 50 full-time employees on business days during the preceding calendar year. A full-time employee generally includes any employee who was employed on average at least 30 hours of service per week and any full-time equivalents (for example, 40 full-time employees employed 30 or more hours per week on average plus 20 employees employed 15 hours per week on average are equivalent to 50 full-time employees). ***However, any employer that sponsors a self-insured health plan (such as a governmental unit participating in the Local Government Health Insurance Plan) is required to report, even if the employer has fewer than 50 full-time employees.***

Form 1095-C - Employer Provided Health Insurance Offer and Coverage

To complete this form you will need the following information:

- Who is a full-time employee for each month.
- Identifying information for employer and employee such as name and address.
- Information about the health coverage offered by month, if any.
- The employees share of the monthly premium for lowest-cost self-only minimum value coverage.
- Months the employee was enrolled in your coverage.
- Months the employer met an affordability safe harbor with respect to an employee and whether other relief applies for an employee for a month.
- If the employer offers a self-insured plan, information about the covered individuals enrolled in the plan, by month.

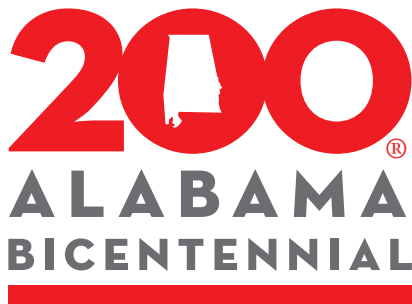
Form 1094-C - Transmittal of Employer Provided Health Insurance Offer and Coverage

To complete this form you will need the following information:

- Identifying information for your organization.
- Information about whether you offered coverage to 70% of your full-time employees and their dependents in 2015. (After 2015 this threshold changes to 95%.)
- Total number of Forms 1095-C you issued to employees.

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Bicentennial Community Celebration Committees Form Yours Today!

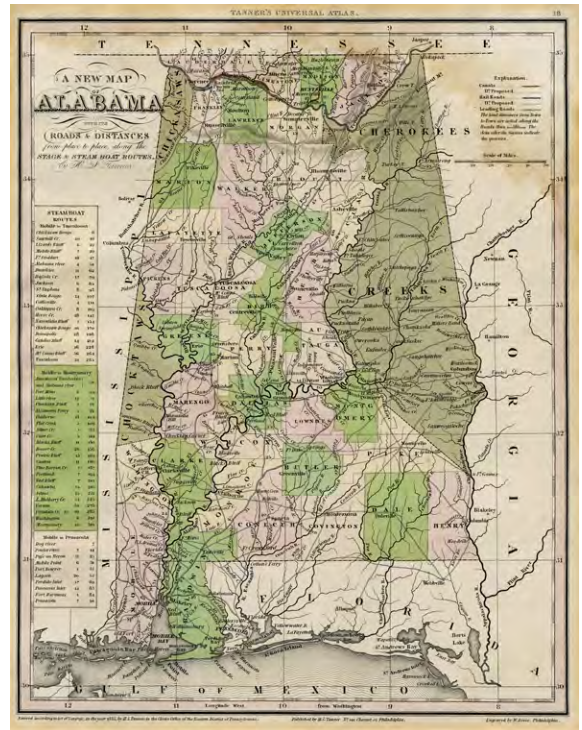


Alabama's Bicentennial, which will be celebrated 2017-2019, is a unique opportunity for our municipalities to participate in a very specific historical milestone. For example, if your community has an annual festival, you could use the ALABAMA 200 branding to broaden your festival by incorporating the history of the festival, the history of your community and highlighting some of the

elements that make your community unique and historically significant. Some communities may decide to take on a special project for the Bicentennial, such as a cemetery restoration or renovation of a historic structure. The options and opportunities are endless, which is why the Alabama Bicentennial Commission wants an accurate database of what communities are doing throughout the state.

You will hear much more about the Bicentennial in the coming months; however, the League encourages every city and town to be part of the Bicentennial process (2017-2019) and consider immediately forming a **Community Celebration Committee**.

In order to apply for grant funding or to receive ALABAMA 200 promotional and branding materials from the Bicentennial Commission, your municipality must designate an official Community Celebration Community that is approved via special resolution by the Mayor and Council. Download the necessary resolution at alabama200.org.



A copy of your resolution, as well as the contact information for the Chair of your Community Celebration Committee, must then be submitted to the Commission, which is forming a database to enable the Commission to send relevant information to the correct people. Community Celebration Committees can be composed of *anyone* from your community, especially people from historical, educational, cultural and/or civic and community organizations such as schools, libraries, history/heritage groups, tourism/economic development organizations, etc. We encourage you to engage your community leaders, activists and historians in this process.

Mail or email a copy of your resolution as well as your committee chair person's contact information to: Hannah J. Garmon, Alabama Bicentennial Commission, 401 Adams Street, Suite 126, Montgomery, AL 36104 or Hannah.Garmon@bicentennial.alabama.gov.

Alabama200.org

- Information about members of the aggregated applicable large employer group, if any.
- Full-time employee counts by month.
- Total employee counts by month.
- Whether you are eligible for certain transition relief.

When must you file the required information return with the IRS?

You must file the return for each employee (Form 1095-C) and a transmittal form (Form 1094-C) with the IRS on or before February 29, 2016, or March 31, 2016, if filed electronically. Employers filing 250 or more forms must file electronically.

When must you furnish the statements to full-time employees?

You must furnish the statement to each full-time employee on or before February 1, 2016.

Is there a penalty for failing to report?

Yes. Employers that do not submit an annual IRS return or provide individual statements to all full-time employees may be subject to a penalty up to \$250 per return, with a maximum annual penalty of \$3 million.

For more information, visit www.IRS.gov/aca

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