

The Alabama Municipal JOURNAL

July/August 2018

Volume 76, Number 1



2018 Annual Convention • #ALMCon18



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The Alabama Municipal JOURNAL

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July/August 2018 • Volume 76, Number 1

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#LiveLocallyAlabama

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On the Cover:

More than 1,000 municipal officials, clerks, staff, vendors and guests attended ALM's Annual Convention in Montgomery May 19-22. Delegates had many educational opportunities throughout the convention, as well as time to network and discuss ideas with colleagues from around the state. **#ALMCon18**

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Upcoming CMO Training: Saturday Summer Sessions and Webinars

Summer Training: Saturday, July 14 and Saturday August 11

Summer Training will be held at League headquarters in Montgomery on Saturday, July 14 and Saturday, August 11. **Saturday training is ONLY offered twice a year and limited to 50 people per session. Early registration is highly encouraged.**

Where: Alabama League of Municipalities, 535 Adams Avenue, Montgomery, AL 36104

When: 8:30 a.m. - 3:00 p.m., Lunch provided onsite and included with registration.

Who Should Attend: Elected Officials and Municipal Personnel

Cost to Attend: \$125.00 (includes lunch onsite)

CMO Credit: Approved for four and one half (4.5) Basic, Advanced or Emeritus hours in the Certified Municipal Official Program.

2018 Webinar Schedule

NOTE: online registration opens 3 weeks before each session

Tuesday, July 24	The Municipal Budgeting Process
Tuesday, August 28	Municipal Sales Tax in Alabama
Tuesday, September 25	Municipal Liability
Tuesday, October 30	Conflicting Offices and Interest
Tuesday, November 27	The Municipal Budget and Auditing Process

There is a nominal registration fee: Payment required with credit card at time of registration.

Registration Limit: The webinar is limited to 50 registrants. Early registration is recommended!

Refunds: Registration fees for webinars are non-refundable. Substitutions are allowed.

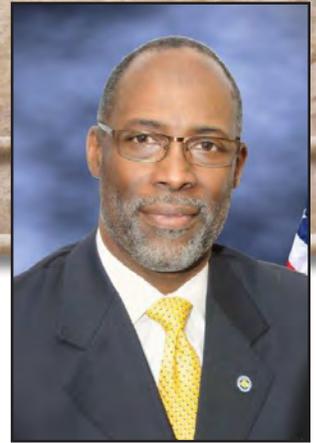
Who should register: Elected Officials and Municipal Personnel

Any municipal employee may register for these events, but only elected officials will be awarded credit hours in the CMO Program.

For more information or to register: www.alalm.org/upcoming-training

The President's Report

Council President Pro Tem Jesse Matthews, Bessemer



“Working Together Works”

President's Acceptance Address • May 21

To the Alabama League of Municipalities and special guests. Good evening.

I am both humbled and honored to stand before you as President of the Alabama League of Municipalities. I am humbled because the reality is the fulfillment of a burning professional desire and a step-by-step process that has led to this accomplishment. It is the culmination of faithfulness and relentless efforts to serve the cities of this great state. It is the manifestation of the dreams of a small town boy with a big imagination. It's my time. I am further humbled and thankful that God has granted me this opportunity and prepared me for a time such as this. I am honored that you have entrusted me to serve this outstanding organization with diligence, dedication and pride. For this, I say 'thank you'.

My commitment to serve would be meaningless without the support and encouragement of my loving family. They have been my strength and motivation. They each in their own special ways have served as a major source of inspiration and encouragement, and to my family I say 'thanks and I love you all'. I have several family members supporting me here this evening. Family, will you please stand. Thank you.



2018-2019 League President Jesse Matthews, Council President Pro Tem, Bessemer, delivers his acceptance speech in Montgomery.

The City of Bessemer, where I have served as city councilmember for the past 20 years, is also well represented here this evening. In Bessemer, we believe that “Working Together Works”. Coupled with experience and hard work, the essence of this theme is what has propelled our city to its current state of financial stability, economic growth and community development. The City of Bessemer is open for business. I'd like to recognize the Bessemer City Council at this time. Councilmembers, will you please stand. As the Council, we work together collectively as a legislative body to address the municipal needs of our city. Although our opinions may differ, we share a common respect and appreciation for the contributions each member brings to the Council. Councilmembers, I thank you.

Now I'd like to acknowledge the outstanding leadership of Bessemer's mayor, Mayor Kenneth Gulley. Setting aside all political differences, Mayor Gulley's efforts to build a better Bessemer are evident. Under his leadership, a new multi-million dollar Park and Recreational Facility and a new City Hall were erected. Recently, a new three-phase nature walking trail was developed in the City. Phases two and three are currently under construction. Despite unfunded mandates and individual community differences, the City of Bessemer continues to grow. Thank you for your support, Mayor Gulley.

Another acknowledgement definitely worthy of recognition is my gratefulness to President Howard Rubenstein. I would like to take this opportunity to recognize his faithfulness and outstanding dedication to the League. Serving as Vice President under President Howard Rubenstein has been both an honor and a privilege. Thank you for your inspiration, the advice, the communications and – most of all – your service. Your willingness to step up to the plate when needed has not gone unnoticed or unappreciated. Dr. Rubenstein has served tirelessly and without complaint. His experience and knowledge regarding the League has been a tremendous asset to my personal growth and the League in general. Please stand



2018-2019 League President Council President Pro Tem Jesse Matthews of Bessemer with 2017- 2018 League President Mayor Howard Rubenstein of Saraland.

and join me in thanking and celebrating Dr., Mayor, President – Howard Rubenstein!

To League members, I applaud your efforts to proudly represent the Alabama League of Municipalities. I encourage you to continue to work to address local issues and advocate for our cities. Making your voices heard will continue to serve to strengthen municipal government. The fine members of our communities depend on you to represent them and their best interests well. The League’s reputation for the past 80+ years as a municipal advocate

must be maintained. We must continue to strive to maintain our honesty and integrity as we advocate for Alabama’s cities and towns.

We must not be negatively affected by politics or personal opinions. Instead, our goal should always be to stay focused, work together and maintain open lines of communication while developing effective policies that address municipal needs. We should always work together as a team. It is only through our joint efforts that we can promote the noble goals of this organization. The League’s importance can never be understated. We must have the clarity of vision to separate the essential from the desirable and the courage to attack those challenges necessary to move our cities forward.

To our newly elected officials, the Alabama League of Municipalities is the foundation that you can build on to gain the training and knowledge necessary to become an effective municipal official. It is through League training and the fundamentals it provided that I was able to successfully matriculate through the League.

I am a man of few words but significant actions. I pledge to lead by example and with purpose. I readily accept the responsibility that you have entrusted in me. I will be guided by the principles of morality and hard work. Again, I thank you for your trust and your support AND for this opportunity to serve. Thank you and God Bless! ■



More than 1,000 municipal officials, clerks, staff, vendors and guests attended the 2018 Annual Convention in Montgomery May 19-22. Concurrent and General Sessions were well attended. Many thanks to the City of Montgomery for hosting this year’s event!

Municipal Overview

By Ken Smith, Executive Director



Director's Report Annual Convention, May 21, 2018

First, I'd like to thank our hosts, Mayor Todd Strange and the city council and staff here in the City of Montgomery. They've truly done an outstanding job making us feel welcome here in the Capital City. That was a great reception the City threw for us Saturday night. I know everyone had a great time. Please give them all a round of applause.

I'd also like to thank Mayor Strange for recommending tonight's performer, Jennifer Holliday. She is an outstanding entertainer and I know everyone will enjoy her performance tonight.

I also want to thank President Mayor Howard Rubenstein from Saraland. He has represented the membership well this year and I thank him for his thoughtful input and leadership.

I'd also like to thank your Vice President, Council President Jesse Matthews from Bessemer. Jesse, you've got big shoes to fill, but I know you are up to the task.

Please join me in thanking them for their hard work.

Our attendance figures for this year's convention are very good. This year, 796 officials, staff members and guests preregistered to attend. This does not include last minute registrations and walk-ups. In addition, approximately 400 exhibitors, representing approximately 150 companies and state and federal agencies, exhibited in our Expo Hall, giving us a total attendance of 1,200. Outstanding numbers, and I know everyone has enjoyed their time here.

I have now had the privilege of serving as your Executive Director for seven years, and I'm pleased with the progress we've made as an organization, and I'm excited about what the future holds.

In my opinion, the League is as strong an organization as we've ever been. I think that when you manage an entity like the League, you want to be sure it rests on four strong pillars: your finances, your services, your staff and your membership. So, I'd like to take a few minutes to discuss the current state of these areas, steps we've made to improve them, and explore where we're headed.

To begin with, I'm pleased to report that League finances are in great shape. Several years ago, your Executive Committee asked us to try to increase League reserve levels. After all, if you don't have a firm financial base, you're not going to

accomplish anything.

Your staff has worked diligently to find ways to reduce spending without causing our services to suffer. I'm now very pleased to say that those efforts have been successful and our reserve levels have reached the level the Executive Committee asked us to obtain.

I'd like to salute the Executive Committee for their foresight and thank them for placing their trust in us to work toward this goal. I'd also like to thank your staff for their work to control spending and strengthen our financial position.

The League isn't a wealthy organization, but we are a healthy organization. Because of that, we have to keep an eye on our spending to be sure we remain healthy. Strong reserves, though, give you measure of comfort that lets you build for the future. They allow you to spend more on innovation and growth without worrying as much about the impact an expenditure will have on the next year's budget.

The next pillar I'd like to discuss is the League staff. Your staff is, in my opinion, the best in the business. They work hard on your behalf, and, as important as our finances are, I always feel that our primary responsibility is to protect them and provide them with a safe and comfortable work environment.

To this end, we have taken significant steps over the last year, adding a new security system, new video surveillance cameras and developing better procedures to know who is in the building. The League office is a fairly large structure with a number of access points. To help monitor those points, our doors remain locked. Access is granted by the receptionist, after checking to see that each visitor has legitimate business with the League. We have also assigned a receptionist seated downstairs to monitor all doors, greet visitors and have them sign-in.

In addition to protecting our employees, we work very hard to address maintenance issues as they arise. Especially if there is a danger or risk to our staff or visitors.

My feeling is that if you take care of your finances and your people, that gives them the freedom to focus on important work of the League with less concern for their health, safety and future. We are blessed to have a very effective staff and it is crucial that we look out for their well-being.

The third pillar is membership, but I can't discuss membership without segueing into a discussion of services, so

continued on page 13



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President's Address

Mayor Howard Rubenstein • Saraland
Opening Session • May 19, 2018

Councilmember Matthews, Mayor Strange, municipal colleagues and guests, thank you so much for joining us in Montgomery for the League's 83rd annual convention!

We last met in Montgomery five years ago. Since that time, our Capital City has experienced significant redevelopment and growth, particularly in the downtown area. Historic buildings that were empty or fading have been resurrected for modern-day mixed use. Others are currently being restored. The energy and opportunities are visible nearly everywhere you look. Mayor Strange, I congratulate you on your successes and want to personally thank you, the Montgomery City Council and your staff for working closely with the League to make this convention a reality. We're all looking forward to the City's Welcome Reception this evening as well as the opportunity to spend several days learning and networking with our colleagues.

Special thanks goes to Council President Jesse Matthews for representing us as our League Vice President this past year. He is a dedicated public servant and has been actively involved with the League for 20 years. He has also served our organization as a member of the Board of Directors for the National League of Cities. We are fortunate to have him in a leadership role!

I also want to commend Ken Smith and our League staff for their efforts on our behalf. Not only do they manage this convention and all our CMO training and programs, our staff works perpetually for us and our municipalities. Their professionalism, expertise and absolute dedication to our organization is exceptional, and I can tell you without hesitation that we are represented by outstanding people.

This dedication and expertise was particularly prominent leading up to and during the 2018 Regular Session of the Alabama Legislature. The strides made on our behalf by our Advocacy/Communications Team led by Greg Cochran

are noteworthy. I feel certain there's no way you missed the weekly updates and legislative alerts; however, if you *don't* know what I'm talking about, see me or Greg over the next few days to make sure you're receiving our *State House Advocate*, which is emailed every Friday during the

Session and monthly throughout the rest of the year to advise and guide us on our advocacy efforts – efforts that require participation from *everyone in this room* and throughout the state. Protecting and improving our cities and towns was why we were elected to office. Advocating on behalf of our communities with our state representatives during the legislative session and throughout the year is part of that process.

This past year, the League's Executive Committee made our advocacy efforts an even greater priority by allocating the resources to hire an additional team member. In August, Kayla Farnon joined the staff as our Advocacy Communications

Coordinator who is also a registered League lobbyist and works directly with Greg at the State House. Kayla came to us by way of the Governor's Office, the Secretary of State's Office and a year-long span with the grassroots advocacy organization VOICES for Alabama's Children, where she was directly responsible for helping to shape crucial daycare legislation that finally passed this year. Kayla's background was uniquely suited for our organization and she proved to be a valuable addition from her first day.

Prior to the start of the 2018 Regular Session, our Advocacy/Communications Team, which also includes Carrie Banks and Karl Franklin, coordinated nine successful legislative dinners around the state where Executive Committee members and policy chairs were able to engage with their legislative delegations. They also expanded our social media presence, held an extremely successful Municipal Advocacy CMO session at the Capitol Auditorium and collaborated with many stakeholders to ensure provisions to the Simplified Sellers Use Tax legislation passed. These



SSUT provisions *directly* benefit our municipalities – passing this legislation was monumental.

Thanks to the efforts of our staff, we are slowly closing the gap between online sales and our brick and mortar stores. That being said, it's still *very* much an uphill battle, which is why the Executive Committee formed our Digital Economy Task Force this past fall to evaluate changing consumer purchasing habits and identify solutions to address the erosion of our municipal tax base. This Task Force will continue to meet as we prepare for the 2019 Regular Session, which promises to be yet another vigorous battle defending our local authority and our ability to maintain healthy, solvent communities for our constituents and their families.

I encourage you to attend the General Session that will be held in this room following our break for an in-depth legislative report from Greg and Kayla. You will also learn more about #LiveLocallyAlabama, the specialized grassroots campaign we recently launched to encourage civic engagement, instill community pride and highlight the crucial role municipal government plays in the daily lives of our citizens.

Since 1935, our League has protected and championed municipal interests, diligently safeguarding our cities and towns by offering legal guidance, educational training, advocacy resources as well as through specific programs including AMIC, MWCF, AMFund and MIS. I'm very proud of our organization and the strides we've made this year, but there's much more to do and many *significant* challenges ahead.

Recognizing that we face an uncertain future, the Executive Committee made the decision to proceed with a formal strategic planning process to look closely at our strengths and weaknesses and determine how we remain responsive to our membership while maintaining our relevance.

A formal plan will aid the Executive Committee and staff in setting priorities and focusing our resources. It will provide guidance for how to strengthen operations; ensure that employees and other stakeholders are working toward common goals; and establish agreement around intended outcomes and results. In addition, it will address future staffing and logistical needs as well as planning for continued sound fiscal management of League revenues and expenses.

A sub-committee of the Executive Committee was formed to guide this process. It will meet immediately following convention to review the results of multiple interviews and focus group sessions that were held earlier this year and begin developing a plan based on that information. We hope to have a formal plan ready for implementation in January 2019.

I'd like to take a moment to recognize a significant – actually a *groundbreaking* – accomplishment by the Alabama

Municipal Insurance Corporation, which as you all know was created by the League in 1989 to provide liability insurance to our cities and towns. In late 2017, the AMIC Board of Directors made an unprecedented and historic move to further “insure the future of local government” by endowing \$1,050,000 to Samford University's Cumberland School of Law in Birmingham to establish the Stephen Everett Wells Chair in Municipal Law. This innovative academic position, named for AMIC President Steve Wells, is designed to ensure that future lawyers are educated about municipal law and the issues affecting municipalities – and that those issues will receive sound scholarly research to enhance municipal services.

Everyone in this room understands all too well that municipalities provide the most essential services to citizens with the least amount of money and the *least amount of statutory protection*. The Stephen Everett Wells Chair in Municipal Law will emphasize understanding municipal statutes, which will result in more reasonable legal results. Or – more simply stated – will save taxpayer dollars. In addition, it will ensure law school graduates are better ready and able to address legal issues affecting Alabama's municipalities.

Please join me in a round of applause for AMIC's Board of Directors for taking this very important step to further protect our cities and towns!

I'll close my remarks today by revisiting some of the “pearls” I've shared with you throughout my tenure.

First: *Use the League's resources*. These extend well beyond legal advice and CMO training. Become *involved* in the process – join a policy committee, attend the Advocacy seminar prior to the legislative session and make use of our #LiveLocallyAlabama campaign. Engage and participate!

Second: Leaders are usually the first line of attack when efforts are launched to undermine a community. However, a city whose council is united is a strong city. A city whose council and mayor work as a *team* is an efficient and progressive city because the leaders understand the importance of their mission – to improve the quality of life for the *entire* community. Mayors: Please share all information you receive with ALL of your councilmembers. The Mayor's Office serves as an interface for a great deal of information your municipality receives. Please be considerate of your councilmembers in sharing this information as it will help develop good Mayor/Council relationships. Councilmembers: Please “stay in your lane”. You function as the legislative and policy making arm of your city or town. The Mayor is responsible for the day-to-day operation of your municipality and supervising its employees.

And Third: Social media, particularly Facebook, is here to stay. You can ignore it, but I guarantee a great deal of your citizens, including many seniors, are using it daily – or

hourly! If a “Concerned Citizens of Yourtown” Facebook page is formed, be aware of what is being discussed. Consider launching an official Facebook page for your municipality if you don’t already have one. It will help you “drive the narrative” as well as allow yet another opportunity to share positive and useful information with your citizens. You should keep in mind that if your municipality doesn’t set up an official page, a citizen or organization may decide to do it themselves – independent of the municipality and those tasked with managing your city or town. *Be proactive!* Communicate with your citizens via the platforms the majority of them are now using!

Ladies and Gentlemen, it goes without saying that we are *extremely fortunate* to have an organization such as the Alabama League of Municipalities to protect our interests at the Legislature; to provide us with timely, important information; to educate us through structured training programs; to give us sound legal advice regarding the many challenges we face daily; and to encourage and promote collaboration.

Throughout its long history, the League has accomplished many great things on behalf of Alabama’s municipalities. Our *united* efforts will ensure that this list of achievements continues to grow.

It has been an absolute honor to work so closely with so many of you throughout my tenure. Thank you for your insights, your support and your enthusiasm. I’ve grown not only as an elected official, but as a person. It’s also been a true privilege to build close personal relationships with our League staff. They, too, have supported me throughout my tenure and I am truly grateful.

I also humbly thank the members of the Saraland City Council as well as the city’s staff. They enthusiastically encouraged my service to you and have always been very strong supporters of our League.

Again, I thank all of you for the privilege of serving as your League president. May God bless you, your communities and our Alabama League of Municipalities! ■



This year’s Municipal Marketplace during the League’s Annual Convention featured 142 vendors and state agencies that work closely with Alabama’s cities and towns. The outstanding City Hall backdrop was designed by ALM Graphic Designer Karl Franklin (pictured center) and J.A. Dawson Company, Dixie Decorations and Jenilyn’s Creations contributed to the landscape. Also pictured are ALM employees (left to right) Richard Buttenshaw, Cindy Price, Sharon Carr and Ken Gabehart.



Mayor Todd Strange welcomed delegates and guests to the City of Montgomery during the Opening Session of the League's 2018 Annual Convention on Saturday, May 19th and Gov. Kay Ivey was the keynote speaker.

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I'll combine these two pillars in my comments.

An association like the League doesn't accomplish much without the assistance of a strong and active membership. I'm pleased to report that 451 of Alabama's 462 municipalities are League members. Only a few smaller municipalities remain unaffiliated with the League. Our membership has increased from 442 when I became Director in 2011 and has remained constant for several years. I thank you for your participation in this great organization.

Increases in membership come from hard work by your staff and the recognition by the great municipal leaders in all of our cities and towns that we work better together than we do separately. As Ben Franklin said, if we don't hang together, we will certainly hang separately.

We all share common goals and wishes. We all want nice parks, great jobs, and safe streets. We want our kids to attend good and safe schools. We want our garbage picked up on time. We want toilets that . . . do what toilets are supposed to do.

And we can only achieve our collective goals by speaking with the same voice and carrying the same message to state leaders.

When we don't work together, we work against ourselves, and it is crucial that we find common issues our municipalities can support so that we work to solve problems together.

We saw the importance of this just last legislative session. The League has always been a strong lobbying organization. A great deal of our legislative success is due to the efforts of our membership.

With your help, over the past seven years your advocacy team has killed bills that would have required you to take responsibility for county roads in the police jurisdiction, to pay half the cost of incarcerating juveniles, to contract with the county for housing municipal prisoners in a county facility, to maintain the current distribution on motor fuel taxes, to exempt pharmacies, durable medical equipment and other businesses, from paying licenses. We've defeated hundreds of unfunded mandates and sales tax exemptions, limitations on subdivision authority, the diversion of oil and gas funds, increases in the population required to form a local school board and many, many more.

At the same time, we've successfully helped pass legislation that authorized the creation of the League Municipal Intercept Services debt set-off program, that made major improvements in the Simplified Sellers Use Tax, that overturned a Supreme Court decision and validated certain alcohol referendums, that strengthened the regulation of day care centers, that clarified filling vacancies in Class 7 and 8 municipalities, that corrected problems in municipal election procedures, that eased publication requirements for long ordinances like business licenses and planning and zoning, that allowed more flexibility in municipal bidding procedures, that consolidated municipal court offenses, that helped improve weed abatement,



Ken Smith gives the Director's Report during the Business Session of the 2018 Annual Convention on May 21.

that repealed the unused commission form of government and that provided income tax credits for improvements on historic structures.

But I'm going to be honest with you. In 2016 and 2017, for the first time any of us on your staff could remember, our members didn't seem as interested in the legislative process. This lack of participation worried us.

The timing was even more significant because during the 2016 session legislative priorities shifted. The volcano of anti-government sentiment that had been spreading across the nation suddenly erupted with a vengeance in Alabama. I'm sure you've felt that change in attitude as well, both in Montgomery and back home. It should have sparked immediate concern among our members.

But, for some reason, we struggled during the 2016 session to get our own members to react to our message. This may have been simply a matter of fatigue. The sheer volume of anti-municipal legislation introduced in 2016 was staggering. Unlike previous sessions, it seemed like a new issue came up every day that required action by you. That probably made your task even more daunting. Maybe it was the fact that 2016 was also a municipal election year and you had other things on your mind. Perhaps we at the League didn't take the correct approach to seeking your input. I certainly hope not. I can't tell you how much we need your participation. I never want to take it for granted. But whatever the reason, we couldn't seem to get the attention of our members.

Following another extremely frustrating and contentious session in 2017, your staff and I felt that the time had arrived to take a different approach to our legislative advocacy efforts.

We started in earnest by hiring Kayla Farnon as the League's first Advocacy Communications Coordinator. We assigned Kayla a multi-faceted role. She will serve as one of our primary lobbyists. But she will also explore new ways to

keep you informed about our legislative positions and needs.

The Communication part of the process is absolutely crucial. As we always say, we are only as successful legislatively to the extent our members are involved. Keeping you up to date is mandatory.

With the addition of Kayla, we now have more resources devoted to legislative advocacy than the League has ever had before. In the past, our lobbying team consisted of myself, Greg Cochran, Lori Lein, our General Counsel, and our contract lobbyist, Hal Bloom. In addition to adding Kayla, for the first time, all League attorneys are registered lobbyists and participate in our advocacy efforts. Carrie Banks and Karl Franklin in the Communications Department provide much needed communications assistance. This, along with our continued work to build relationships with lobbyists working for our municipal members, puts additional boots on the ground at the Statehouse.

Each of us knows that during the legislative session, advocacy is our priority.

This realignment in approach led to one of the most successful legislative sessions we've had in years and I sincerely thank each of you and congratulate you for the assistance you provided. We could not have been nearly as effective without your participation.

This last session, you guys showed up. You made contacts. You helped with negotiations. You appeared at legislative hearings. It was a true team effort.

You made a difference. And I want to thank you for your continued contributions and the unity you've shown by working together toward achieving important joint goals. There were a number of issues that threatened to split our members, but I'm pleased to say that we hung together.



Ken Smith during the Resolutions Committee meeting on May 19 with Mayor Gary Fuller of Opelika, Chair of the League's Committee on State and Federal Legislation

So, I want to take a moment to thank each of you for your continued efforts. You cannot even imagine how important that is to those of us who lobby on your behalf. Please give yourselves a well-deserved round of applause.

As successful as we've been, though, we continue to evolve our legislative approach. We are working to implement a text alert system to notify you when immediate responses are needed.

You'll see more legislative information disseminated between sessions to keep you update and involved.

The League has generally lobbied in the background, taking the view that our efforts were better spent behind the scenes, building coalitions and working bills quietly. It was a more reactive approach, and as you can see, this has been very successful for a long, long time.

But times change, as do expectations, and we are moving into an era that seems to demand a more proactive approach, and our movement in this direction has very much been intentional.

We've reached out to legislative leadership about reestablishing the legislative interim committee on local government. This committee met between legislative sessions to discuss issues affecting local government. It was disbanded back in the early 1990's when the legislature created today's standing local government committees.

But the interim committee served a different function than a standing committee. Former League Executive Director Perry Roquemore and I met with the interim committee regularly between sessions to educate them on issues that concerned our members. We got commitments to help us pass legislation. It was a very effective process. And, in my opinion, the need to meet with legislative members between sessions for discussions on local government issues has never been more acute than it is right now.

We've moved policy committee meetings from the fall to the spring, which allows committee members time to meet with their legislators while they are in session. We've honored legislators who strongly supported our positions as "Hometown Hero's", giving them recognition for their efforts. We've held dinners around the state for our Executive Committee members to meet with their legislators so they can get to know each other better and learn more about the League's legislative positions.

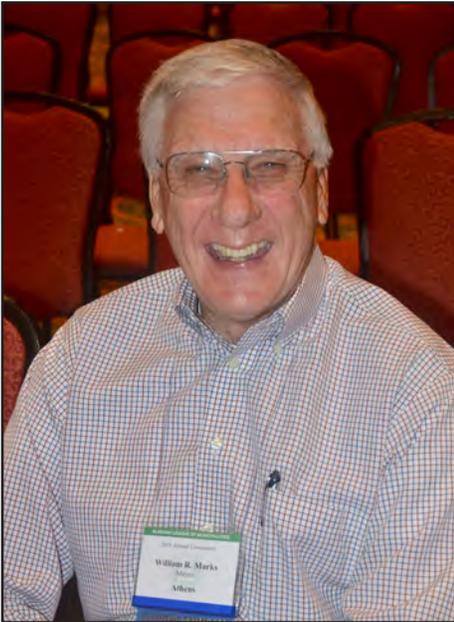
We will continue to develop new ideas and approaches to meet the ever-changing legislative landscape.

We're also making other changes in the way we communicate with you. Several years ago, we combined our Advocacy and Communications Departments. This has led to several suggested changes. We've made more and better use of social media. We are making significant changes to the format our electronic newsletter, *This Week* with the goal of reducing the number of emails you receive from our office. We are transforming it into a newsletter for quick information retrieval. It will include links where you

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Mayor Ronnie Marks of Athens

Elected Vice President of the Alabama League of Municipalities



On May 21, Athens Mayor Ronnie Marks was elected by his municipal colleagues to serve as Vice President of the Alabama League of Municipalities for 2018-2019. He was elected and took office during the League's annual convention, which was held in Montgomery May 19-22.

League Executive Director Ken Smith looks forward to working with Mayor Marks over the next year. "Ronnie has been actively involved with the League for many years," Smith said. "He has served on a number of League committees, including our Executive Committee, and his municipal knowledge and leadership skills have been an asset to our organization. He will serve us well as Vice President." Mayor Marks also serves on the Board of Directors for the Alabama Municipal Insurance Corporation (AMIC), a mutual insurance company created by the League in 1989 to provide Alabama's municipalities with liability insurance.

Mayor Marks began his municipal service in 2004 as a councilmember and assumed the position of mayor in 2010 when then mayor and League past president Dan Williams won a seat in the Alabama Legislature. He was elected to his first full term in 2012. He has completed the League's Basic and Advanced Certified Municipal Official (CMO) programs and is currently working on his CMO Emeritus designation, which is awarded to officials who have acquired a

minimum of 120 credit hours of Continuing CMO Education through a series of one-day programs designed especially for mayors and councilmembers who voluntarily wish to receive formal training in municipal government. Emeritus status also requires earning a total of 15 points, which can be achieved by participating on ALM policy committees and attending specific ALM and National League of Cities (NLC) events. ■

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can get more information. It will include important meeting notices, upcoming training and conference information as well as other information pertinent to municipal officials and employees. We are also looking at ways to better integrate all our communication platforms.

But perhaps the most significant development in this area is the start of the Live Locally Alabama campaign you've heard so much about this Convention. This campaign has the potential to be one of the most far-reaching developments in our Advocacy/Communication efforts.

Years ago, the League set aside a session at the Convention to showcase innovative municipal programs. It was an opportunity to officials to discuss developments in their community in which the city or town played a significant part. Interest in this session waned, though, and it was eventually eliminated from the program. But I've often felt that there was a continued need for us to find a way to highlight local improvements and sources of pride. I think that Live Locally Alabama helps fill that need.

We hope this tool will serve as a community post for local stories and calendar events. It is not intended to be used for direct advocacy, but our hope is that it will make all citizens more aware of the important role municipalities play in their lives.

Back in 1955, former League Executive Director Ed Reid wrote the following in a League publication called "Some Facts about Municipal Government in Alabama:"

"It is an alarming fact that many people take their municipal government so much for granted. They become interested in it only when some controversial issue develops and otherwise assume that its routine operations are of little importance to them. They overlook the fact that the whole pattern of their daily life is constantly influenced by their municipal government. It supplies water, sewage service, garbage collection, police and fire protection, streets, traffic control, recreational facilities and countless other functions. Some of these are primarily a convenience, but many of them vitally affect the health, safety and welfare of the municipality's residents. Moreover, they are financed by the residents of the municipality through taxes and other revenue devices. In short, every citizen has much at stake in the operations of his municipality's government and should show a degree of interest which reflects this. Certainly, he ought not simply take it for granted."

These comments probably seem very familiar to each of you. And it's sad to think that – in my opinion at least – in the time that has passed since 1955, we have only seen this failure to understand the effort and sacrifice needed to provide municipal service worsen. More and more, it seems that legislators and citizens take municipal services and benefits for granted. It feels like your residents are demanding that you do more, while at the same time providing you with fewer resources to get the job done.

Municipalities are the lifeblood of this country. They are the economic engines that drive the economy and provide the jobs. They maintain the infrastructure. They guard our children, our homes and our lives with police and fire protection. They provide us with safe drinking water, with wonderful parks to play in, with opportunities for us to enjoy a great quality of life.

And you are the people who keep that engine going. You are the people who work so hard for so little for so many people who will rarely acknowledge – or in some cases even accept – that you are the people who made so much good happen in their lives.

We and our cities and towns face numerous challenges over the next few years. Live Locally Alabama has tremendous potential to serve as a key link between local governments and their residents and increase citizen awareness of the importance of their municipal government.

One of the most significant changes in services at the League since 2011 has been the creation of the Municipal Intercept Service, what we call MIS. Your Executive Committee authorized the creation of MIS in 2013. In 2014, the Alabama Legislature authorized the League to offset individual tax returns against uncollected public debts, and in 2015, the League developed MIS to serve as the single point of contact between each municipal entity and the Alabama Department of Revenue. In a little over two years of operations, MIS has returned almost 2 million dollars to municipal entities in Alabama – revenue that would have otherwise gone uncollected.

League affiliated programs continue to work for the betterment of our cities and towns. For example, the Alabama Municipal Insurance Corporation, AMIC, has taken major strides toward improving public perception by endowing a chair in municipal law at Cumberland School of Law. From what we've been able to tell, this is the first program of its type in the country.

The endowment of this Chair will allow future law students at Cumberland to develop a base in municipal law that is currently sorely lacking. It will train law students on the unique issues confronting our municipalities, and hopefully make them more sympathetic to the legal issues you face as you attempt to serve your citizens. It will also fund research and study in municipal law at the law school level. I salute AMIC for taking this major step and hope that it will serve as a model for other state Leagues.

The League authorizes the creation of very few affiliate programs, but these two programs, along with the Municipal Workers Compensation Fund, AMFund, and the delinquent insurance license collection program all serve vital needs your Executive Committee has recognized and I'm proud to work beside them to help our municipalities.

If you aren't participating in these affiliate programs, what are you waiting for? They were created to help you and while private programs may provide similar services, League

programs keep your needs primary. Municipalities aren't just one client among many – municipalities are the client.

These groups provide endorsement funds for the League as well. The funds help us provide the services you turn to us for. They help us keep our dues low. I've told you before, each of us has a responsibility to leave the League better than we found it. One of the best ways you can do that is by participating in MWCF, AMIC, MIS, AMFund, or the delinquent insurance license program. I thank them for the work they do on your behalf.

We've made many other changes over the past seven years as well, and I could spend hours talking about developments in the CMO program like the Emeritus certification level, the creation of a core curriculum, our Saturday training seminars we offer during summer months, the creation of the Municipal Leadership Institute and the increased use of webinars to provide training. I could talk about the reduction in the number of Journal issues each year that allows us to focus more effort on developing a social media and technology-based approach to communication. I could talk about updates in our technology, new construction at our office, the creation of LeagueLaw, which provides you access to summaries of Attorney General's Opinions, Ethics rulings and Court decisions. I could talk about modernization of our financial and payroll systems, about updating our sponsorship program, and many, many other changes.

But I'm running out of time, and I've got one last topic I want to discuss. Where is the League headed?

The League's culture tends to change slowly. We've all heard the expression – say it with me – if it ain't broke....

That's right, don't fix it.

If it ain't broke, don't fix it. It's a philosophy that has worked very well for the League for many years. No one likes change for the sake of change. But you have to be aware of new approaches and opportunities, and you have to be willing to adjust to take advantage of them.

This year, your Executive Committee established a subcommittee to develop a strategic plan for the League. In my opinion, given the strength of the League and the renewed participation and excitement among our members, the timing of this process could not have been better.

I feel certain that this subcommittee will make several recommendations that will take the League in new directions. I'm very excited to see the results of this process and work toward the implementation of their recommendations.

The strategic plan will help us identify what we're doing right and spotlight areas where we can improve. I want to thank all of you who have responded and provided input.

Whatever changes are coming, though, will strengthen an already strong organization. The Alabama League will continue to be a leader both in Alabama and nationally.

Staffs from other Leagues look to the Alabama League for input and guidance. The development of the MIS program has been a long-standing dream of mine. I'm pleased to say that our success since 2015 has been a source of discussion among my

fellow Executive Directors and several of them are considering adopting similar programs. One League has already introduced legislation modeled on ours.

Changes in our Journal and our use of social media have led one League to completely revamp their communications approach.

The success of our legal department has led other Leagues to take a closer look at the way they address the legal needs of their members and explore the option of expanding their own legal and research services.

Our Certified Municipal Officials Program continues to serve as a model for other Leagues. Just last year, NLC asked me to make a presentation about our program to my fellow Executive Directors who had expressed an interest in creating their own training.

Our IT Department is a recognized national leader in the protection of digital information and association use of technology.

Keeping our goal of serving you central to what we try to achieve helps keep us in the forefront among our sister Leagues. You're going to see other associations look a closer at Live Locally Alabama and the endowment of a municipal law chair. These are developments that make an impact.

I want to close with a few comments about your staff. You have a great staff working on your behalf in Montgomery and they deserve recognition for what they do. These individuals were hired because they had skills that served your needs.

But I've encouraged them to do more than just work for you. I've asked them to help educate you. If there are legislative issues, Greg, Kayla, Lori or I can speak to them. Communications or social media issues, Carrie or Kayla can address them. If it's legal, Lori, Rob, Teneé or I can speak to those. Human Resources, Barbara. IT, Chuck.

While we're limited in our ability to attend every meeting or address every group – keep in mind that we have a limited staff and that their primary responsibility will always be to serve the needs of the full membership, which generally means getting the work done in Montgomery – when time allows, I want them to share their knowledge with you. I want you to know who they are and the great work they do. You'll see each of them more involved in our webinar presentations over the next year. Your staff also takes on leadership challenges to represent their peers and the state:

- Greg Cochran has chaired the Southern Municipal Conference lobbyists section and the National League of Cities Bond Pool Consortium.
- Lori Lein serves on the Opioid Task Force and amicus brief review committees for the International Municipal Lawyers Association.
- Carrie Banks serves on the advisory committee of the Bicentennial Commission and represents us on the ACE Board, working closely with a broad range of development entities such as Main Street and Design Alabama. She is

also a member of the David Mathews Center for Civic Life Advisory Council.

- Chuck Stephenson serves on the planning committee for the SMC planning committee, developing IT training for League IT Departments around the country.
- Kayla Farnon was recently recognized as one of the Alabama's Women who Shape the State for 2017 at a major event in Birmingham.
- I'm humbled to say that I've twice been selected by my fellow Executive Directors to serve their interests on the National League of Cities Board of Directors, and I've twice chaired the NLC State League Steering Committee, a committee that provides NLC with input and advice from state Leagues across the country. I've also been selected to serve as one of two Executive Directors on the Southern Municipal Conference Executive Committee.

This is just a short list of the ways your staff serve their community and municipalities across the country. I take great pride in the trust my peers have placed in me and I know your other staff members feel the same way.

Please join me in thanking your staff for their contributions. This list only scratches the surface of the contributions your staff makes. Your staff are leaders, but we realize it is not about us. It's not about getting glory and recognition for what we do.

It's not about us and our accomplishments. It's about you. You're the reason we exist, and the reason we work so hard.

I have a plaque on my desk that my wife gave me when I became Executive Director. It's a quote from Ronald Reagan that I've tried to live by:

"There is no limit to the amount of good you can do if you don't care who gets the credit."

And I truly believe that.

I'm proud of the work we do at the League. It is important work, and I'm happy to know that we do it for important people like you who do important work.

From the start of the League in 1935, our mission has been to help you better perform your jobs, and to demonstrate the value of Alabama's cities and towns. We will continue to focus on that mission as we move forward.

You are important people, doing important work for the betterment of the State of Alabama and the nation. Never forget that. Never.

It's an honor to serve you. Thank you. ■



A graphic for a brochure titled "SCENIC North Alabama Motorcycle ROUTES". The text "North Alabama" is in a red script font, "Motorcycle" is in a white script font, and "ROUTES" is in a large, bold, red block font. Below the text is a photograph of two motorcycles riding on a winding road through a forest. At the bottom of the graphic, it says "A FREE BROCHURE FEATURING NINE BREATHTAKING ROUTES IN NORTH ALABAMA. CALL OR CLICK TODAY TO GET YOUR FREE GUIDE". Below that is the phone number "800.648.5381" and the website "www.NorthAlabama.org". At the bottom, there are social media icons for Facebook, Twitter, Pinterest, YouTube, and Instagram, along with logos for "ALABAMA ROAD TRIPS", "NORTH ALABAMA BARBECUE TRAIL", and "ALABAMA CRAFT BEER TRAIL". A banner at the very bottom says "Free Travel Apps in your App store!".

Minutes of the General Business Session May 21, 2018 • Montgomery

The Annual Business Session of the Convention of the Alabama League of Municipalities was called to order at 3:45 p.m., May 21, 2018, by President Howard Rubenstein, at the Renaissance Montgomery Hotel and Spa at the Convention Center in Montgomery, Alabama. President Rubenstein welcomed the attendees.

President Rubenstein then called on Mayor Tom Henderson of Center Point, President of the Municipal Workers' Compensation Fund, Inc. (MWCF), for an annual report. Mayor David Bradford of Muscle Shoals, Alabama Municipal Insurance Corporation (AMIC) Board Member, gave AMIC's annual report. Mayor Wally Burns of Southside, Chair of the Alabama Municipal Funding Corporation (AMFund) was called upon to make the AMFund annual report. Richard Buttenshaw, President of Municipal Intercept Services (MIS), gave the MIS annual report.

The President then called upon Ken Smith, Executive Director of the Alabama League of Municipalities, for his annual report. Mr. Smith expressed his thanks to all for being present in Montgomery and to Mayor Todd Strange, the City Council of Montgomery and their staffs, for their hard work in making the Montgomery Convention a huge success. Mr. Smith noted that League membership was now at 451 cities and towns and provided an overview of the past year and a look forward to anticipated issues confronting the League. A copy of his report is attached to these minutes.

The President then called upon Lori Lein, League General Counsel, who read the rules for voting during the League Business Session. Following this, the President called upon Mayor Gary Fuller, Chair of the Resolutions Committee, for the Resolution Committee's report. Councilmember Matthews reported that the Resolutions Committee met on Saturday, May 19, and recommended that the League's *Policies and Goals for 2018* be adopted with certain amendments.

Mayor Fuller moved the adoption of the changes recommended to the *Policies and Goals for 2018*. Mayor Tony Haygood of Tuskegee seconded the motion, which passed unanimously.

The *Policies and Goals for 2018*, as amended, was declared adopted. The following changes were made to the *Policies and Goals for 2018*:

Changes to the *Policies and Goals for 2018* Approved by the Membership

Delete PL. – 1.23

Amend TP-8.2 to read as follows: TP- 8.2. That the League urge the federal government to create uniform national truck operation standards for drivers of vehicles

transporting hazardous materials. Such standards should be issued by the Alabama Department of Transportation and administered by the state **and enforced by ALEA.**

Amend PP – 2.5 to read as follows: PP – 2.5. That the League continue to urge the Governor, in filling vacancies on the Alabama Peace Officers Standards and Training Commission and the Alabama Fire College and Personnel Standards Commission, to appoint elected **trained municipal officers** to represent municipal interests in establishing standards for municipal law enforcement and firefighting personnel.

Add CP-5.17 to read as follows: CP – 5.17. That the League and its members support the Alabama Department of Commerce in its efforts to develop international markets for Alabama's businesses and industries, **as well as foreign directed investment in the state of Alabama.**

Add a new legislative statement to read: CL – 2.3. That the League urges the Alabama Legislature to provide funding for international offices for the Alabama Department of Commerce.

Amend HL – 1.10., relating to health care for children, to change the word "All Kids" to "CHIP"

Amend HP – 3.12. to read as follows: That the League urges the State of Alabama to support legislation that would allow contiguous municipalities with a combined total population of at least 5,000 to band together to form their own school systems **and opposes and restrictions or limitations on this authority.** (2005) Further, the League urges the Legislature to preserve the right of a single municipality of at least 5,000 in population to form their own school systems.

Amend HP – 7.2. (a) to read as follows: That the League urges all member municipalities to recognize that alcoholism **is a serious problem** on the part of employees can represent a tremendous drain on their productivity but that alcoholism is also a treatable disease and that all municipalities are urged to follow the highly successful example set by several municipalities and major industries of Alabama in undertaking the Employee Assistance Program for the rehabilitation of persons with alcoholism.

4) Add new section that reads: HP 7.7. (a). That the League encourages municipalities to participate in the Drug Take Back Program which is held during the months of April and October.

Mayor Fuller then called on General Counsel Lori Lein to read Resolutions 1 through 7. The President then called

on Ken Smith, Executive Director, to read Resolutions No. 8 through 11. Mayor Fuller moved adoption of the Resolutions, leaving the memorial resolution, Resolution No. 11, open to add additional names until the end of the Closing General Session. Wayne Biggs, Councilmember, Saraland seconded the motion. The motion passed unanimously. Mayor Fuller then called on Ken Smith to read a staff recommended resolution. Tom Williams of Satsuma moved adoption of the resolution, and renumbering resolutions so that the memorial resolution would be listed last. Councilmember Tammi Holley, Roanoke, seconded the motion, which passed unanimously.

President Rubenstein next presented the report of the Nominating Committee. President Rubenstein noted that the Nominating Committee had a tough assignment choosing officers for the next year from an abundance of very qualified candidates. He reported the Nominating Committee met and recommended the following persons:

President: Jesse Matthews, Council President Pro Tem, Bessemer

Vice President: Ronnie Marks, Mayor, Athens

Executive Director: Ken Smith

CHAIR & VICE CHAIR OF LEAGUE POLICY COMMITTEES

Committee on State and Federal Legislation:

Chair: Gary Fuller, Mayor, Opelika

Vice Chair: Adam Bourne, Councilmember, Chickasaw

Finance, Administration and Intergovernmental Relations Committee:

Chair: Veronica Hudson, Councilmember, Saraland

Vice Chair: Ruthie Campbell, Councilmember, Robertsedale

Energy, Environment and Natural Resources Committee:

Chair: Lawrence Haygood, Mayor, Tuskegee

Vice Chair: Johnny Smith, Mayor, Jacksonville

Community and Economic Development Committee:

Chair: Charles Gilchrist, Mayor, Glencoe

Vice Chair: Leigh Dollar, Mayor, Guntersville

Transportation, Public Safety and Communications Committee:

Chair: Jerry Parris, Councilmember, Jacksonville

Vice Chair: Fred Barton, Councilmember, Brewton

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League Resolutions Adopted at ALM's 2018 Convention

RESOLUTION NO. 1

WHEREAS, the Alabama League of Municipalities' Annual Convention is its signature event; and

WHEREAS, it takes strategic collaboration with numerous entities as well as many hours to plan, organize and accomplish this event; and

WHEREAS, the Annual Convention not only includes educational sessions, networking opportunities and access to vendors and state agencies but is also the venue for the League's Annual Business Session;

NOW, THEREFORE, BE IT RESOLVED by the Delegates of the Alabama League of Municipalities in Convention assembled in Montgomery, Alabama, on this the 21st day of May, 2018, that we respectfully thank Mayor Todd Strange and the City of Montgomery for assistance in planning the 2018 Annual Convention and for hosting the Convention Welcome Reception;

BE IT FURTHER RESOLVED that the Alabama League of Municipalities thanks all the many people, businesses and organizations that supported our 2018 Convention as speakers, presiders, sponsors and exhibitors and that we especially thank the League staff for the many hours spent before, during and after to ensure our signature event is always successful.

RESOLUTION NO. 2

WHEREAS, in 2017, the Executive Committee of the Alabama League of Municipalities formed the ALM Digital Economy Task Force to study the current tax structures of

municipal governments and future consumer trends affecting those revenue streams; and

WHEREAS, the Task Force is chaired by League Past President Tuscaloosa Mayor Walt Maddox and is comprised of municipal officials representing each Congressional District as well as several at-large members including: Mayor Charles Murphy, Robertsdale; Mayor Jason Reeves, Troy; Councilmember Mack Arthur Bell, Roanoke; Mayor Ronnie Marks, Athens; Mayor Tom Henderson, Center Point; Mayor Darrio Melton, Selma; Mayor Howard Rubenstein, Saraland; Councilmember Jesse Matthews, Bessemer; Mayor Todd Strange, Montgomery; Mayor Leigh Dollar, Guntersville; Mayor Frank V. Brocato, Hoover and Ken Smith, ALM Executive Director as well as support from ALM staff members Lori Lein, General Counsel; Carrie Banks, Communications Director; Greg Cochran, Director of Policy & Public Affairs; and Kayla Farnon, Advocacy Communications Coordinator; and

WHEREAS, the members met in Tuscaloosa on November 13 to begin discussions on the goals of the Task Force and determine the resources needed to accomplish those goals; and

WHEREAS, the United States Supreme Court is expected to issue an opinion this summer on a case which could overrule the long-standing decision of *Quill Corp. v. North Dakota*, which has prohibited states from requiring remote sellers with no physical presence in a state to collect state and local use taxes; and

WHEREAS, the Court's opinion will likely require study



and input from the Digital Economy Task Force;

NOW, THEREFORE, BE IT RESOLVED by the Delegates of the Alabama League of Municipalities in Convention assembled in Montgomery, Alabama, on this the 21st day of May, 2018, that we applaud the efforts of the ALM Digital Task Force to address how online sales are substantially eroding municipal revenue sources;

BE IT FURTHER RESOLVED that the Alabama League of Municipalities will continue to support the Digital Economy Task Force as it determines the best practices for how our cities and towns will adjust their local tax codes to address changing consumer trends.

RESOLUTION NO. 3

WHEREAS, the Alabama Municipal Insurance Corporation (AMIC) Board of Directors recently authorized an endowment to Samford University's Cumberland School of Law in Birmingham to establish the Stephen Everett Wells Chair in Municipal Law; and

WHEREAS, this ground-breaking academic position, named for AMIC President Steve Wells, is designed to ensure that future lawyers are educated about municipal law and the issues affecting municipalities – and that those issues will receive sound scholarly research to enhance municipal services to citizens; and

WHEREAS, AMIC was created by the League in 1989 to provide liability insurance to Alabama's cities and towns; and

WHEREAS, this unprecedented and historic move to further "insure the future of local government" by teaching law school students to be better ready and able to address legal issues affecting Alabama's municipalities, which will result in more reasonable legal results and will save taxpayer dollars;

NOW, THEREFORE, BE IT RESOLVED by the Delegates of the Alabama League of Municipalities in Convention assembled in Montgomery, Alabama, on this the 21st day of May, 2018, that we applaud AMIC's Board of Directors for creating this unique program that will further protect Alabama's municipalities and its citizens.

RESOLUTION NO. 4

WHEREAS, extraordinary quantities of opioids have been prescribed without understanding their full impact on the human body, leading to an unprecedented public health crisis in this country; and

WHEREAS, President Donald J. Trump has declared the nation's opioid crisis to be a public health emergency; and

WHEREAS, from 2006 through 2014 the number of overdose deaths in Alabama climbed 82 percent totaling 5,128; and

WHEREAS, Alabama was the highest per capita opioid prescribing state in 2016 with a rate of 121 prescriptions per 100 persons; and

WHEREAS, the people of the state of Alabama continue

to be devastated by addiction; and

WHEREAS, Governor Kay Ivey's Alabama Opioid Overdose and Addiction Council released a 74-page report on this crisis on December 31, 2017, calling for significant investments in treatment and recovery programs directed by the Department of Mental Health;

NOW, THEREFORE, BE IT RESOLVED by the Delegates of the Alabama League of Municipalities in Convention assembled in Montgomery, Alabama, on this the 21st day of May, 2018, that we recognize the acute need to address the opioid crisis in our state and that we respectfully ask Alabama's Congressional Delegation and Alabama's Legislature to make opioid treatment and recovery programs a top priority in Alabama.

RESOLUTION NO. 5

WHEREAS, the mission of the Alabama Department of Economic and Community Affairs (ADECA) is to strengthen Alabama's Communities and the people who live there; and

WHEREAS, the federal programs ADECA manages address critical needs across Alabama that help our state grow and move forward; and

WHEREAS, President Trump's budget proposals will eliminate several programs, such as the Delta Regional Authority (DRA) and Community Development Block Grant (CDBG), critical to rural Alabama and our state's most underserved citizens;

NOW, THEREFORE, BE IT RESOLVED by the Delegates of the Alabama League of Municipalities in Convention assembled in Montgomery, Alabama, on this the 21st day of May, 2018, that we respectfully ask Alabama's Congressional Delegation to support funding for ADECA-administered federal programs that are fundamental to the advancement of our state and its citizens;

BE IT FURTHER RESOLVED that the Alabama League of Municipalities supports ADECA's efforts to preserve federal funding and will work closely with ADECA to ensure Alabama's municipalities have the necessary federal resources to prosper.

RESOLUTION NO. 6

WHEREAS, Alabama municipalities are responsible for providing services and protecting the wellbeing of the citizens; and

WHEREAS, in order to fulfill this duty, municipal officials must have authority to raise revenue and the ability to exercise regulatory authority to act as they see fit in the best interests of their citizens; and

WHEREAS, these officials depend on the legislature to provide them with this needed authority; and

WHEREAS, numerous bills have been introduced during recent legislative sessions granting special tax or license exemptions for specific types of businesses, removing

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The Legal Viewpoint

By Lori Lein, General Counsel



Point and Click: The Commerce Clause, Sales Tax Collection and the Changing Retail Landscape

Article I of the United States Constitution provides that: “Congress shall have the power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.” (the Commerce Clause)

Interstate commerce embodies any business operating between two or more states. Individual states may not impede the flow of commerce from other states. The Commerce Clause prevents states from blocking channels of free trade, and, thus, impairing the national market. To what extent, however, does state or local taxation of interstate commerce block free trade in violation of the Commerce Clause?

The U.S. Supreme Court has been asked to rule on this question numerous times over the past century, with various results. The Court has called its own decisions on state taxation of interstate commerce a “quagmire,” and Justice Scalia has declared that in the years since the Commerce Clause was first applied in this area, the Court’s applications of the doctrine have “made no sense.” Thus, this is a very confusing area of law, one in which even the courts often reach conflicting conclusions.

As this article was being prepared for publication, many states, counties and municipalities are collectively awaiting a ruling from the Supreme Court of the United States in a case out of South Dakota challenging regulations designed to require the collection of use taxes by remote sellers. Oral argument was heard in the case of *South Dakota v. Wayfair*, 901 N.W.2d 754 (2016), cert. granted 138 S.Ct 735 (Jan. 12, 2018), on April 17, 2018, and a decision by the Court is expected sometime this summer. Additionally, Congress continues to bounce around bills which may require remote sellers to collect local use taxes. Many larger Internet merchants are now voluntarily collecting state and local use taxes.

Additionally, while commerce clause jurisprudence covers more ground than mail-order and on-line sales, this article, as the title states, will focus on how the changing way consumers shop relates to the Commerce Clause and tax collection at the state and local level.

Bellas Hess

Fifty years ago, in *National Bellas Hess v. Department of Revenue*, 386 U.S. 753 (1967), the United States Supreme Court examined whether states may impose collection duties on remote mail order retailers. *Bellas Hess* was the first major salvo in what has become a multi-pronged and lengthy battle over what constitutes nexus between remote sellers and state and local governments.

In this case, *Bellas Hess*, a mail-order company incorporated in Delaware and headquartered in Missouri, was required by the state of Illinois to collect and remit use taxes. The company had no stores, agents, property or telephone numbers in Illinois. Its contacts with Illinois residents consisted of mailing two catalogues each year to past and potential customers, supplemented by occasional flyers. *Bellas Hess* accepted orders by mail and shipped goods by mail or common carrier. *Bellas Hess* challenged the use tax requirement on two provisions of the United States Constitution: The Commerce Clause and the Due Process clause.

The Court stated that state taxation on interstate businesses is justified only where the tax is necessary to make the commerce bear its fair share of the cost of the government whose protection it enjoys. The Court said that due process requires that the state demonstrate that it has given benefits to the business which justify the tax. The Court found that retailers with stores, solicitors or property within a state received protection and services from the state, while retailers relying solely on mail-order business did not. The Court feared that if the use tax was upheld, every other state would impose similar requirements on mail-order businesses, which would unjustifiably entangle mail-order businesses in an administrative nightmare.

Rather than focusing on the nature and depth of the retailer’s contacts with the taxing state, the Court instead conditioned nexus upon a finding that the retailer was physically present in the state. This bright-line rule, first articulated in this case, continues as the rule today, although there have been many, many re-interpretations by courts, legislative bodies, and regulators.

continued on page 32

or limiting municipal regulatory authority, or making municipalities fund state and county functions; and

WHEREAS, passage of these bills would have a devastating impact on Alabama's municipalities, resulting in the potential loss or reduction of much needed services or staff, and severely limit municipal power to protect the health, safety and welfare of their citizens and visitors;

NOW, THEREFORE, BE IT RESOLVED by the Delegates of the Alabama League of Municipalities in Convention assembled in Montgomery, Alabama, on this the 21st day of May, 2018, that we do hereby request the Alabama Legislature to protect municipal ability to raise local revenues and authority to act as they see fit to protect the wellbeing of municipal citizens.

RESOLUTION NO. 7

WHEREAS, the existing motor fuel tax revenues are declining and haven't been raised since 1992; and

WHEREAS, the annual potential shortfall of State revenue for transportation infrastructure is estimated at \$350 million; and

WHEREAS, efforts are being made to have the Alabama Legislature enact an additional excise tax to alleviate the loss of potential revenue;

NOW, THEREFORE, BE IT RESOLVED by the delegates of the Alabama League of Municipalities in Convention assembled in Montgomery, Alabama, on this the 21st day of May, 2018, that they do request the Alabama Legislature find funding mechanisms to protect Alabama's transportation infrastructure that do not in any way preempt or exempt municipal governments from raising local revenue from the sale of motor fuels to fund local transportation infrastructure.

BE IT FURTHER RESOLVED that the delegates of the Alabama League of Municipalities formally request the Alabama Legislature and Alabama Department of Transportation to implement an equitable formula for the distribution of motor fuel tax revenues and to distribute funds to municipal governments rather than through county governments to address municipal infrastructure needs.

RESOLUTION NO. 8

WHEREAS, Faith Ann Gunn has worked as the Accounting Manager for the Alabama League of Municipalities for nearly two decades; and

WHEREAS, in her role she has worked closely with the Finance Director to manage League finances; and

WHEREAS, during her tenure, the League has seen steady financial growth; and

WHEREAS, Faith Ann has assisted the General Manager and Operations Manager of the Municipal Workers Compensation Fund to grow and develop the Fund for the benefit of League members; and

WHEREAS, Faith Ann helped develop and launch a full-service Loss Control Division in partnership with the Alabama Municipal Insurance Corporation, allowing both programs to provide additional staff and expanded risk management services at a much reduced cost to their members; and

WHEREAS, Faith Ann is retiring after nearly two decades of outstanding and commendable service to the cities, towns and municipal entities of this state; and

WHEREAS, Faith Ann's diligent efforts to keep the League and MWCF strong and to improve the quality-of-life opportunities for Alabama's cities and towns make her a true champion of municipal government are much appreciated by the League staff, League members, and all who know her.

NOW, THEREFORE, BE IT RESOLVED by the Delegates of the Alabama League of Municipalities in Convention assembled in Montgomery, Alabama, on this the 21st day of May, 2018, that they do hereby commend Faith Ann Gunn for her years of outstanding service to the League and MWCF and for her dedication in making the League an organization that is second to none.

BE IT FURTHER RESOLVED that we extend our best wishes to Faith Ann for continued success, happiness and good health in the years to come.

RESOLUTION NO. 9

WHEREAS, Dr. Howard Rubenstein, Mayor of Saraland, Alabama, served as President of the Alabama League of Municipalities from November 2016 until May 2018; and

WHEREAS, Mayor Rubenstein's diligent attention to duty and outstanding leadership on behalf of the League and its members has led to the growth and well-being of the League; and

WHEREAS, the members of the League shall always be most grateful for Mayor Rubenstein's years of unselfish service and untiring efforts to promote the programs, projects and philosophy of the League;

NOW, THEREFORE, BE IT RESOLVED by the Delegates of the Alabama League of Municipalities in Convention assembled in Montgomery, Alabama, on this the 21st day of May, 2018, that they do recognize and commend Mayor Rubenstein, for his service as a municipal official in the State of Alabama and as a leader of our state organization.

RESOLUTION NO. 10

WHEREAS, League Past President and former mayor of Oxford Leon Smith passed away on September 17, 2017, at age 77 after more than three decades of outstanding and commendable public service; and

WHEREAS, Mayor Smith served as Mayor of Oxford from 1984 until 2016; and

WHEREAS, during that time the population of Oxford more than doubled; and

WHEREAS, Mayor Smith was an active member of the Alabama League of Municipalities, serving on numerous committees and as League President from 1997-1998; and

WHEREAS, Mayor Smith served for many years as president of the Board of Directors of the Municipal Workers Compensation Fund, Inc.; and

WHEREAS, Mayor Smith was a long-time advocate of municipal government and its critical role in the success and wellbeing of Alabama's cities and towns and is remembered as one of Oxford's most respected and beloved public servants;

NOW, THEREFORE, BE IT RESOLVED by the Delegates of the Alabama League of Municipalities in Convention assembled in Montgomery, Alabama, on this the 21st day of May, 2018, that they do memorialize Mayor Leon Smith and pay tribute to the many years of dedicated service he gave to the City of Oxford, the Alabama League of Municipalities and the Municipal Workers Compensation Fund, Inc. His devotion to local and government and his friendship will be missed by his colleagues throughout Alabama.

RESOLUTION NO. 11

WHEREAS, Twanna Walton worked in various capacities for the Alabama League of Municipalities for many years; and

WHEREAS, in her role as League Researcher she worked closely with the Legal department, the Advocacy and Communications Department and directly with two executive directors, Perry Roquemore and Ken Smith; and

WHEREAS, in her role as League Researcher over the years she assisted in the maintenance of hardbound volumes of municipal ordinances, conducted various surveys and combed a variety of news outlets in Alabama to compile news related to various Alabama Municipalities; and

WHEREAS, during her tenure at the League many technological advancements occurred in how information is accessed and made available such that ordinances and news information is readily available without the need of compilation; and

WHEREAS, Twanna's service to the Alabama League of Municipalities and Alabama's cities and towns was outstanding and commendable; and

WHEREAS, Twanna retired in 2017.

NOW, THEREFORE, BE IT RESOLVED by the Delegates of the Alabama League of Municipalities in Convention assembled in Montgomery, Alabama, on this the 21st day of May, 2018, that they do hereby commend Twanna Walton for her years of service and extend their best wishes to Twanna for her continued success, happiness and good health in the years to come.

RESOLUTION NO. 12

BE IT RESOLVED by the Delegates of the Alabama League of Municipalities in Convention assembled in

Montgomery, Alabama, on this the 21st day of May, 2018, that they memorialize the following persons who have died in office since our last convention, namely: Jeddo Bell, councilmember, Greenville; Johnnie Robinson, councilmember, Phenix City; Jean Jones, councilmember, York; Lana Wiggins, councilmember, Valley; Martha Gallo, councilmember, Daleville; Evelyn J. Chambers, councilmember, Greensboro; Don Strait, mayor, St. Florian; Jerry Shirey, councilmember, Semmes and John Frank Cotton, councilmember, Brewton; Norman Dye councilmember, Fairview; Herman Majors, councilmember, Orrville; and Gary D. Scales, councilmember, Sheffield.

BE IT FURTHER RESOLVED that the following former officials be memorialized: Wink Chapman, former councilmember, Center Point; Joe Brown, former mayor, Southside; Leon Smith, League Past President and former mayor, Oxford; Billy Don Anderson, former mayor, Sheffield; Judy Rittenour, former mayor, Pike Road; Danny King, former councilmember, Center Point; Bob Lake, former mayor, Moundville; Rep. George Bandy, former councilmember, Opelika; Norman A. Wiley, former councilmember, Robertsedale; Bobby Hendrix, former mayor, Weaver; Bobby McGuire, former mayor, Lexington; Gene Stedham, former mayor, Anniston; George Areno, former councilmember, Jacksonville; G.G. Smith, former mayor, Sylvania; Larry V. Hilsman, former mayor, Albertville; Robert Rigsby, former mayor, Heflin; Richard Smith, former councilmember, Heflin; Milton "Buddy" Etheridge, former councilmember, Sweet Water; Don Hall, former mayor, Hartselle; Jack Harris, former councilmember, Waterloo; Walter "Buddy" Smith, former mayor, Citronelle; Danny Daniels, former councilmember, Citronelle; Thomas G. Starling, former councilmember, Abbeville; John Comer Hamm, Jr., former councilmember, Florence; Dale Sherman Lowery, former councilmember, Ozark; Gilbert Gardner, former councilmember, Pickensville; Jack Brasfield, former councilmember, Graysville; Clyde Foster former mayor, Triana; Ray Bice, former councilmember, Guntersville; James Bubba Reasor, former councilmember, Fairfield; Michael Johnson, former mayor, Fairfield; Doug Weems, former councilmember, Gadsden; Roger Garner, former councilmember, Moody; L.B. Feemster, former councilmember, Clay; Michael Elrod, former councilmember, Hokes Bluff; John Grimes, former councilmember, Creola; David Horn, former councilmember, Lipscomb; Augusta Jones, former councilmember, Robertsedale; Steve Fountain, former councilmember, Robertsedale; Oscar Ray Peden, former commissioner, Florence; J.B. Jackson, former mayor, Castleberry; Ben McCrory, former mayor, Montevallo; and Lew Bostick, former councilmember, Eutaw. ■

Human Development Committee:

Chair: Bridgette Jordan Smith, Councilmember, Vincent
Vice Chair: Jennifer Williams Smith, Councilmember, Jasper

FOR EXECUTIVE COMMITTEE

First Congressional District

Jim Staff, Mayor, Atmore
Bob Wills, Mayor, Bay Minette
Paul South, Mayor, Jackson
Newton Cromer, Councilmember, Saraland
Thomas Williams, Mayor, Satsuma

Second Congressional District

Mickey Murdoch, Mayor, Elba
Bill Gillespie, Mayor, Prattville
Darrell Wilson, Councilmember, Tallassee
Jason Reeves, Mayor, Troy
Todd Strange, Mayor, Montgomery

Third Congressional District

Rusty Jessup, Mayor, Riverside
Barry Moody, Mayor, Lafayette
Billy Pearson, Councilmember, Lincoln
Alberta McCrory, Mayor, Hobson City
Mack Arthur Bell, Councilmember, Roanoke

Fourth Congressional District

Jimmy Madison, Mayor, Berry
Ray Nelson, Mayor, Fayette
Deverick Williams, Councilmember, Gadsden
Donald Pennington, Councilmember, Littleville
Terry John Calhoun, Mayor, Rainbow City

Fifth Congressional District

Randy Garrison, Mayor, Hartselle
Gary Livingston, Mayor, Eva
Tommy Battle, Mayor, Huntsville
Sandra Burroughs, Mayor, Lexington
Tommy Perry, Councilmember, Priceville

Sixth Congressional District

Marty Handlon, Mayor, Alabaster
Frank Brocato, Mayor, Hoover
Tom Henderson, Mayor, Center Point
Bobby Cook, Councilmember, Clanton
Rick Hayes, Councilmember, Pelham

Seventh Congressional District

Marva Gipson, Mayor, Aliceville
Darrio Melton, Mayor, Selma
Loxcil Tuck, Mayor, Tarrant
Don Moore, Councilmember, Uniontown
Gena Robbins, Mayor, York

Ex Officio Members (Active Past Presidents)

Mayor Billy Joe Driver, Clanton
Mayor Lew Watson, Lincoln
Councilmember Sadie Britt, Lincoln
Mayor David Bradford, Muscle Shoals
Councilmember Harold Swearingen, Pine Hill
Mayor Melvin Duran, Priceville
Mayor Charles Murphy, Robertsdale
Mayor Howard Rubenstein, Saraland
Mayor Wally Burns, Southside
Mayor Walt Maddox, Tuscaloosa

Mayor Vivian Covington, Hurtsboro, moved adoption of the Nominating Committee Report as presented. Councilmember Deborah Hicks-Milan of Union Springs, seconded the motion, which passed unanimously. The President declared all officers elected.

Mayor Todd Strange, Montgomery, was called upon to present the report of the Site Selection Committee for Mayor Bell of Birmingham. He stated that the League Convention would be held in future years as follows: May 20 – 23, 2017, Birmingham; May 19 – 22, 2018, Montgomery; May 4 – 7, 2019, Mobile; May 16 – 19, 2020, Tuscaloosa; May 22 – 25, 2021, Huntsville; May 21 – 24, 2022, Birmingham; and May 20-23, 2023, Montgomery.

Mayor Strange moved adoption of the report, which was seconded by Councilmember Jocelyn Tubbs-Turner, Marion. There being no further business, the meeting was adjourned.

Ken Smith
Acting Secretary





#ALMCon18





#ALMCon18



2018 Distinguished Service Awards

Each year during its Annual Convention, the League presents Distinguished Service Awards to mayors, councilmembers, municipal clerks, municipal administrative assistants, city managers, city administrators, municipal attorneys and municipal judges who have completed 20, 30, 40 and 50 years of service in municipal government. A total of 28 awards were announced during the Closing General Session on May 22nd in Montgomery. Pictured here and on the following pages are the recipients of the 2018 Distinguished Service Awards. Not pictured – **30 Years:** Administrative Clerk Sandra Clements, City of Moody; Mayor Jeff Collier, Town of Dauphin Island. **20 Years:** Councilmember Royce W. Benefield, City of Haleyville; Councilmember Neil Benson, City of Thorsby; Municipal Clerk Karen S. Biel, Town of Magnolia Springs; Mayor W. Clayton Edgar, Town of Deatsville; Councilmember Billy Jackson, City of Decatur; Mayor James Rickey Steele, City of Stevenson; Councilmember Kenneth Washington, City of Leeds; Councilmember Calvin Madison, Town of Berry.

2018 Distinguished Service Award Recipients



50 Years: Councilmember James F. Jett,
City of Warrior



40 Years: Councilmember Rickey Jones,
Town of Sylvan Springs



40 Years: Municipal Judge Benjamin E. Pool,
City of Millbrook



30 Years: Councilmember
Mack Arthur Bell, City of Roanoke



30 Years: Mayor Tim Coe,
Town of Wedowee



30 Years: Mayor Harold Crouch,
Town of Chatom



30 Years: Mayor Stevan Parsons,
Town of Sylvan Springs



30 Years: Councilmember
Billy Pearson, City of Lincoln



30 Years: Councilmember
Tracy A. Sanders, City of Brent



30 Years: Municipal Clerk
Marilyn Sanford, Town of Union



30 Years: Councilmember
Bobbie J. Steed, City of Ashland



20 Years: Municipal Clerk
Laura S. Carmack, City of Lincoln



20 Years: Mayor Al Kelley,
City of Millbrook



20 Years: Council President Pro Tem
Jesse Matthews, City of Bessemer



20 Years: Councilmember Ben Reed,
City of Gadsden



20 Years: Municipal Attorney
Russell B. Robertson, City of Jasper



20 Years: Municipal Clerk
Peggy Shadix, Town of Sylvan Springs



20 Years: Councilmember
Kenny Thompson, City of Hartselle

Congratulations to our 2018 Distinguished Service Award Recipients!

Pumper | Aerial | Rescue | Tanker | Quick Attack



NAFECO

Whelen LED Warning Light Package

Dothan Fire Rescue

Recent Delivery

Full Height/Split Depth Compartments On Officer's Side

Smart Wheel Controls In Steering Wheel

Full Height/Full Depth Compartments On Driver's Side

Vertical Backboard Storage Module On Rear Cab Wall Over Walkway

Hale QMax-150 1500 GPM Pump

750 Gal. Water
30 Gal. Foam



KME Predator

MFD Cab With 16" Raised Roof

Cummins ISX12 500 HP Engine

Hale Smart Foam 3.3 Class A and/or B foam system






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Post *Bellas-Hess*

While not a mail-order case, most commerce clause analysis begins and ends with the *Complete Auto Transit* case. In 1977, the Court issued its ruling in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977). In this case, a transportation services dealer sued over a Mississippi requirement that he collect taxes from his customers. The Court overturned its previous decisions and allowed the state tax to stand. In doing so the Court established a four-part test to determine when a state tax is permissible. A state tax will be sustained if:

- (a) the tax is applied to an activity with a substantial nexus with the taxing state;
- (b) the tax is fairly apportioned;
- (c) the tax does not discriminate against interstate commerce; and
- (d) the tax is fairly related to some service the state provides.

The *Complete Auto* test remains the standard today. Courts continue to find that interstate commerce must pay a fair share of local taxes. Taxes and licenses applied to interstate businesses, however, must not constitute a burden. In determining whether a tax meets this test, it is important to understand each of these four elements.

Complete Auto Element One: Nexus

Webster defines “nexus” as a connection, a tie or a link. For taxation purposes, legally speaking, nexus is some activity, relationship or connection which is necessary to subject a person, business or corporation to a jurisdiction’s taxing powers. In other words, there must be a sufficient connection between the business involved and the taxing jurisdiction for a tax to be applied. Physical presence is generally necessary to satisfy nexus requirements under the Interstate Commerce Clause. Case law and legislative efforts to statutorily define nexus have made this a frequent topic of discussion among local revenue administrators.

Interstate commerce cases generally arise from two types of taxes: true sales and use taxes and license taxes. The true sales and use tax is a consumer tax; that is, although the seller collects this tax, he or she serves only as an agent for the taxing jurisdiction. The purchaser is the ultimate taxpayer. The use tax is on tangible personal property which was purchased outside the jurisdiction for use or consumption within the jurisdiction.

Pursuant to state law, whether a sales tax is due on a transaction depends upon the passing of title between the buyer and seller. *Hamm v. Continental Gin Co.*, 276 Ala. 611, 165 So.2d 392 (Ala. 1964). Section 40-23-1(5) states that “a transaction shall not be closed or a sale completed until the time and place when and where title is transferred by the seller or seller’s agent to the purchaser or purchaser’s

agent.” Thus, delivery is a pivotal issue for determining where title transfers, but it is not conclusive. The determining factor is the intent of the parties, in whatever means it is revealed.

In the case of both sales and use taxes and license taxes, courts have focused on the nature of contacts the retailer has with the state. Clearly, physical presence is enough to enable the state to require collection of the taxes. Closer questions arise where the contact is more limited.

In the interstate commerce area, “the ‘substantial–nexus’ requirement . . . limit[s] the reach of State taxing authority so as to ensure that State taxation does not unduly burden interstate commerce.” See, *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). Nexus can only be determined by examining all possible connections the taxpayer has with the taxing jurisdiction. This can only be determined on a case-by-case basis because these factors vary in each individual situation. For interstate commerce purposes, only a minimal contact is necessary.

Cases have indicated several factors relevant to the issue of nexus. For instance, maintaining a legal domicile or principle place of business generally subjects the business to tax liability. Other factors include making deliveries into the jurisdiction, advertising, employing local individuals, maintaining or using a facility, rendering services, taking advantage of the economic benefits of locating near the jurisdiction, and soliciting orders. However, in the case of soliciting orders, 15 U.S.C. Section 381 et seq., prohibits a state or local government from assessing any net income-based tax on an interstate business if the only contact between the business and the taxing jurisdiction is the employment of a representative to solicit orders which are filled and shipped from a point outside the state. Even in this situation, though, every decision about accepting or rejecting the order must be made outside the state to defeat a finding of nexus.

In attempting to define nexus legislatively, in 2003 the Alabama legislature adopted Section 40-23-190, Code of Alabama 1975. The purpose of this legislation is to establish the conditions under which an affiliation between an out-of-state business and an in-state business creates remote entity nexus with Alabama to require the business to collect and remit state and local use tax. Remote entity nexus is established and therefore an out-of-state business is required to collect and remit state and local use tax if:

The out-of-state business and the in-state business maintaining one or more locations within Alabama are related parties; and one or more of the following conditions is met:

- The out-of-state business and the in-state business use an identical or substantially similar name, trade name, trademark, or goodwill, to develop, promote, or maintain sales, or

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Trap-Neuter-Return (TNR) Program Worth Considering

By Kayla Farnon • Advocacy Communications Coordinator • ALM



Editor's note: The Alabama League of Municipalities launched #LiveLocallyAlabama in January 2018 – a grassroots campaign to encourage civic engagement, instill community pride and highlight the crucial role municipal government plays in the daily lives of Alabama's citizens. As part of this campaign, we will include a #LiveLocallyAlabama feature in each issue of the Journal highlighting important community topics and quality of life issues that will help municipal officials and employees improve their cities and towns for the people they serve. For additional information on this campaign, visit livelocallyalabama.org.

In the heart of Alabama's Gulf Coast, with the help of the Orange Beach Mayor and City Council, operates a 501(c)(3) non-profit program dedicated to saving the lives of community cats, and making it possible for these animals to live in harmony with their neighbors.

Founded by Tom Conerly, a former military colonel, Orange Beach Animal Care and Control (OBACCP) is a resource for animal advocates, dedicated community cat caregivers and volunteers driving change. It is dedicated to accelerating protection for community cats and our other animals in Orange Beach.

After spotting three kittens in his driveway, which then turned into five, and five to nine, Conerly knew something had to be done.

In April 2017, Conerly was hired as Orange Beach's full-time animal control officer and began working on a Trap-Neuter-Return (TNR) program. That summer, he established OBACCP and began his grassroots efforts to gain support for the program. He started his efforts by reaching out to Orange Beach citizens and community leaders, educating them on the benefits of a TNR program.

In September 2017, the Orange Beach City Council passed a resolution endorsing the OBACCP and the TNR program. In addition, they approved start-up funds and the purchase of 20 traps for the OBACCP to implement the TNR program.

Nationwide Success

Currently, more than 430 local governments in the US have officially embraced TNR to successfully manage their community cat populations. According to the

National Humane Society, TNR is a nonlethal strategy for reducing the number of community cats and improving the quality of life for cats, wildlife and people. At its most basic, TNR involves: humanely trapping community cats, spaying or neutering them, vaccinating them against rabies, surgically removing the tip of one ear (a "tipped" ear is the universally-recognized sign of a cat who has been spayed or neutered) and returning the cats to their home.



OBACCP
Orange Beach
Animal Care and
Control Program

Success in Orange Beach

"What a difference a year can make," said Conerly. "Before September 2017, officials in Orange Beach didn't have a procedure in place for addressing people's concerns about outdoor cats. Today, the city has a thriving Trap-Neuter-Return program. The Orange Beach Animal Care and Control Program has spayed or neutered almost 200 cats and kittens and adopted out at least 30 to date. The amazing turnaround is due to the hard work of our team of volunteers and the support of the local business community and city officials."

According to the OBACCP, organizations have realized positive benefits after implementing TNR, which include: improving the cats' lives; stabilizing colonies – reproduction stops and litters are not born; an immediate reduction in calls from neighbors about



The City of Orange Beach unanimously passed a resolution endorsing the Orange Beach Animal Care and Control Program (OBACCP) and the Trap-Neuter-Release program.

behaviors associated with mating, including spraying, caterwauling, fighting, roaming and breeding; resources previously spent on ineffective removal and/or lethal services are spent on non-lethal, life-saving, positive, publicly-supported initiatives such as subsidized neuter services, adoption and outreach programs; and positive public reaction, fundraising platforms and partnership opportunities, media exposure and support from staff, volunteers, other like-minded organizations as well as the community at large.

“A well-managed Trap Neuter Return program is the most humane and effective means by which we can care for and manage our community cat population,” said Stephanie Christie, OBACCP Board Member and Orange Beach business owner. “This approach provides both cost control as well as long-term, community cat population control for a municipality. We recognize this value and the positive impact it has on our animal and residential population.”

For more information about this unique endeavor, visit www.obaccp.org. OBACCP is also accessible on social media via its active Facebook, Twitter and Instagram platforms. ■



When we put our energy behind our communities, we all thrive.

Here’s to the many cities and towns that make up the great state of Alabama. We’re proud to support you as you continue to advance this state we call home.

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CSI:

(COMPUTER NERD EDITION)
SECURITY ASSESSMENTS

CHUCK STEPHENSON – DIRECTOR OF INFORMATION TECHNOLOGY – ALM

How concerned are you about the security of your municipality's data? What data do you have stored on your PCs and servers? How secure is your network? How well trained is your staff? Have your policies and procedures regarding IT been kept current with changing equipment and new technologies over the years? Are those policies and procedures being adhered to?

Does this feel like an excerpt from a crime show on television? Unfortunately, it isn't. These are actual questions that will be asked when you undergo a *formal* security assessment – which probably sounds like something that should be avoided for as long as possible, doesn't it? However, what if I told you that a formal security assessment is *not* something you should avoid? What if I told you that you should, in fact, *pay* someone to ask all those questions – and a lot of others as well?

Stay with me here. I realize many people hyperventilate over spending money on anything related to technology, but a formal security assessment could *save* you money in the long run. And keep your information secure.

Just the facts.

I know. I know. A root canal is probably more fun than this process. But consider some very serious (and disturbing) facts: according to a Spiceworks.com article, within a 14-month period (January 2017 – March 2018), 29 counties and municipalities were hit with ransomware attacks. One of those municipalities, Atlanta, GA, was hit *twice* in a 12-month period (April 2017 and March 2018). Another target was in the state of Alabama – Montgomery County. And those 29 local government invasions are just the attacks that were caught. There are *countless* hits that get through via Malware and Spyware daily.

Even more disturbing: the latest ransomware attack on Atlanta was not initiated by the normal methods such as phishing emails, online scams or social engineering which rely on staff members to spread a payload. According to Wired.com, the March attack in Atlanta utilized a standard but notoriously effective strain of ransomware called SamSam. SamSam exploits vulnerabilities or weak passwords as its infiltration method and then uses resources such as password discovery tools to start to gain control of an entire network. Another key difference in this attack and others is how the attack is monitored. Most ransomware attacks are unmonitored and sent without intelligent guidance. SamSam, on the other hand, is often monitored and controlled during the attack.

What does all that mean?

I'm so glad you asked!

It means that you aren't nearly as prepared as you think you are. Seriously.

Not nearly.

Let's face it: you're busy. Super busy. You don't have time to sit down with your IT people to talk about security. Likewise, your IT people (if you have them) are busy, too. Combine that with the fact that, as IT staff members, we know our infrastructure at our organizations very well. Our job is to make sure that you can get work done expediently. What that means is there are things we may miss – or things we know about but can't fix because legacy systems prohibit us from patching or replacing the problems.

The examples I just described are the very definition of vulnerabilities! Fortunately, there is a solution.

Bring in a professional. That's right. A professional.

TERMS OF THE TRADE

- **CSI (Crime Scene Investigation)** – also known as forensic science is the application of science to criminal and civil laws, mainly—on the criminal side—during criminal investigation, as governed by the legal standards of admissible evidence and criminal procedure. (See also: CBS cash cow)
- **IT Security Consultant** – a professional who makes his or her living selling security advice. (See also: Proctologist ... just kidding ... sort of.)
- **Security Assessment** – See also: Spanish Inquisition
- **Legacy System** – a system that no one knows just how long has been around but that one employee “loves the way this system works and if it ain't broke don't fix it.”

When you want to or are required to confirm that your municipality's finances are in order, who do you call? An auditor, right? Generally, someone who is not part of the day-to-day operations with your finances. Why? So that a fresh, unbiased set of eyes with proper training on what to look for can verify that things are being done correctly, point out areas that are incorrect and make recommendations on how to remediate any issues.

An IT security consultant will do the same thing for your IT infrastructure.

What to look for.

Certifications and experience.

When considering an IT security consultant, several qualifications should be considered. This person should have certain certifications. Some of the certifications to look for are: Certified Information Systems Security Professional (CISSP), Certified Ethical Hacker (CEH) and the CompTIA Security+ Certification. Another requirement should be experience. This is not a position for someone who is brand new to the IT realm – particularly the realm of IT security. I recommend eight to 10 years of IT experience. As with any project, it never hurts to ask for references. Talk to the organizations that have used this individual or firm.

What to expect.

Questions. Lots of questions. As I stated earlier, it may seem like an episode from a crime drama.

There will also be requests for technical information: IP addresses, number of employees, email addresses for each

employee, copies of policies and procedures. This is all a part of the preliminary information gathering period prior to the start of the actual assessment.

I suppose we should also discuss exactly what the assessment is. In essence, to quote Kevin Beaver, independent information security consultant with Atlanta-based Principle Logic, LLC., professional speaker and author of the book *Hacking For Dummies*, “the main goal is to try and hack your IT environment, and to then point out all the flaws therein. Essentially, to call your baby ugly.”

And that's just the beginning. After the process of trying to hack your environment from the outside, then the process starts all over and the consultant(s) will try and hack you from the inside. (Don't forget, you're *paying* them to do all of this; you want to get your money's worth!)

Once the assessment is complete, the consultant(s) will deliver a report that shows the findings of their attempts. Additionally – and this may be very important to some of you – they can offer to develop high level policies and procedures that may be lacking in your municipality, such as password policies, disaster recovery/business continuity plans and/or incident response plans.

This is serious.

While I've made light of the security assessment process here, the reality is that this is one of the most beneficial and needed processes that most organizations can – and should – undertake. Knowing where you are vulnerable allows you to begin remediation on the issues found and add additional security to protect your data and, most importantly, your citizens' data! ■



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Employee Recognition: Where building a culture of appreciation is winning!

Barbara Alexander • Operations Manager • ALM

Treat employees like they make a difference and they will.
~ Jim Goodnight

When was the last time you showed appreciation to your employees? Was it the day you brought cupcakes or donuts to the office after a big goal was accomplished? Or was it the high-five you gave to a team member for performing what seemed to be an impossible task? One thing is for certain: most are not going to turn down a sweet treat or leave you hanging on a high-five for a job well done. However, is that enough to ensure that your employees are engaged, happy and made to feel appreciated?

It is fundamentally true that your employees are your most important asset. They can make the difference between a successful or a failing organization. There is documented proof from numerous studies across several industries about the difference employee appreciation can make for an organization. The University of Warwick found that happy employees had a 12% spike in productivity while unhappy employees proved 10% less productive, and, in a 2017 study from CareerBuilder, it was determined that 40% of employees who do not feel recognized in a meaningful way do not go above their normal responsibilities in the workplace.

So, why not show your employees just how much you appreciate them and the work they do to ensure that your organization not only grows but thrives within its field? The goal of employee recognition is to show appreciation for an employee's achievement and to motivate other employees to continue with above standard performances while staying committed to the organization, and its mission. To achieve these goals, it is critical for you, as a leader, to recognize the importance of employee recognition and know how to practice it.

A solid employee recognition program can help organizations retain key employees and keep job satisfaction at a high level. There are several components that must be present in order to have a successful recognition program that adds value to an organization but doesn't demotivate employees or make them feel indifferent. First, establish the criteria for what will constitute an award worthy performance and create a panel that will decide who receives the award, if more than one candidate is eligible for it. Second, ensure that all employees that work for the organization are eligible to participate in the award program; anyone that performs at the level of the award or above should be granted the opportunity to receive the award. Third, share the recognition publicly; make it a BIG deal so that everyone knows. Your goal should be to encourage more award-level performances and/or behavior from your staff.



There are several existing programs designed to ensure employees are recognized and appreciated for what they do. Here are a few examples:

Lunch drawing

Enter your outstanding employee's names into a hat and at the end of the week/month draw out two names from the hat and let those employees enjoy a meal on the organization.

Birthday Celebration

Allow employees to use a "floating holiday" for their birthday. (Floating holidays are typically a fixed number of personal days that employees may use at any time during the year over and above any vacation, sick or other paid time off (PTO) they may have. Usually such days do not accrue under the employer's policy and are not paid out at the time of termination.) If they are outstanding, they deserve a day!

Recognition Day

Form a committee and organize a formal "Employee Appreciation Day" at work. Make an event out of it with food, prizes and team building activities. (It's okay to make this a mandatory employee fun day.)

Prize Tokens

Whenever you see or hear of an employee doing something great, give them a token, and make them tradeable for prizes such as a company shirt, a gift card to a store or restaurant, or a day off.

Employee recognition is a great tool. It can boost morale, improve employee engagement and productivity and help your organization to grow and thrive. Whether you are starting a new program or updating an existing program, employee recognition is a win-win for the entire team. ■

- The out-of-state business and the in-state business pay for each other's services in whole or in part contingent upon the volume or value of sales, or
- The out-of-state business and the in-state business share a common business plan or substantially coordinate their business plans, or
- The in-state business provides services to, or that inure to the benefit of, the out-of-state business related to developing, promoting, or maintaining the in-state market.

An out-of-state business and an in-state business are related parties if one of the entities meets at least one of the following tests with respect to the other entity:

- One or both entities is a corporation, and one entity and any party related to that entity in a manner that would require an attribution of stock from the corporation under the attribution rules of Section 318 of the IRC owns directly, indirectly, beneficially, or constructively at least 50 percent of the value of the corporation's outstanding stock; or
- One or both entities is a limited liability company, partnership, estate, or trust and any member, partner or beneficiary, and the limited liability company, partnership, estate, or trust and its members, partners

or beneficiaries own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the profits, or capital, or stock, or value of the other entity or both entities; or

- An individual stockholder and the members of the stockholder's family, as defined in Section 318 of the IRC, owns directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the value of both entities' outstanding stock.

The legislature also passed, and recently amended, the Simplified Seller Use Tax Remittance Act found at Sections 40-23-191 *et seq.*, Code of Alabama 1975, to allow eligible sellers who participate in the program to collect, report, and remit a simplified Alabama sellers use tax rather than taxes that would otherwise be due. The Alabama Department of Revenue has adopted Rules 810-6-2-.90.02 to implement the Simplified Sellers Use Tax Remittance Program. As originally passed in 2015, municipalities in Alabama received 25 percent of the revenue collected under this program. Amendments to the law in the 2018 Legislative Session provide that the state receives half of the revenue collected and local government receives half of the taxes collected. The local government portion is divided between the cities and counties on a 60/40 split respectively based on population.

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Complete Auto Element Two: Fair Apportionment

The apportionment element of the *Complete Auto* test is concerned with the avoidance of applying multiple taxes to a single interstate transaction. State and local governments cannot exact from interstate commerce more than a fair share of the tax associated with the transaction. This part of the test looks to the structure of the tax to see whether its identical application by every State would place interstate commerce at a disadvantage as compared with intrastate commerce. While there are a fair number of cases, both federal and state, that address the fair apportionment provision of the *Complete Auto* test as it relates to the assessment of business licenses and excise taxes, there isn't much regarding sales/use tax collection and remittance. See generally *M & Associates v. City of Irondale*, 723 So.2d 592 (Ala. 1998), *City of Tuscaloosa v. Tuscaloosa Vending Co.*, 545 So.2d 13 (Ala. 1989), *Goldberg v. Sweet*, 488 U.S. 252 (1989), *Gwin, White & Prince v. Henneford*, 305 U.S. 434 (1939),

The issue of fair apportionment is particularly troublesome for sales tax collection because states have differing nexus rules for sales tax. They can broadly be characterized as “destination-based states” or “origination-based states.” In origin-based states, sales tax is collected where the seller is located. Approximately 12 states collect sales tax based on origin. Most states follow the ever-increasingly-confusing destination-based system. In destination-based states, the sales tax rate is based on where the *buyer* is located (the destination of the sale). The reason this can be more confusing than origin-based states is that states can have hundreds of tax jurisdictions, meaning sellers could potentially have to charge hundreds of different tax rates. Alabama is a destination-based state.

Regarding remote sellers, the nexus and fair apportionment prongs of the *Complete Auto* test come head on with each other because most remote sellers are finding, based on varying state laws, that they have nexus in multiple jurisdictions so what exactly is their responsibility for collecting sales tax if they are located in an origin-based state but delivering to a destination-based state? The United States Supreme Court has noted this issue when determining how to analyze state taxation and the Commerce Clause:

“[W]e are mindful that the central purpose behind the apportionment requirement is to ensure that each State taxes only its fair share of an interstate transaction. But ‘we have long held that the Constitution imposes no single [apportionment] formula on the States,’ and therefore have declined to undertake the essentially legislative task of establishing a ‘single constitutionally mandated method of taxation.’ Instead, we determine whether a tax is fairly apportioned by examining whether it is internally and externally consistent ... To be

internally consistent, a tax must be structured so that if every State were to impose an identical tax, no multiple taxation would result.” *Goldberg v. Sweet*, 488 U.S. 252 (1989). (Citations omitted.)

Oklahoma Tax Com'n v. Jefferson Lines, Inc., 514 U.S. 175 (1995), involved the internal/external consistency issue. Jefferson Lines, Inc., a common carrier, did not collect or remit to Oklahoma the state sales tax on bus tickets sold in Oklahoma for interstate travel originating there, although it did so for tickets sold for intrastate travel. The Court found no failure of consistency in this case, because if every state imposed a tax identical to Oklahoma's—that is, a tax on ticket sales within the state for travel originating there—no sale would be subject to more than one state's tax. Additionally, since Jefferson offered no convincing reasons why the tax failed the external consistency test, the Court found that Oklahoma's sales tax on full price of ticket for bus travel from Oklahoma to another state did not violate dormant commerce clause.

In *Goldberg v. Sweet*, 488 U.S. 252 (1989), Illinois passed an Telecommunications Excise Tax Act which imposed a 5% tax on the gross charges of interstate telecommunications originated or terminated in the State and charged to an Illinois service address, regardless of where the call was billed or paid. The Act also provided a credit to any taxpayer upon proof that another State has taxed the same call and required telecommunications retailers to collect the tax from consumers.

The U.S. Supreme Court found that this tax was fairly apportioned. The Court stated that the tax was internally consistent, since it was structured so that if every state imposed an identical tax on only those interstate phone calls which are charged to an in-state service address, only one State would tax each call. Thus, no multiple taxation would result.

The Court also found that the tax was externally consistent even though the tax was assessed on the gross charges of an interstate activity, since the tax was reasonably limited to the in-state business activity which triggered the taxable event in light of its practical or economic effects on interstate activity. Because it was assessed on the individual consumer, collected by the retailer, and accompanied the retail purchase of an interstate call, the tax's economic effect was like that of a sales tax, and reasonably reflected the way consumers purchased interstate calls, even though the retail purchase simultaneously triggered activity in several States, and was not a purely local event.

Further, the Court found that the risk of multiple taxation was low, since only two types of States—a State like Illinois which taxed interstate calls billed to an in-state address and a State which taxed calls billed or paid in state—have a substantial enough nexus to tax an interstate call. Even

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Alabama Data Breach Notification Law

< By Teneé Frazier, Assistant General Counsel, ALM />



On Wednesday, March 28, 2018, Governor Kay Ivey signed the Alabama Data Breach Notification Act of 2018 (SB318) into law. The new law became effective June 1, 2018, and requires covered entities to implement and maintain reasonable security measures to protect sensitive personally identifying information (“Sensitive PII”). Covered entities must conduct “good faith and prompt investigations” of security breaches and notify consumers if there is a breach of security that results in the unauthorized acquisition of Sensitive PII. The law also requires entities to take reasonable measures to dispose of or arrange for the disposal of records containing Sensitive PII when they are no longer to be retained.

A covered entity is defined as a person, sole proprietorship, partnership, government entity (e.g., state, county, municipality or any instrumentality thereof) corporation, nonprofit, trust, estate, cooperative association or other business entity that acquires or uses sensitive personally identifying information.

“Sensitive PII” includes an Alabama resident’s first name or first initial and last name in combination with one or more of the following regarding the same resident:

1. A complete SSN number or tax identification number.
2. A complete driver’s license number, state ID number, passport, military ID, or other unique identification number issued on a government document.
3. A financial account number, including bank account number, credit card or debit card, in combination with any security code, access code, password, expiration date, or PIN, that is necessary to access the financial account or to conduct a transaction that will credit or debit the financial account.
4. Any information regarding an individual’s medical history, mental or physical conditions, or medical treatment or diagnosis by a health care professional.
5. An individual’s health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individuals.
6. A user name or email address, in combination with a password or security question and answer that would permit access to an online account affiliated with the covered entity that is reasonably likely to contain or is used to obtain Sensitive PII.

Notification Requirements

Affected Individuals. Affected individuals must be notified in writing by mail or email within 45 days of the breach or likelihood of substantial harm. The notice must include:

1. The estimated date or date range of the breach.
2. A description of the Sensitive PII acquired.

3. A general description of actions taken to restore the security and confidentiality of the personal information.
4. The steps an affected individual can take to protect himself or herself from identity theft.
5. Contact information for the covered entity in case of inquiries.

Substitute Notice. Substitute notice is allowed if the cost of direct notice is excessive, the affected individuals exceed 100,000 persons or if there is a lack of sufficient contact information for the required individual to be notified. Substitute notice may include both posting on the website for 30 days and using print or broadcast media in the major urban and rural areas where the individuals reside. An alternative form of substitute notice may be approved by the Attorney General. If notice is not required, the entity must document the determination and maintain the documentation for at least five years.

Attorney General. The Attorney General must be notified within 45 days of the breach or likelihood of substantial harm if the affected individuals exceed 1,000. The notice must include:

1. An event synopsis.
2. The approximate number of affected individuals in Alabama.
3. Any free services being offered by the covered entity to individuals and instructions on how to use them
4. Contact information for additional inquiries.

Consumer Reporting Agencies. Consumer reporting agencies must be notified if more than 1,000 individuals are required to be notified at a single time.

Third Party Notification. Third party agents experiencing a breach of a system maintained on behalf of a covered entity must notify the covered entity within 10 days of the breach.

Enforcement Authority

Violating the notification provisions is an unlawful trade practice under the Alabama Deceptive Trade Practices Act (ADTPA), and the Attorney General has exclusive authority to bring an action for penalties. There is no private cause of action.

Penalties

Any entity knowingly violating the notification provisions is subject to ADTPA penalties, which can be up to \$2,000/day, up to \$500,000 per breach. In addition to these penalties, a covered entity violating the notification provisions is liable for a penalty of up to \$5,000/day for each day it fails to take reasonable action to comply with the notice provisions.

Government entities are subject to the notice requirements but exempt from penalties. However, the Attorney General may bring an action to compel performance or enjoin certain acts. ■

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

Tort Liability: Park patron failed to establish city had actual knowledge of diagonal crossbar in park presented a condition involving an unreasonable risk of death or bodily harm. *Ex parte City of Guntersville*, 238 So.3d 1243 (Ala.2017).

Tort Liability: City was entitled to immunity for reckless misrepresentation claim, but not negligent misrepresentation claim, brought by the wife of decedent firefighter, who was the decedent's life insurance beneficiary based on alleged misrepresentations regarding the amount of life insurance the firefighter was allowed to keep in place. Section 11-47-190, Code of Alabama 1975, the immunity statute, limited the city's liability for claims arising from wanton misconduct. *Miller v. City of Birmingham*, 235 So.3d 220 (Ala.2017).

Alcoholic Beverages: An appeal by a property owner whose application for a liquor license was denied based on the claim that the city failed to provide it with equal protection was moot since it did not include a claim for damages under federal law. *Brazelton Properties, Inc. v. City of Huntsville*, 237 So.3d 209 (Ala.Civ.App. 2017).

Tort Liability: Gas station's allegation that the town denied an application for a liquor license based on the owners' race and national origins stated an equal protection claim. *Minesaha, Inc. v. Town of Webb*, 236 So.3d 890 (Ala.Civ.App. 2017).

DECISIONS FROM OTHER JURISDICTIONS

Employees: An employee of the city's police-oversight agency spoke as an employee, and not as a private citizen, when he refused his supervisors' request to make changes to his reports regarding police misconduct. Thus, the employee's speech was not protected by the First Amendment. Given the employee's position in the agency's hierarchy, the employee was responsible for revising his reports at the direction of his supervisors. *Davis v. City of Chicago*, 889 F.3d 842 (C.A. 7, Ill. 2018).

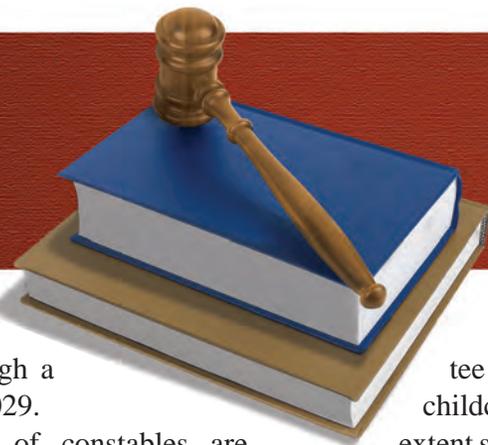
ATTORNEY GENERAL'S OPINIONS

Appropriations: A city may contract with private companies to advertise the city itself and its resources. The city may not build signs to be leased for the advertisement of private companies. The city may lease property to a private sign company as surplus property if the requirements of section 11-47-21 of the Code of Alabama are met. AGO 2018-024.

Industrial Development Boards: An industrial development board is not authorized to provide financial assistance through loans or grants to a nonprofit corporation that will create an entrepreneurial collaborative business service center for shared work space because the business does not meet the definition of a project. AGO 2018-026.

Planning Commission: Because the proposed recreational vehicle park involves building development, it is a subdivision under section 11-52-1(6) of the Code of Alabama and the town subdivision regulations that is subject to regulation by the town planning commission. AGO 2018-028.

Courts: A municipal court's standing order directing the release from custody of a defendant who executes an appearance bond in an amount prescribed in a bail schedule constitutes an "order of release" as contemplated under Rule 7.3 of the Alabama Rules of Criminal Procedure. A standing order setting a bail schedule must contain the four mandatory conditions set out in Rule 7.3(a) and a defendant's release may be revoked for violating such conditions. A defendant released pursuant to a standing order setting a bail



schedule may be given notice of the mandatory conditions through a separate document. AGO 2018-029.

Public Records: Records of constables are subject to the provisions of the Open Records Law. Generally, access to public records is limited to Alabama citizens. AGO 2018-030.

ETHICS OPINIONS

Contracts: Counties and municipalities may enter into contracts through which the municipality reimburses the county for the use of the county's election equipment and county employees who possess the requisite skill and knowledge to operate the equipment. Municipalities may not directly engage the county employee. To do under these facts would put the employee in the position of violating Section 36-25-5(a) and (c), Code of Alabama 1975. AO 2018-03.

FCPA: A principal campaign committee may use campaign funds to pay for the childcare expenses describe in the request to the extent such expenses are incurred as a direct result of campaign activity and are tied to specific campaign events. Under the facts supplied, the candidate would not have needed the childcare but for the fact that she is a candidate, and without childcare, she cannot participate in the describe activities. Moreover, she has not reasonable option available to her but to pay for childcare. The payments must be reasonable and customary for the services rendered, and the campaign must properly document the expenditures. AO 2018-04.

Employees: An employee of a municipal water board may drop his children off at daycare on his way to work in his official vehicle if the use requested is allowed "pursuant to a lawful employment agreement regulated by agency policy. AO 2018-05. ■

F.A.Q.

Your Frequently Asked (Legal) Questions Answered
by Assistant General Counsel Teneé Frazier

Competitive Bid Law- Emergency Purchasing

Is the City required to follow the competitive bid law in the event of an Emergency?

The answer is no, with a big, bold, all caps **BUT!** Per Section 41-16-53 of the Code of Alabama, 1975 a municipal council may let contracts without advertisement in emergency situations when public health, safety or convenience is involved in the delay of acquiring needed equipment. Generally, the term "emergency" signifies a situation which has suddenly and unexpectedly arisen which requires speedy action. 128 Quarterly Report of the Attorney General 40. Here comes the BUT. BUT the Council must first declare the emergency in writing and state the nature of the danger that would be caused by delaying the purchases or services to comply with the bid law. An emergency must be declared prior to the performance of any work by a contractor. The municipal council may not declare an emergency after the work has been performed by a contractor. These actions must be made public immediately by the awarding authority. ■

though this opened the door to possible multiple taxation, actual multiple taxation was precluded by the Act's credit provision.

Complete Auto Element Three: Discrimination

The third element of the *Complete Auto* test is that the tax must not discriminate against interstate commerce. This test is designed to prevent taxes which are imposed which provide a commercial advantage to intrastate business. The Court has described the rule as follows:

“[N]o State, consistent with the Commerce Clause, may “impose a tax which discriminates against interstate commerce ... by providing a direct commercial advantage to a local business.” This antidiscrimination principle “follows inexorably from the basic purpose of the Clause” to prohibit the multiplication of preferential trade areas destructive of the free commerce anticipated by the Constitution. *Maryland v. Louisiana*, 451 U.S. 725 (1981).”

For example, a state excise tax on wholesale liquor sales, which exempted sales of specified local products, was held to violate the Commerce Clause in *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263 (1984). And, a state statute that granted a tax credit for ethanol fuel if the ethanol was produced in the State was found discriminatory in *New Energy Co. of Indiana v. Limbach*, 486 U.S. 269 (1988).

On this prong of the test, the case law is fairly clear. In a nutshell, state and local taxes cannot place a heavier tax burden on remote out of state sellers than what is taxed for local, in state sellers.

Complete Auto Element Four: Relation to State Services

Finally, in order to be valid under the Commerce Clause, a tax must be “fairly related to some service the state provides.” This element seems to be fairly easily satisfied, provided that there is sufficient nexus to uphold the tax. The test appears to be whether the business has the requisite nexus with the State or local government. If so, the tax probably meets the fourth element simply because the business has enjoyed the opportunities and protections that the government has provided.

Quill – The Law of the Land for Remote Sellers (for now at least ...)

Twenty-five years after *Bellas Hess*, the Court had the opportunity to reexamine the physical presence requirement in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

In this case, North Dakota required its residents to pay a use tax on personal property brought into the state for storage, use or consumption. All retailers maintaining a place of business in North Dakota were required to collect the tax when the property was sold. For purposes of the North Dakota statutes, distribution of catalogues or advertisement in the state on a regular or systematic basis constituted maintaining a place of business. Regular or systematic solicitation was defined as three or more separate transmissions of any ad during a twelve-month period.

In 1989, North Dakota's tax commissioner filed suit requesting that the Quill Corporation be ordered to pay use taxes, interest and penalties on all sales in North Dakota since July 1, 1987. Quill, a Delaware corporation with property in Illinois, California, and Georgia, sold office supplies and equipment to North Dakota residents. Quill mailed catalogues and flyers into the state 62 times a year and supplemented these efforts with telephone solicitation. At the time of the lawsuit, Quill was the sixth largest retailer of office supplies in North Dakota. Its presence in the state, however, was almost purely economic. It owned no real property and very little personal property; it had no representatives, facilities, in-state telephone numbers or bank accounts in North Dakota.

Relying on *Bellas Hess*, the trial court rejected the commissioner's request. On appeal, the North Dakota Supreme Court reversed, holding that changes in the mass marketing business and in the legal landscape had reduced *Bellas Hess* to an “obsolescent precedent.”

The state supreme court stated that the test applied in personal jurisdiction cases should apply in mail-order taxation cases as well. That is, out-of-state retailers are subject to use tax collection duties if they purposefully direct their activities at a state's residents. The court held that a seller's nexus with a taxing state should be evaluated by analyzing the economic realities present in each case. Thus, the court found a substantial nexus in Quill's intentional solicitation and exploitation of North Dakota residents. The court determined that the company's economic presence was substantial, given its market share, level of advertising and annual gross revenues in North Dakota. The state also supplied Quill with a benefit the court deemed extremely important: disposal of Quill's advertising. The court reasoned that Quill profited from advertising and benefited from the annual disposal of an estimated 24 tons of discarded advertisements. The U.S. Supreme Court reversed, holding that *Bellas Hess* was still good law for the proposition that a retailer must have a physical presence in a state to establish a substantial nexus under the Commerce Clause. The Court did, however, remove one barrier to future

taxation of direct marketers: The Court held that a physical presence is not necessary to establish nexus under the Due Process Clause. Under a due process analysis, the Court held that a retailer satisfies the nexus requirement when its connections with a state provide fair warning that it may be subject to the state's jurisdiction.

The Court pointed out that the central concern of due process is the fundamental fairness of governmental activity. The Court stated that developments in the law of due process since *Bellas Hess* had rendered the physical presence requirement unnecessary. Thus, as long as an out-of-state retailer purposefully directs its solicitation toward residents of a taxing state, it doesn't matter whether the solicitation is by catalogue or retail stores.

Regarding the Commerce Clause, however, the Court held that it still requires that a retailer have a physical presence in a state before he or she can be required to collect a state tax. The Commerce Clause is primarily concerned with issues of national unity, the Court said, and only a physical presence can satisfy problems of state regulation on the national economy. This requirement, according to the Court, sets boundaries on the states' authority to impose collection duties, reduces litigation over such imposition and encourages settled expectations and promotes business investment based on those expectations.

In the direct marketing context, though, the Court's decision to remove the due process barrier was important because it opens the door to regulation of the direct marketing business by Congress. The Commerce Clause says that only Congress can regulate interstate commerce. Therefore, Congress has the power to pass a law that less than physical presence will satisfy the Commerce Clause. Unfortunately, to date, they have failed to do so.

Will the Commerce Clause Catch Up with Technology and Changes in the Retail Landscape?

In the years since *Bellas Hess* and *Quill*, retailers have developed the ability to target customers by lifestyles, life-events, demographics and geographic and previous purchasing characteristics. Orders are no longer taken just through the mail. Retailers now use telemarketers, toll-free numbers, computers, the Internet, interactive television, electronic bulletin boards and e-mail. Technology continues to evolve at a breath-taking pace, leaving courts and legislators scrambling to keep up with developments.

Revenues have grown as well. In 1967, mail order sales totaled \$2.4 billion annually. In 2017, retail ecommerce sales worldwide reached \$2.304 trillion, a 24.8% increase over the previous year. Mobile was a key factor, as ecommerce accounted for 58.9% of digital sales. (source: emarketer.com)

In the United States in 2017, consumers spent \$453.46 billion on the web for retail purchases, a 16.0% increase compared with \$390.99 billion in 2016. That's the highest growth rate since 2011, when online sales grew 17.5% over 2010. If not for the present interpretations of the Commerce Clause, these sales would be subject to taxation, just like intrastate sales.

In the last decade, several bills have been considered before Congress that would close this loophole e-retailers currently enjoy, allowing states and localities to require remote sellers to collect the use that is due on these transactions. To date, however, Congress has been unable to pass remote sales tax legislation. In 2012, the Alabama Legislature passed Section 40-23-174, Code of Alabama 1975, which requires remote sellers to collect this tax should Congress authorize the collection of a use tax by these remote retailers on these otherwise taxable sales.

For the first time since the Supreme Court of the United States decided *Quill*, the Court is considering the wisdom of that decision considering changes to the way the world shops in 2018. On April 17, 2018, the Court heard oral argument in the case of *South Dakota v. Wayfair*, 901 N.W.2d 754 (2016), cert. granted 138 S.Ct 735 (Jan. 12, 2018). In 2016, South Dakota, passed a law requiring online retailers whose gross revenue exceeds \$100,000 annually, or more than 200 transactions a year in South Dakota, to assess and remit sales tax back to the state. Not long after the law's effective date, South Dakota brought suit against four major online retailers for refusing to collect the state's four percent tax--Wayfair, Systemax, Overstock.com and Newegg. Knowing full well that the law would contradict twenty-five-year-old Supreme Court precedent from *Quill Corp. v. North Dakota*, South Dakota made it evident that the state enacted the legislation fully intending to challenge the highest court in the United States.

Like many state legislatures across the country, South Dakota did what Congress continues to refuse to do. There is little argument that the effects of *Quill* have been crippling to state and local economies, have forced in-state businesses to operate at a large disadvantage, have allowed online retailers to evade collection responsibility, and have caused states to go without billions of dollars in revenue for which they are entitled--revenue that could be used to better school systems, police training, roadways, healthcare, and many other facets of government operations and public service.

The Court is expected to rule sometime this summer. The League will continue to follow this case closely and report developments to its membership as they occur. ■



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