

THE ALABAMA MUNICIPAL JOURNAL

March 2003

Volume 60, Number 9

2003 Convention Preview

Loretta Spencer
Mayor



"The Space to be
in the 21st Century"

March 5, 2003

Dear League Members:

I would like to take this opportunity to personally invite you to Huntsville for the 2003 Alabama League of Municipalities Annual Convention. We are so pleased to be the host city this year and are looking forward to your arrival.

This year's convention promises to be both informative and fun with some new activities to enjoy. We have intentionally planned this year's convention to coincide with one of our city's most exciting events, Panoply Arts Festival (Pronounced PAN-o-plee). The festival highlights both visual and performing arts through a wide array of activities, events and performances for the entire family. Admission is free to the public. It takes place in downtown Huntsville's Big Spring Park, a short walk across the street from the convention center. You can enjoy Panoply after our welcome dinner on Saturday night, or during your free time on Sunday.

The Welcome Dinner will be at Joe Davis Stadium, home of our AA Minor League Baseball Team, The Huntsville Stars. We will enjoy a barbeque dinner and some great baseball action. If you aren't a big sports fan, a bus will be provided to take you to Big Spring Park for Panoply.

I hope you have already made your plans to attend the 2003 Annual Convention. I look forward to hosting you in Huntsville. I am sure you will take home many wonderful memories from our city.

Sincerely,

A handwritten signature in cursive script that reads "Loretta Spencer".

Loretta Spencer
Mayor



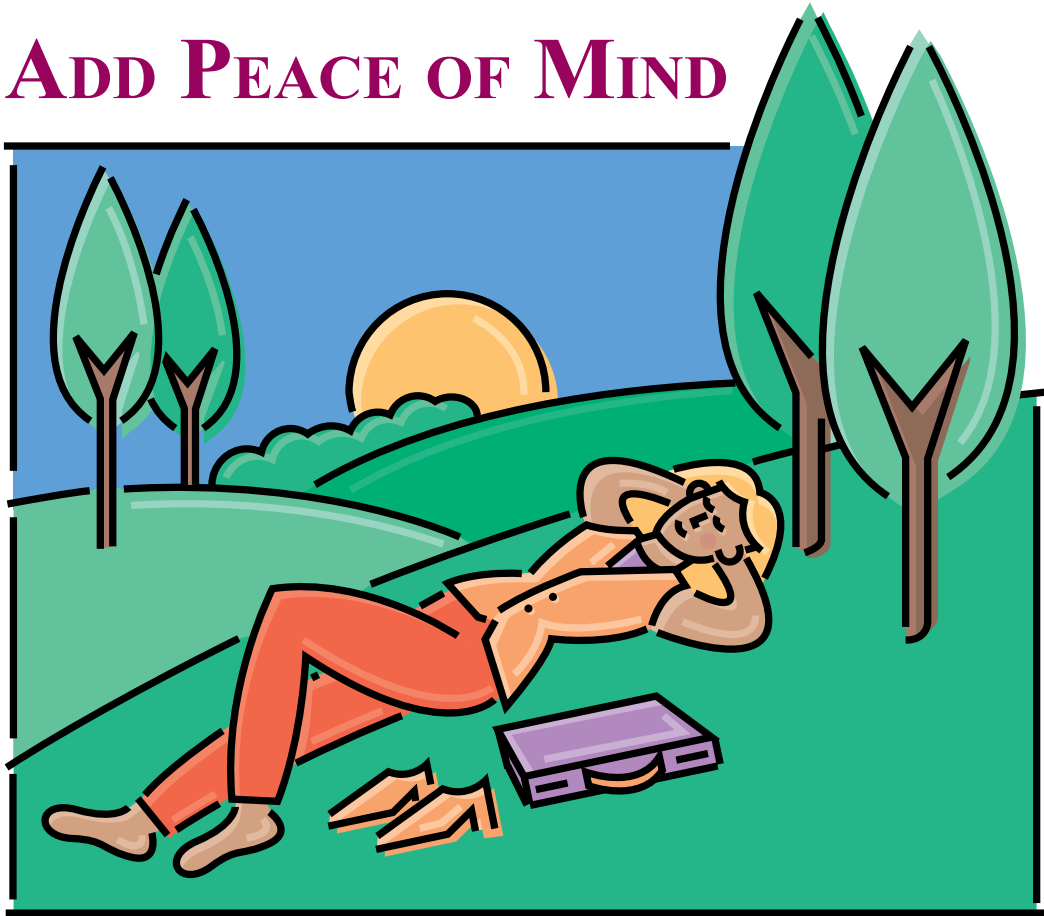
Inside:

- Quick Guide to the Convention
- Program Overviews for Municipal Attorneys, Judges and Municipal Clerks
- Convention Entertainment

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2003 CONVENTION PREVIEW

Welcome to Huntsville!

Mayor Loretta Spencer and the Huntsville City Council extend a warm welcome to all delegates and spouses to the 2003 League Convention. They hope your stay in the Rocket City will be both pleasant and productive. The League staff would like to thank Mayor Spencer and her staff; the Huntsville City Council; and the dedicated municipal personnel who have put in the extra time to make this convention a success.



Von Braun Center

Convention Pre-Registration Advised

To save time when arriving to Huntsville, delegates are advised to preregister with League Headquarters. Registration materials were mailed to each municipality in January. Additional registration packets can be obtained by calling the League office at 334-262-2566. In addition to giving registrants more time for convention activities, preregistration assists the league staff in making arrangements for the large number of delegates who always attend conventions in Huntsville.

It is especially important for delegates and their spouses who wish to play in the Municipal Masters Golf Tournament on Sunday morning, April 27, to send in their advance entry forms as soon as possible. These forms are included in the registration packets available through the League office. The golf tournament will be a four player scramble with a shotgun start again this year. **You must be at the Hampton Cove Golf Course at 7:30 a.m. to play.**

The Convention Program

Please take a moment to review the “Quick Guide to the Convention” segment on the next page for a brief overview of convention proceedings. The following pages briefly describe the programs which have been developed for each component of our municipal family. For the concurrent sessions, we urge each municipality to assign at least one member to each session so your municipality can benefit from all of the information presented. In addition to the concurrent sessions, we want to emphasize the importance of the following events:

- **Resolutions Committee meeting on Sunday, April 27 at 3:00 p.m.**
- **Opening Session on Monday, April 28, at 9:00 a.m.**
- **Ask Your Attorney/Roundtable Discussions on Tuesday, April 29, at 9:00 a.m.**
- **General Business Session on Tuesday afternoon at 3:00 p.m.**

We encourage each delegate to attend these sessions and to participate fully in convention proceedings. We on the League staff hope that your attendance at the 2003 convention is both beneficial and informative to you as municipal officials and to the continued progress of your communities. If we can assist you in any way, please don't hesitate to ask.

Welcome Reception

The City of Huntsville's Welcome Reception will take place Saturday, April 26 at the Joe Davis Stadium. Buses will leave the various hotels at 5:30 p.m. A bar-b-que dinner will be provided as well as tickets to the 7:05 baseball game between the Huntsville Stars and the Greenville Braves. For those who do not want to attend the game, buses will be available to return people to their hotel.

NOTE: If you plan to attend the game, please *be sure* to sign up for tickets when you pick up your name badge and registration materials at the registration desk in the Von Braun Center. **A letter with complete details will be mailed to each registrant prior to convention.** Detailed information will also be posted on the League's website at www.alalm.org.

Spouses' Program

Saturday, April 26

Welcome Reception (see above).
Panoply Arts Festival (see page 7).

Sunday, April 27

Spouses are invited to play in the Municipal Masters Golf Tournament at Hampton Cove Golf Course. No activities have been scheduled for Sunday evening to allow delegates and spouses to enjoy the Panoply Arts Festival (see page 7) and/or attractions and fine cuisine Huntsville has to offer.

Monday, April 28

The annual Spouses Breakfast will begin at 9:00 a.m. in the Huntsville Hilton Hotel, Grand Salon A,B and C. Special entertainment is planned for that morning. See the "Quick Guide to the Convention" on this page for other Monday activities.

Tuesday, April 29

Special activities for spouses on Tuesday are still in the planning phase. Be sure to check the League's website at www.alalm.org for an update. See the "Quick Guide to the Convention" on this page for other Tuesday activities. ■

QUICK GUIDE TO THE CONVENTION

SATURDAY, APRIL 26

1:00 p.m.-5:00 p.m. **Registration** – Von Braun Center, South Hall Prefunction
3:00 p.m. **AMIC Annual Meeting** – Huntsville Hilton Hotel
5:30 p.m. **Welcome Reception** – Joe Davis Stadium
8:00 a.m.-5:00 p.m. **Municipal Law Conference**, Huntsville Hilton Hotel
8:00 a.m.-5:00 p.m. **Municipal Judges Program**, Huntsville Hilton Hotel

SUNDAY, APRIL 27

7:30 a.m. **Municipal Master's Golf Tournament** – Hampton Cove Golf Course
1:00 p.m.-5:00 p.m. **Registration** – Von Braun Center, South Hall Prefunction
3:00 p.m. **Resolutions Committee*** – Huntsville Hilton Hotel, Grand Salon B

MONDAY, APRIL 28

8:00 a.m.-5:00 p.m. **Registration** – Von Braun Center, South Hall Prefunction
9:00 a.m.-10:30 a.m. **Opening Session*** – South Hall Meeting Rooms 3, 4, and 5, Von Braun Center
10:45 a.m.-12:15 p.m. **Mock Council Meeting*** – South Hall Meeting Rooms 3, 4, and 5, Von Braun Center
12:30 p.m. **Luncheon** – Governor Bob Riley (invited), South Hall 2, Von Braun Center
2:00 p.m. - 5:15 p.m. **Concurrent Sessions*** – Von Braun Center
6:00 p.m. **Reception** – South Hall 1
7:15 p.m. **Banquet** – South Hall 2, Von Braun Center.
Entertainment – Peter Noone of Herman's Hermits, Concert Hall, Von Braun Center

TUESDAY, APRIL 29

8:00 a.m.-3:00 p.m. **Registration** – Von Braun Center, South Hall Prefunction
9:00 a.m.- 12: 30 p.m. **Ask Your Attorney – Roundtable Discussions*** – Von Braun Center
12:45 p.m. **Box Lunches** – South Hall Prefunction
3:00 p.m. **General Business Session** – Grand Salon A, B and C, Huntsville Hilton Hotel
4:30 p.m. **President's Reception** – Azalea, Huntsville Hilton Hotel
6:00 p.m. **Reception** – South Hall Prefunction
7:15 p.m. **President's Banquet** – South Hall 2.
Distinguished Service Awards; CMO Classes of 2003; Installation of officers
Entertainment – *Three on A String*, Concert Hall

* Attendance at session will earn credits in the Elected Officials Training Program (basic or advanced) or Continuing Education Credits.



Peter Noone of Herman’s Hermits to Perform Monday

Peter Blair Denis Bernard Noone was born in Manchester, England. He studied singing and acting at the Manchester School of Music and Drama. As a child, he appeared in the British television shows “Coronation Street,” “Knight Errant” and “Fanuky Solicitor.” In 1963, he joined a Manchester beat group, The Heartbeats, whose name was changed shortly thereafter to Herman and The Hermits and eventually shortened to Herman’s Hermits. Peter Noone became Herman.

The group’s phenomenal string of successes began with their first #1 recording, “I’m into Something Good” in late 1964 and was followed by dozens of top 20 hits, including: “Silhouettes,” “Dandy,” “Can’t You Hear My Heartbeat,” “Just a Little Bit Better,” “There’s a Kind of Hush,” “Listen People,” “End of the World,” “Mrs. Brown You’ve Got a Lovely Daughter” and “Henry VIII.”

During their pop chart reign, Herman’s Hermits sold 52 million records and performed to sold-out audiences throughout the world. Peter Noone, aka Herman, graced the cover of every national and international magazine, including *Time* in April 1965. Herman was a teen pop idol, appearing on hundreds of national television programs and three major motion pictures. Herman’s Hermits was named Cashbox Top Entertainer for two years in a row. Their success was matched



by only a few household names of the British Invasion: The Beatles, The Rolling Stones and The Dave Clark 5.

The 1970s found Noone pursuing a solo career as an actor and musical star, both in television specials and as the first pop star to successfully make the transition to Broadway actor – he starred in two Broadway shows in the 1980s. Noone came back to musical touring in the 1980s, first with a new wave band, The Tremblers and later with Herman’s Hermits, performing throughout the United States. His acting career also continued with guest-starring roles in television shows such as “Married With Children,” “My Two Dads,” “Quantum Leap,” “The Ted Night Show” and “Laverne and Shirley.”

The 1990s found Noone beginning a four-year stint as host of “My Generation” on VH1, the highest-rated half hour retrospective of the music of the 1960s and beyond. Peter Noone still performs to sold out audiences around the globe in over 200 concerts a year, delighting them with his music, charm and wit. Noone wrapped up the 90s with his successful entry into the internet era, dubbed “King of the 60s on the Internet” by *The New York Daily News* due to his popular websites, www.peternoone.com and www.hermanshermits.com. ■

Three on A String Scheduled for Tuesday Night

Three on A String has entertained throughout the United States and Canada. They have performed with symphony orchestras and with some of the top names in the country, including Bill Cosby, Red Skelton, Barbara Mandrell and Lee Greenwood.

Their repertoire include all types of music – old standards, country, classical, bluegrass and folk. Their three-part harmony has a unique and pleasing blend, from a heart-rending country song to an unexpected capella rendition.

Individually, there's Jerry – the master of ceremonies, guitar and harmonica player. He keeps the show rolling delivering timely one-line quips and stories with an impish twinkle in his eye.

Bobby, a fine musician, demonstrates his expertise on guitar, banjo, dobro, trumpet and bass. He'll also tickle your funny bone through a variety of comedy routines.

Brad, the bass player, literally grew up with *Three on A String*. As a six-year-old, he watched as Bobby and "Dad" learned their way around the business. Later he learned about the business himself, first as a teenage roady and eventually as the third string.

Three on A String will perform Tuesday evening immediately following the President's Banquet. ■



Huntsville's Panoply Arts Festival

April 25-27, Big Spring Park

Celebrating its 22nd year, the Panoply Arts Festival will be held downtown in Huntsville's Big Spring Park, April 25-27. Panoply showcases the best in local and touring performers on five performing stages located throughout the park. Performances ranging from jazz, gospel, comedy, dance and theater run continuously throughout the weekend. The Boeing Art Marketplace is another attraction featured during the festival. Artists from across the country enter this juried art show with the hopes of winning the Best of Show or an Award of Distinction. Stroll through this lovely tree-lined area by the lagoon in search of original paintings, primitive art, jewelry, photography, pottery and much more. The Boeing Art Marketplace also features the Arts Demo Village where artists demonstrate their craft. Panoply Arts Festival is a production of The Arts Council, Inc. The festival is free to the public. For more information on the Panoply Arts Festival, visit www.panoply.org.

Program for Municipal Attorneys

Municipal attorneys are invited to participate in the Annual Municipal Law Conference on Saturday, April 26 in the Huntsville Hilton Hotel.

- 8:00 **Registration**
- 8:45 **Legislative Update** – Perry Roquemore, Executive Director, Alabama League of Municipalities
- 9:15 **DUI Update** – Brad Bishop, Professor, Cumberland School of Law
- 10:15 **Break**
- 10:30 **A Day in the Legal Life – Commonly Asked Questions** – Legal Staff Panel, Alabama League of Municipalities
- 11:45 **AAMA Business Meeting**
- 12:00 **Lunch – Provided**

- 1:00 **Stormwater Phase II Guidelines** – Bennett Bearden, Assistant City Attorney, Tuscaloosa
- 1:45 **The Zoning Process – Complying with Alabama Law** – Claudia Anderson, Assistant City Attorney, Huntsville
- 2:30 **Break**
- 2:45 **The Legal Aspects of Preserving Alabama History** – Wanda Cochran, Assistant City Attorney, Mobile
- 3:45 **Employee Hotline Legal Questions** – Ben Goldman, Porter, Porter & Hassinger
- 4:30 **Attorney General’s Opinion Update** – Carol Jean Smith, Assistant Attorney General

Breaks Sponsored by:

- Lanier, Ford, Shaver & Payne
- Fees & Burgess
- Crownover, Standridge & Spence
- Alabama Association of Municipal Attorneys

Program for Municipal Judges

Municipal judges are invited to participate in the Administrative Office of Courts Annual Municipal Judges Seminar held in conjunction with the Annual Municipal Law Seminar on Saturday, April 26 in the Huntsville Hilton Hotel.

- 8:00 **Registration**
- 8:45 **OPENING REMARKS** – Hon. Wanda Rahman, Mobile Municipal Judge, President, Municipal Judges’ Association ; Hon. Charles “Sonny” Rodenhauser, Presiding Municipal Judge, Huntsville
- 9:00 **Use of Foreign Language Interpreters in Municipal Courts** – Ben Bruner, Esquire
- 10:15 **Break**
- 10:30 **What Are My Options if a Defendant Refuses to Pay, Can’t Pay or Doesn’t Care** – Panel: Hon. Charles “Sonny” Rodenhauser, Presiding Judge, Huntsville Municipal Court; Hon. Larry Sparks, Municipal Judge, Centreville, Brent, Woodstock; Hon. James Lackey, Presiding Judge, Mobile Municipal Court; Hon. Bill Roberts, Municipal Judge, Prattville Municipal Court; Hon. Karen Knight, Municipal Judge, Montgomery Municipal Court

- 12:00 **Lunch – Provided**
- 1:00 **DUI Updates** – Hon. T. Brad Bishop, Professor of Law, Cumberland School of Law, Pelham Municipal Judge
- 2:00 **Domestic Violence Updates and Issues** – Hon. Wanda Rahman, Mobile Municipal Judge; Hon. Larry Speaks, Municipal Judge, Centreville, Brent, Woodstock
- 3:00 **Break**
- 3:15 **Recent Legislation, Cases and Attorney General Opinions of Interest** – Eric Locke, Esquire, Municipal Court Liaison, Administrative Office of Courts
- 4:00 **Maintaining Judicial Ethics in a Political Environment** – Panel: Hon. Charles “Sonny” Rodenhauser, Presiding Judge, Huntsville Municipal Court; Hon. James Lackey, Presiding Judge, Mobile Municipal Court; Hon. Bill Roberts, Municipal Judge, Prattville Municipal Court

Municipal Clerks' Program April 28 and 29

The program for municipal clerks will begin at 8:00 a.m. on Monday, April 28th with the breakfast and business meeting of the Alabama Association of Municipal Clerks and Administrators (AAMCA) in the Heritage Ballroom of the Huntsville Hilton Hotel.

At 9:30 a.m., clerks will meet in the West Hall of the Von Braun Center for the remainder of their two-day program. Topics will include:

Monday

- Grantsmanship for Alabama Cities and Towns
- Elections
- Update on Alabama Attorney General's Opinions
- Legislative Update and Current Legal Issues
- Purchasing and Bid Laws

Tuesday

- IIMC Institutes and Related Training
- Population Discussion Groups.

Coffee breaks for the clerks will be held in the West Hall. The Monday luncheon will take place at 12:30 p.m. in South Hall 2 of the Von Braun Center. Governor Bob Riley has been invited to speak. For additional information on the convention, please see "Quick Guide to the Convention" on page 5. ■

Concurrent Session Overview

The League staff has planned a number of interesting, informative concurrent sessions for Monday afternoon of the convention. Topics will include:

- Budget Saving Using Specialized Pay Plans
- Alabama Real Estate Research & Education Center
- Current Issues Facing the Fire Service
- Positive Impact of Recreation
- Design Makes a Difference
- Tourism is BIG Busine\$\$ – Are You Getting Your Fair Share?
- Enhancing Your Community for the 21st Century
- Ethics in Law Enforcement: Ensuring the Integrity of Your Police Department
- The Wonderful World of Print Communication
 - Citizen Newsletters: Personalizing Your Community
 - Choosing A Printer: What You Should Know to Save Time, Money and Aggravation

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- Handbook for Mayors and Councilmembers
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- Major Organ Transplant
- Terminal Illness

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The President's Report

George W. Roy
Mayor of Calera

Guard, Reserve Mobilizations Affecting Cities Across the Country

They have sworn to uphold city charters and in some cases to protect the residents who live in the cities, towns and villages where they work. Now, some city officials and municipal employees are upholding another oath, to defend the United States as part of the activation and mobilization of National Guard and military reserve units.

Since January 15, 58,894 men and women who serve with the U.S. Army National Guard, Air National Guard, Coast Guard and the reserve branches of the Army, Navy, Air Force and Marines have been called to active duty in preparation for an attack against Iraq. They join some 60,000 military personnel already stationed in the Middle East. And Secretary of State Colin Powell has said that 265,000 members of the National Guard and Reserves would be called to active duty in the event of an attack.

Exactly how many city councilmen, mayors, administrators, firefighters, police officers and other city employees will be called to active duty is not known. But there is enough anecdotal evidence to suggest that many cities across the nation will be hit hard by the guard and reserve call-ups.

"People had not thought about the impact these mobilizations have on city government until Sept. 11, but this is an emerging issue for cities," said Connie Sprynczynatyk, executive director of the North Dakota League of Cities and city commissioner in Bismarck, N.D. "I think it's fair to say that many people don't realize how much of our nation's military strength is made up of the national guard and reserves; people with full-time jobs who also serve their country."

West Valley City, Utah, is one city affected by the recent activations. Not only does the city stand to lose two police officers, one fireman and the director of the city's housing authority, but also its newly hired city manager, Wayne Pyle.

"I was appointed city manager six weeks ago, and I haven't had time to appoint an assistant, and now I may be leaving," said Pyle, who was the city's former assistant city manager and whose Army Reserve unit was put on alert last week. "If that happens, it would be difficult for the city for a while, but we have good people here and I've met with the city council and we have put a contingency plan in place."

That plan calls for naming the city's director of administrative services as the interim city manger. The job of city manager would be reserved for Pyle upon his return.

In Lynchburg, Va., the calls to active duty are straining already thin resources in the city's police department. Retirements, turnover and providing security to a regional airport had already caused the city to consider increasing the number of officers in the police department. That was only aggravated when three more officers were called to active duty. Lynchburg City Manager L. Kimball Payne III said the city is coping with the absences by increasing overtime to the department. He said the city council has also approved filling the three positions that are temporarily open in addition to a staffing increase.

"We've felt the absences in our police department since Sept. 11, 2001," said Payne. "Our council is committed to finding positions in the department for those officers when they come back from active duty."

A recent survey by the International Association of Fire Chiefs (IAFC) shows that the biggest concerns for municipal fire departments are the loss of critical emergency skills, impact on apparatus staffing and service response times. The survey was sent to more than 8,500 IAFC members on January 15. Of that, 1,271 departments responded. IAFC said the intent of the survey was not to compile statistical data, but to determine what effect the mobilization of reserve and National Guard units would have on fire departments.

Eighty-one percent of the departments said they would lose no more than 5 percent of their staff. Thirteen percent said they would lose between 5 and 10 percent and the remaining 6 percent said their losses would be greater than 10 percent.

Of the personnel to be affected by a call to active duty; 82 percent of departments said they would lose firefighters, 46 percent said they would lose paramedics/EMS responders and 11 percent of departments said they would lose their fire chief.

IAFC president Randy Bruegman said the survey indicated that smaller fire departments and fire departments that are composed primarily of volunteers, stand to be hit the hardest by the mobilizations.

"In a small department, the loss of one or two trained men has a significant impact," said Bruegman. "I think we're at a point in time that, if you compare to Desert Storm when we had the last major call up, our economy is in different shape. Many cities and department budgets are constrained and we'll see a shift in program money to cover overtime and callbacks that will have an impact at the local level." ■

This article was written by Lance Davis of the National League of Cities and appeared in the January 27, 2003 issue of Nation's Cities Weekly.

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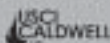
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Municipal Overview

By
PERRY C. ROQUEMORE, JR.
Executive Director

Mid-Winter Meeting of the Executive Committee

The Mid-Winter Meeting of the Executive Committee of the Alabama League of Municipalities met on Thursday, January 16, 2003. The meeting was presided over by Mayor George Roy of Calera, League President.

The following persons were present: Mayor Roy, Mayor Dan Williams, Athens, Vice President; Mayor Tim Russell of Foley, Mayor E. Harry Brown of Daphne, Council Member Michael A. Ford of Fairhope, Mayor Howard Shell of Atmore, Mayor Jay Jaxon of Eufaula, Mayor Jim Byard of Prattville, Mayor Rebecca Beasley of Clayton, Mayor Fred McNab of Pinckard, Mayor Frank Houston of Coosada, Council Member Charles Woodsof Childersburg, Mayor Ed Kimbrough of Weaver, Mayor Betty Ziglar of Roanoke, Mayor Charles Fagan of Piedmont, Council Member Marshall Shaddix of Oxford, Council Member Robert Earnest of Winfield, Mayor Wally Burns of Southside, Mayor Charles O'Rear of Attalla, Council Member Cynthia McCollum of Madison, Mayor Melvin Duran of Priceville, Council Member JoAnn S. Thomas of Florence, Council Member Jimmie B. Slay of Littleville, Mayor Wayne Tuggle of Graysville, Council Member Robert Thomas of Northport, Mayor Charles Penhale of Helena, Council Member Rita Franklin of Selma, Mayor Edward Daniel of Marion, Council Member Roberta Jordan of Pine Hill, Mayor Steve Means of Gadsden, Mayor Alvin P. DuPont of Tuscaloosa, Mayor Sue L. Glidewell of Rainbow City, Mayor Bobby Payne of Tallassee, Mayor Leon Smith of Oxford, Mayor Ted Jennings of Brewton, Mayor Billy Joe Driver of Clanton, and Council President Alice Reynolds of Montgomery. Council Member Thomas Moore of Demopolis sat in for Mayor Austin Caldwell.

League staff members Perry C. Roquemore, Jr., Steve Martin, Edye Goertz, Lori Lein, Greg Cochran, Steve Wells, Ken Smith, Carrie Banks, Hal Bloom, Mary Ellen Harrison and Bobby Black were present. Guests were Greg Gerrin, Allen McGleen, Bill Lovell, and Ryan deGraffenried

representing State Farm Insurance.

President Roy welcomed those present and thanked members for coming to the meeting as well as to the Legislative Reception held on January 15. He also thanked the staff for its efforts in planning the Legislative Reception. Vice President Dan Williams, Mayor of Athens, echoed the comments of the President and stated that the reception gave members an excellent opportunity to meet new legislators.

The Committee held an open discussion with representatives of State Farm Insurance on State Farm's new procedure of not using ISO ratings in the determination of fire insurance policy rates. A number of municipal officials have expressed concern over State Farm's decision. These concerns led two League policy committees to recommend legislation to require use of ISO ratings in the setting of fire insurance rates. The League Committee on State and Federal Legislation included this proposed bill in the League's 2003 Legislative Package. Following lengthy discussion, the Executive Committee directed that a meeting be set up for all interested parties to come together to determine if the legislation was necessary. The meeting was set for February 26 at League Headquarters.

I covered a number of items in my report to the Committee. Dues notices for our September 1, 2002 - August 31, 2003 League Fiscal Year were mailed in August. The League has 440 member cities and towns out of the 456 municipalities in the state. As of the date of the meeting, the League had collected dues from 432 members. A list of the sixteen non-members was provided and committee members were urged to contact any non-members in their area and recommend that they join the League.

The National League of Cities Congress of Cities was held in Salt Lake City, Utah, on December 3-7, 2002, with approximately 325 Alabama delegates and spouses attending. The meeting was very successful. It was my pleasure to congratulate Council Member Cynthia McCollum of Madison on her election to a two-year term on the NLC Board of Directors. New NLC officers for the coming year are: President – Mayor John DeSteffano, New Haven, CT; 1st Vice President – Selectman Charles Lyons, Arlington, MA; and 2nd Vice President – Mayor Anthony Williams, Washington, DC.

The Committee on State and Federal Legislation met on November 7, 2002, and adopted a package of bills to be introduced on behalf of the League during the 2003 Regular Session of the Legislature which begins on March 4. A copy of the package can be obtained from the League website at www.alalm.org.

The NLC Congressional-City Conference will be held in Washington, DC, on March 7-11, 2003. The League plans

continued next page

an Alabama Caucus on Sunday afternoon, Group Congressional Dinners (by district) on Monday evening, and a Breakfast with the Two Senators on Tuesday morning. I want to thank the following persons for agreeing to coordinate our Monday evening dinners: District 1 – Mayor Ted Jennings, Brewton; District 2 – Mayor Rebecca Beasley, Clayton; District 3 – Shannon Plexico, Sylacauga; District 4 – Mayor Don Goetz, Jasper; District 5 – City Clerk Steve Eason, Florence; District 6 – Mayor Barry McCulley, Homewood; and District 7 – Council Member Louise Alexander, Bessemer.

The annual League Convention will be held in Huntsville on April 26-29, 2003. A registration package was mailed to all municipal officials in January and is also available on the League web page. For the first time, the League will accept payment by credit card for the preregistration of delegates. More on the convention is provided in this issue of the *Alabama Municipal Journal*.

The League continues to offer two computer programs. The *Municipal Law on Disc* program contains summaries of Attorney General Opinions, Court Decisions and Ethics Opinions published in the League newsletters over the past years. The program also contains our *Directory of Municipal Officials*. Opinions are indexed by word for instant retrieval. We currently have 43 subscribers to the annual service. Most clients are renewing their service and new orders continue to come in. The program is available on CD for Windows format only.

Our other program is the *ALM Library*. This program contains the complete updated text, searchable by word, of the *Selected Readings for the Municipal Official; Handbook for Mayors and Councilmembers; Municipal Clerk's Manual, Municipal Public Improvement Cost Assessments; Methods of Extending Municipal Corporate Limits; Labor Laws Affecting Municipalities; and Incorporating a Community*. We have also included the text of the very popular *Do's & Don'ts* publication. Persons interested in either program should contact League Headquarters.

League Deputy Director/Chief Counsel Ken Smith has redesigned the League website to be more user friendly. If you haven't already gone to see the new and improved website, I urge you to do so. Suggestions to make it a better site are always welcome.

The 2003 edition of the *League Annual Directory and Vendor Yellow Pages* was recently distributed to members. Greg Cochran and Carrie Banks put in a lot of hard work to make this excellent publication a reality.

Approximately 150 people attended the CMO program on Smart Growth held on November 21, 2002. Additional programs are being planned for the spring. For more information, go to the League website. To date 2,048 officials

have enrolled in the CMO program. There have been 509 graduates of the Basic CMO Program and 153 graduates of the Advanced CMO Program.

The League-endorsed GovDeals program continues to grow and Municipal Code Corporation, pursuant to an agreement with the League, has developed a single book containing all state laws pertaining to municipalities. Further information on these programs can be found on the League website.

Please mark you calendar for these future events of interest to municipalities in Alabama:

- **SMC Leadership Conference** – April 10-12, 2003, Richmond, VA
- **ALM Convention** – April 26-29, 2003 – Huntsville
- **Last Day of Regular Session** – June 16, 2003
- **Executive Committee Organizational Meeting** – July 17, 2003
- **AAMA Meeting** – August 15-16, 2003 – Opelika
- **Committee Day** – September 4, 2003 – Montgomery Civic Center
- **Year-End Executive Committee** – October 16, 2003
- **Committee on State & Federal Legislation** – November 4, 2003
- **NLC Congress of Cities** – December 9-13, 2003 – Nashville, TN

Mayor Sue Glidewell, Chair of the Alabama Municipal Insurance Corporation, and Mayor Leon Smith, President of the Municipal Workers' Compensation Fund, presented the reports on the activity of their respective programs during the meeting. Both companies are doing a great job in providing needed insurance coverage for League members.

League Legislative Liaison Hal Bloom reported on the Organizational Session. It was reported that the House has created a Committee on County and Municipal Government to deal with city and county legislation. This should be of great benefit to the state's municipalities. Rep. Bill Dukes of Decatur will chair the committee. ■

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The *Annual Directory & Vendor Yellow Pages* is a 132 page, 8" x 11 publication with a coil binding that also offers information about the League and our staff and provides contact information for the Alabama House of Representatives, the Alabama Senate, Constitutional officers and important state agencies. Municipal listings for Alabama's more than 400 incorporated cities and towns include the following information:

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ENVIRONMENTAL OUTLOOK



By Gregory D. Cochran
Director, State and Federal Relations

President Bush's 2004 Budget Request

There is good and not so good news for cities in the 2004 Budget Request. The President's major priorities are the war on terrorism abroad; homeland security at home; economic security; and growth and modernization of Medicare with a prescription drug benefit.

The proposed budget states that the federal government will spend \$2.1 trillion in 2003 and maintains that the current deficit is projected to reach a peak of \$307 billion in 2004 and decline thereafter.

As a measure to control federal spending, the President is requesting that Congress extend the Budget Enforcement Act that expired in 2002; impose statutory caps on discretionary spending for 2004 and 2005; and renew "pay-as-you-go" requirements to constrain the growth of the non-essential spending during this period of unique economic and international uncertainty.

With the overall discretionary budget held to a 4 percent increase in 2004, there are trade offs. The Administration would shift considerable responsibility for management of numerous federal programs over the next few years to the states. This would include Medicaid, the Unemployment Insurance program and Head Start. The Administration recommends block granting the Section 8 housing assistance program to the states, a private sector investment initiative for Public Housing with \$100 million to back loan guarantees, and institution of a cost share with Corps of Engineers projects.

Below are excerpts from the budget funding proposals for water and wastewater infrastructure; drinking water systems security; clean air enforcement; bioterrorism and chemical emergency preparedness; brownfield redevelopment funding; weatherization assistance programs; hydrogen automotive technology investment; and low income home energy assistance programs.

Environmental Protection Agency / Water Infrastructure

Clean Water – Most recently (i.e., in fiscal 2002, the last year for which an appropriation was approved), the Clean Water State Revolving Fund (CWSRF) was funded at \$1.35 billion. The Administration is requesting \$850 million for fiscal 2004, despite the agency's recent analysis (Sept. 2002) documenting a funding gap of \$535 billion (for wastewater and drinking water infrastructure needs) over the next 20 years. The CWSRF provides grants to states which, in turn, offer loans to cities to finance their municipal wastewater infrastructure needs, including mandates of remediation of combined and separate sewer overflows.

Drinking Water – The Drinking Water State Revolving Fund (DWSRF) is proposed to remain level at \$850 million. Increases in funding for the drinking water programs would go to states through such programs as source water protection and increased funding for monitoring.

Water Security – Large drinking water systems, those serving more than 100,000 people, were each provided \$115,000 to conduct assessments analyzing their vulnerability to terrorist attacks or other acts with negative consequences and develop emergency response plans. EPA's budget requests no additional assistance for systems serving fewer than 100,000 but Administrator Whitman indicated the agency's intention to provide technical assistance to help them develop their vulnerability assessments and emergency response plans.

Clean Air – The President's budget proposes \$617.4 million, an overall increase of \$19.4 million, for implementation of the Clean Air Act, including an additional \$7.7 million for his legislative proposal Clear Skies. This new initiative would establish a market-based approach to cap sulfur dioxide (SO₂), nitrogen oxide (NO_x), and mercury emissions from

continued next page

power plants.

Brownfields/Superfund – The budget requests \$210.7 million, a 75% increase over FY 2002 funding to states, cities, counties and tribes to assist in the remediation of abandoned or underused, and potentially contaminated, industrial or commercial properties. Also include is \$1.389 billion, a \$150 million increase, for clean-up of the nation’s worst hazardous waste sites.

Department of Homeland Security

Under the Department of Homeland Security’s four major areas, \$18.1 billion is requested for Border and Transportation Security; \$5.9 billion for Emergency Preparedness and Response; \$829 million for Information Analysis and Infrastructure Protection; and \$803 million for Science and Technology.

First Responder Initiative – The President has requested \$3.558 billion for First Responder grants where \$500 million is allocated for firefighter assistance grants, \$500 million for state and local law enforcement assistance and \$181 million for the Citizen Corps program. The remaining \$2.3 billion would be used for the program’s original purpose areas: first responder training, equipment, exercises and mutual aid.

Critical Infrastructure Protection – The new Department of Homeland Security’s proposed budget also includes \$500 million in funding for vulnerability assessments of nuclear power plants, water facilities, transportation systems, telecommunications networks and other critical infrastructure. According to the department, the majority of this funding would be directed to local governments.

Bioterrorism Preparedness – Almost \$1.3 billion has been requested to strengthen the nation’s stockpile of drugs, vaccines and bio-defense equipment. In this area, the President is proposing a 10-year, \$5.6 billion plan to secure medical countermeasures against bioterrorism and upgrade the Strategic National Stockpile. This is in addition to the \$1.2 billion in bioterrorism block grants that were directed to states last year.

Department of Energy

Hydrogen Car – The President is proposing \$1.5 billion (\$720 million in new funding) to the Department of Energy to establish “a new partnership between the federal government and energy companies” to hasten the use of fuel-cell vehicles. This program complements a 2002 initiative, “Freedom Car” to develop viable hydrogen fuel-cell technology for cars by 2015. The program is intended to reduce air pollution generated by mobile source (about 50 percent of current air pollutants come from this source.)

Weatherization Assistance Program – The administration is proposing a new Weatherization Assistance program to be funded at \$288 million to cut energy costs of

126,000 low-income families while conserving energy.

Energy Tax Incentives – The President is proposing enactment of energy tax incentives to encourage greater energy efficiency and development of renewable resources. The tax incentives would total \$8 billion over 10 years and include tax credits for purchases of hybrid and fuel-cell vehicles, residential solar power and modification of tax treatment of nuclear power plant decommissioning costs.

Low Income Home Energy Assistance Program (LIHEAP) – The FY 2004 budget provides level funding for LIHEAP, which is a total of \$2.0 billion, including \$1.7 billion in formula block grants to States and \$300 million for contingency funding. The contingency funds are available for release in a heating or cooling emergency such as extreme temperature or high fuel prices, or to meet energy needs related to a natural disaster. LIHEAP provides heating and cooling benefits to approximately 4.6 million households each year. ■

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THE LEGAL VIEWPOINT

By Ken Smith
Deputy Director/Chief Counsel

It's in the Details: Locating Information on Municipalities

The League legal staff frequently receives general information requests about the legal structure of municipal governments in Alabama. Many of these inquiries can be answered by reference to specific provisions of the Alabama Code, or by a simple explanation. Understanding the underlying structure of a municipal government can guide officials and employees in determining the answers to many of their more specific legal questions.

This article is designed to briefly explain some aspects of the nature of municipalities in Alabama. Although a full explanation of the myriad issues raised here is beyond the scope of this article, perhaps a short examination of these items will help readers grasp some of the underlying rules that guide and, at times, restrict our municipalities. Where possible, the article refers readers to specific Code sections. In other cases, though, a cite is not available. When this is the case, the article provides an overview explanation as to the legal reasons why municipal governments operate as they do.

Our lawyer told our council that an action we want to take is prohibited by the Dillon Rule. What is the Dillon Rule?

Alabama is not a home rule state, which means that our local governments do not have home rule powers. Essentially, municipalities in home rule states have any powers that the state has that are not restricted by some statutory or constitutional provision. Instead, Alabama cities and towns operate under the Dillon Rule.

The Dillon Rule provides that municipalities in Alabama have only the powers that they are granted by the Alabama legislature. Municipalities in Alabama can only exercise three types of powers:

- 1) those expressly granted in legislation;
- 2) those implied from legislation; and

- 3) those that are essential to perform some power that has been granted by the legislature.

These powers are generally found in the Alabama Constitution, the Code of Alabama and local laws passed by the legislature.

How can we determine our population?

The most obvious answer to this question is that municipal population is determined by the federal decennial census. Many state laws, either general or local, apply only to municipalities in certain population ranges. These laws frequently govern the form of government, distribution of funds or other issues crucial to the operation of the municipal government. For most purposes, a municipality's population is determined by the federal decennial census. Often, a statute will specifically provide that the decennial census figures are to be used to determine the municipal population. Other times, though, the statute will leave the method of determining municipal population ambiguous.

For instance, in *Dennis v. Pendley*, 518 So.2d 688 (Ala. 1987), the Alabama Supreme Court held that a municipality does not have to prove its population by a decennial census for the purpose of holding a wet/dry referendum. Thus, the municipality in question could use a special census to determine its population. And the Attorney General has stated that for purposes of holding a wet-dry referendum, the population of the city may be determined by the federal decennial census, a special federal census or a municipal census, but not from estimated or projected census figures. Opinion No. 98-00208. So, in some cases, the method used to determine a municipality's population will depend on the language of the statute that requires a specific population. If you don't have to use the decennial census figures, what other methods are

continued next page

available?

In addition to the regular federal census, Alabama municipalities are authorized to conduct a special census to enumerate their populations. Sections 11-47-90 through 11-47-95 of the Code establish a procedure a municipality can follow to conduct its own census, and these censuses are regarded as official. Enumerations under these provisions, though, cannot be made more often than once every five years.

Also, a city or town may request a special census to be taken by the Census Bureau of the U.S. Department of Commerce. This enumeration shall be used only as the basis for any law which provides for the levy, collection or distribution of license taxes, where the levy, collection or distribution is based upon population. Sections 11-47-92 and 11-47-93, Code of Alabama, 1975. This type of census may be used as the basis for distribution of ABC Board profits, for example. See Attorney General's Opinion to Gen. Walter E. Todd, April 8, 1968. It should be noted that at certain times the Census Bureau will not perform special censuses due to involvement with the decennial census.

A census taken under authority of this Act cannot bring about a change in the form of government of the municipality, nor can it be used for any other purpose than that specifically provided. Censuses conducted under this authority cannot be made more often than once each five years.

One important aspect of the census figures is knowing when these figures become final. Section 11-40-6 of the Code provides that these figures only become final at the next municipal election that is held more than four months after the 120th day after the first day of the first regular business session of the legislature following the publication by the federal government of the regular decennial population census for Alabama. If, for example, the decennial census shows that the population of a municipality now exceeds 12,000, whereas the previous census showed them as being under 12,000, the new form of government would not generally become effective until after the following municipal election. For all practical purposes, this limits changes in form or organization of mayor-council cities to enumerations established by the regular federal decennial census.

To locate information about census data for a specific municipality, contact the U.S. Census Bureau, at either www.census.gov/ or by telephone at 301-763-INFO (4636).

Are we a city or are we a town? Is this important?

Municipal corporations containing 2,000 or more inhabitants are considered cities, and all incorporated municipalities containing less than 2,000 inhabitants are designated as towns. Section 11-40-6, Code of Alabama, 1975. Although an increase in population to above 2,000 inhabitants does not involve a change in the organization of a city or town, there are numerous statutory references to "city" and "town"

regarding the performance of specific powers or requirements. This distinction should be kept in mind when determining the powers a municipality is authorized to exercise.

I keep seeing references to general laws and local laws. What's the difference?

Quite simply, Section 110, Alabama Constitution, 1901, states that a general law is one that applies to the whole state." A local law is one that "applies to any political subdivision or subdivisions less than the whole."

Huh? What's so simple about that?

An easy way to look at it is that if a bill being considered by the legislature applies to the entire state (or to a class of municipalities as defined by Section 11-40-12 of the Code), it is a general law. If, on the other hand, it applies only to a particular municipality or county, or to municipalities within a population range, it should be considered local.

At times, it is crucial to know whether an act is local or general. The constitution spells out a specific method for adopting local acts. Section 106 of the Constitution requires giving notice of all local legislation, stating the substance of the proposed law. This notice must be published at least once a week for four consecutive weeks in some newspaper published in such county or counties, or if there is no newspaper published therein, then by posting the said notice for four consecutive weeks at five different places in the county or counties prior to the introduction of the bill. If a bill that meets the definition of a local bill is not passed by this procedure, it is invalid as violating the Alabama Constitution.

Additionally, the Constitution limits legislative authority to adopt certain types of legislation by local act. See, Section 104, Alabama Constitution, 1901. Because of this constitutional provision, the laws governing the incorporation, organization and operation of cities and towns in Alabama are general in nature and either apply to all municipalities in the state or to all municipalities within a specified population group.

Well, what about Classes of municipalities? I personally think we have a first class municipality. Why does the legislature say we're only a Class 8 municipality?

Answering this question requires a further examination of the previous question. As complicated as the explanation may seem so far, we've only scratched the surface.

Prior to 1978, the state legislature adopted numerous statutes to provide powers for municipalities with very narrow population ranges. These laws were known as general laws of local application (GBLA's). In 1978, the Alabama Supreme Court, in the case of *Peddycoart v. City of Birmingham*, 354 So.2d 808 (Ala. 1978), held that the state legislature could no longer adopt general bills of local application. The court held that the legislature could pass only statewide general bills

affecting every jurisdiction in the state or local bills affecting single jurisdictions. Since Section 104 of the Alabama Constitution prevents amendment of municipal charters by local acts, another method of enacting such amendments was needed.

The League was successful in obtaining passage by the legislature, and ratification by the voters, of Amendment 397 to the Alabama Constitution of 1901, which authorizes the legislature to establish not more than eight classes of municipalities based on population. Amendment 397 also allows legislation to be passed which affects one or more of such classes and provides that any such legislation shall be deemed to be general laws rather than local laws.

Sections 11-40-12 and 11-40-13, Code of Alabama, 1975, established the eight classes of municipalities as follows:

- Class 1 – Cities of 300,000 inhabitants or more
- Class 2 – Cities of not less than 175,000 and not more than 299,999 inhabitants
- Class 3 – Cities of not less than 100,000 and not more than 174,999 inhabitants
- Class 4 – Cities of not less than 50,000 and not more than 99,999 inhabitants
- Class 5 – Cities of not less than 25,000 and not more than 49,999 inhabitants
- Class 6 – Cities of not less than 12,000 and not more than 24,999 inhabitants
- Class 7 – Cities of not less than 6,000 and not more than 11,999 inhabitants
- Class 8 – Cities and towns with a population of 5,999 or less.

It is important to remember that these population figures refer to the 1970 federal decennial census. This fact bears repeating, because it is so often misunderstood. Classes of municipalities are based on the 1970 federal decennial census figures. Municipalities that grow into new population ranges from one decennial census to another are still considered to be in the population range they were in under the 1970 decennial census. Because of this, once established, a municipality's class does not change, and the only way to determine if class legislation applies to a particular municipality is to check the municipal population under the 1970 census.

Amendment 389 to the Alabama Constitution of 1901 validates most general acts of local application, which were enacted prior to January 13, 1978, that were otherwise valid and constitutional, even though they were not advertised as required by Section 106 of the State Constitution. Amendment 389 provides that the acts shall forever apply only to the county or to the municipality to which they applied on January 13, 1978, despite changes in population. Such acts can only be amended by advertised local bills.

At the risk of complicating things further, the Alabama Supreme Court recently held that municipalities can grow into

or out of population ranges established by GBLAs. In *Walker v. City of Montgomery*, 833 So.2d 40 (Ala. 2002), an attorney challenged the City of Montgomery's license fee on salaried professionals, arguing that this fee violated a 1957 GBLA that prohibited municipalities with populations from 100,000 to 125,000 from levying a license fee on wages. At the time of its passage, this law applied to Montgomery, but in 1960, the City outgrew this range. The Court noted that previous cases had made clear that a municipality can grow into the population bracket established by the GBLA, but that it had never determined if a city could grow out of that bracket. The Court then said that:

“The Court also finds persuasive the undisputed evidence of the Alabama Legislature's acknowledgment that population bracket bills must permit entry and exit of cities or counties as their population increases. Numerous examples reflect a consistent pattern of legislative action and intent. When the Legislature intended to keep a city or county within the scope of a bracket bill after it had outgrown the population bracket, the Legislature enacted another bill which expanded the bracket; significantly, the new bill expressly referenced the previous legislation, the subsequent increase in population for the entity previously covered, and the legislative intent to continue that entity within the scope of coverage.”

Since that was not the case with the legislation in question in *Walker*, the Court held that Montgomery had outgrown the population bracket.

So, what does this mean? Although the Court did not expressly state it, because Amendment 389 provides that the acts shall forever apply only to the county or to the municipality to which they applied on January 13, 1978, despite changes in population, it seems that population brackets no longer shift to be valid. In other words, following the adoption of Amendment 398, all GBLA's forever apply to municipalities that fit within any particular population bracket on January 13, 1978. If a GBLA applied to a municipality that had fallen out of the bracket before January 13, 1978, the GBLA would not apply to that municipality. On the other hand, if the GBLA did not apply to a municipality that had grown into the population bracket before that date, the GBLA would apply to that municipality. However, subsequent population shifts would be irrelevant.

Again, please understand that this change in population refers only to GBLA's, and not to class legislation as discussed above. Determining if class legislation applies to a municipality is always done by referring to the 1970 census.

In the discussion about the effective date of a census, you mentioned something that happens when a city's population reaches 12,000. What was all that about?

In most mayor-council governments with populations

continued next page

below 12,000, the mayor sits with and is considered part of the municipal council. When the city's population reaches 12,000 inhabitants, the mayor is no longer considered part of the council. He or she no longer presides over the meetings. Instead, in cities of 12,000 and over, operating under general law, the mayor exercises veto power over general and permanent actions of the council. In other words, the mayor no longer votes on measures that come before the council, but instead has the power to veto some of these council actions. Of course, the council can override the veto by obtaining a sufficient number of votes.

Other important differences that apply when the population reaches 12,000:

- Under 12,000 – Council appoints a mayor pro tempore to serve when the mayor is absent and Council fills vacancies in office of mayor
- Over 12,000 – Council President performs mayor's functions when mayor is out and becomes mayor in event of a vacancy;
- Under 12,000 – Section 11-43-12.1 permits municipal officials and employees to do business with the municipality in certain circumstances;
- Over 12,000 – No similar rule. Section 11-43-12 prohibits contracts between municipal officials and employees and the municipality

Moving on to a new issue. Through my personal research in the Alabama Code, I've discovered my municipality is not following Section 11-43C-48. I'm no lawyer, but even I can read this Section. It provides that–

Whoa, stop right there. Don't assume that just because a law is contained in the Code of Alabama it applies equally to all municipalities in the state. It is important to understand that the state legislature has from time to time adopted specific legislation that establishes special forms of government for certain municipalities, or that provides procedures by which the forms of these governments may be altered. These laws generally apply only to a single city or town, not the vast majority of municipalities in Alabama, even though these laws are frequently included in the Code of Alabama.

Those municipalities affected by specific acts include:

- Anniston – Council-Manager, Act No. 71-1049
- Phenix City – Council-Manager, Act No. 77-71
- Montgomery – Mayor-Council, Act No. 73-618
- Birmingham – Mayor-Council, Act No. 55-452
- Troy – Mayor-Council, Sections 11-44A-1 through 11-44A-16, Code of Alabama, 1975
- Opelika – Mayor-Council, Sections 11-44D-1 through 11-44D-21, Code of Alabama, 1975
- Prichard – Mayor-Council, Sections 11-43C-1 through 11-43C-92, Code of Alabama, 1975
- Tuscaloosa – Mayor-Council, Sections 11-44B-1 through 11-44B-22, Code of Alabama, 1975

- Bessemer – Mayor-Council, Sections 11-43D-1 through 11-43D-22, Code of Alabama, 1975
- Gadsden – Mayor-Council, Sections 11-43B-1 through 11-43B-32, Code of Alabama, 1975
- Mobile – Mayor-Council, Sections 11-44C-1 through 11-44C-93, Code of Alabama, 1975
- Dothan – Class 5 cities with a mayor-commission-manager, Sections 11-44E-1 through 11-44E-221, Code of Alabama, 1975.

Many of these laws were adopted as class legislation, which was discussed above. Generally speaking, laws found in the provisions cited above apply only to the municipality listed. As an example, the provision cited in this question, 11-43C-48, applies only to the City of Prichard. It does not apply to any other city or town in Alabama.

Further, some of these laws provide a window of opportunity for adoption. These laws generally limit their applicability to municipalities that adopt the law within a specified period of time, such as within three months of the law's effective date. In this case, the law applies only to municipalities that acted within that window of opportunity. Once that window closes, other municipalities are precluded from adopting these laws.

Before assuming a law applies to your municipality, it is important to know whether it was enacted only for a specific city or town (in the case of a GBLA adopted before 1978), certain classes of municipalities (by class legislation), or even if it only had a temporary window for adoption. If so, and your municipality doesn't fall within the sphere of operation of particular legislation, it does not apply to your municipality at all, even if it is located in the Code. ■

It's a Girl!

Congratulations are extended to League Counsel Lori Lein and her husband Greg on the February 15th birth of their first child, Brennan Elise. Baby Brennan weighed in at 8 pounds, 7 ounces and was 21.75 inches long. Both she and her mom are at home and doing very well. Dad is still recovering ...



Legal Notes

By Mary Ellen Harrison
Staff Attorney

COURT DECISIONS

Sales Taxes: The Alabama Court of Civil Appeals held that the state is entitled to an injunction preventing a business from operating until delinquent sales taxes are paid. In this case the owner did not pay taxes when due and there was no evidence of any reason to justify his failure to pay the tax. *State v. Lewis*, 832 So.2d 81 (Ala.Civ.App. 2002).

Legislation: An act barring cities that have populations between 100,000 and 125,000 according to the latest decennial census from collecting privileges licenses tax on salaried professionals no longer applies to a city once its population longer fits into the population bracket set out in the act. Additionally, the court set out three tests that must be met when determining if an act based on population classification is a general act: (1) there must be a substantial difference in population, (2) the classification must be made in good faith, and (3) the classification must be reasonably related to the purpose sought to be achieved by the act. Also, the act must have application to a shifting class. *Walker v. City of Montgomery*, 833 So.2d 40 (Ala. 2002). NOTE: In this case, Montgomery's population fell into the population bracket at the time the act was passed, but Montgomery's population grew out of the bracket before 1978, when Amendment 389 forever locked General Bills of Local Application to the municipalities they applied to January 13, 1978.

Zoning: The Alabama Supreme Court held that use of the terms "structurally unsound" and "dilapidated" in a zoning ordinance were not impermissibly vague or ambiguous when they refer to requiring the removal of nonconforming billboards that have become structurally unsound and dilapidated. The Court will only review a zoning ordinance when it is arbitrary and capricious, because city ordinances are subject to the same rules of statutory construction as are acts of the legislature.

Ex parte City of Orange Beach Board of Adjustment, 833 So.2d 51 (2001).

Clean Water Act: The Eleventh Circuit recently held that an Alabama private citizen may proceed with a Clean Water Act citizen suit against a city waste water treatment plant even though the city has engaged in its own enforcement action for the same violations and assessed a civil penalty. *McAbee v. City of Fort Payne*, 2003 WL 152643 (11th Cir. 2003).

Citations to Cases from Other Jurisdictions

Tort Liability: The U.S. Court Appeals for the Fourth Circuit held that off-duty sheriff's deputies were acting under color of state law for 42 U.S.C. Section 1983 purposes when they made mass purchases of newspapers in the area on election day with the approval and financing of the state's attorney and the sheriff. *Rossingnol v. Voorhaar*, 316 F.3d 516 (4th Cir. 2003).

Clean Water Act: A municipality is not compelled to regulate third parties under the provisions of the Clean Water Act permit rule that require operators of small municipal storm water systems to regulate, through ordinance or otherwise, storm water discharges from construction and development projects, because those provisions only represent one option for cities. *Environmental Defense Center Inc. v. Environmental Protection Agency*, 2003 WL 113486 (9th Cir. 2003).

Tort Liability: Local government officials are not entitled to legislative immunity from a property owner's 42 U.S.C. Section 1983 suit seeking damages for a denial of a conditional use permit, because the denial was an ad hoc administration of the zoning ordinance rather than formulation of new policy, affects only the property owner, and is not a legislative act

continued next page

entitling council members to absolute immunity from property owner's suit under 42 U.S.C. Section 1983. *Kaahumanu v. County of Maui*, 315 F.3d 1215 (9th Cir. 2003).

Sexual Harassment: A Chicago area school district's complete and detailed response to a kindergartner's alleged sexual harassment of a fellow student precluded liability under Title IX of the 1972 Education Amendments. *Gabrielle M. v. Park Forest-Chicago Heights, IL School District 163*, 315 F.3d 817 (7th Cir. 2003).

ATTORNEY GENERAL'S OPINIONS

Public Records: Gross receipts information as it relates to privilege or business tax is not the type of sensitive proprietary information that Alabama law protects. A city may divulge the amount of privilege or license tax paid to the city by a business. 2003-052

Offices of Profit: Both members of the State Board of Education and Commissioner of Children's Affairs are both offices of profit; therefore, one may not hold both offices at once. 2003-063.

Public Records: Section 41-13-23 requires that public records should be kept in the office where the records were created or in a depository approved by the Local Government Records Commission. Before transferring public records to a different location, the Local Government Records Commission should be consulted. 2003-064.

Officials: When a public official transmits a resignation without an effective date and without a condition, the resignation is effective at the point he transmits the resignation, and the resignation does not need to be accepted. 2003-065.

Education: A County Board of Education has authority to set the compensation of employees on continuing service status in accord with the general salary schedule adopted as long as the schedule is consistent with the state law and regulations found in the *Alabama Administrative Code* Rule 190-2-1. Additionally, the compensation paid to an elementary principal does not have to be the same as the salary paid to a high school principal, and Section 68 of the Constitution of Alabama (1901) prohibits the Board from granting retroactive pay. 2003-066.

Taxation: A city may not use petroleum inspection fees for the construction and maintenance of sidewalks within the municipality. 2003-068.

Worker's Compensation: The side effects of a vaccination against smallpox is subject to coverage by worker

compensation carriers when the vaccination is administered at the request of the federal government under the federal smallpox vaccination program, because it would be considered to have arisen "out of and in the course of employment." 2003-069.

Elections: If a voter is not on the official voter list, they may cast a challenged ballot. If they do so, they are required under Section 17-12-3 of the Alabama Code (1975) to subscribe to an oath which swears that he or she is a qualified elector. In addition to the oath, Section 17-12-4 of the Alabama Code (1975) requires that another person, who is a qualified elector in the same precinct, subscribe under oath that he or she knows the person attempting to vote. 2003-072.

Appropriations: Under Section 94 of the Constitution of Alabama, a local government may only expend public funds for improvements to private property if the governing body determines that a public purpose will be met by the expenditure. The determination of whether an expenditure is for a public purpose is a factual one and can only be made by the governing body of the local government making the expenditure. 2003-074.

Boards: A public corporation's gas district's rates are restricted to cost recovery, because there is no basis for the public corporation to earn a profit or retain net income. Therefore, a utility rate for unbundled natural gas transportation based on cost recovery is permissible, but it must be published in the newspaper and available to all eligible customers. The board in this Opinion was created under Section 11-50-390 to 11-50-417. 2003-075.

ETHICS COMMISSION ADVISORY OPINIONS

AO No. 2003-05: A municipal board of education can purchase property from a limited partnership even if a member of the partnership is the president of the board of education if the transaction is done at arm's length, the sale of the property is at or less than fair market value, the fair market value is set by an independent appraiser, and if the president of the board has not participated in any discussion or in any official action regarding the transaction.

AO No. 2003-06: A planner in a municipal planning and development department may not also work as a real estate developer within the municipal jurisdiction, as real estate development is regulated by the entity with which he is employed. ■

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The Municipal Trouble Shooter

By Lori Lein, League Counsel

Editor's Note: "The Municipal Trouble Shooter" is written by a League attorney to provide our members additional information about current legal issues. This column will appear regularly in The Alabama Municipal Journal.

Q. If a municipality participates in a retirement program, whether it is the Alabama Employees Retirement System or some other system, is the municipality governed by federal or state law with regard to retirement credit for employees who are called into active military service?

A. The establishment of retirement credit for periods of military service for public employees called into active military service is covered specifically by federal law under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) which is codified at 38 USC § 4301, et seq. The rights provided under USERRA to public employees serving in the military cannot be diminished in any way by state law. However, USERRA expressly permits state and local law to provide greater or additional protections for employees than USERRA does.

Q. What responsibilities does a municipality have with regard to retirement credit for municipal employees who are returning to work after being on active military duty?

A. Under USERRA, a municipality must reemploy a person returning from active military duty¹ and shall, with respect to the period of military service, be liable to the retirement system the municipality participates in for funding the employer's obligation to that system. With regard to retirement benefits, USERRA specifically provides the following:

1. A reemployed person must be treated as not having

incurred a break in service with the employer;

2. Military service must be considered service with an employer for vesting and benefit accrual purposes;

3. The employer is liable for funding any resulting obligation; and

4. The reemployed person is entitled to any accrued benefits from employee contributions only to the extent that the person repays the employee contributions.

For purposes of determining an employer's liability or an employee's contribution for retirement credit, the employee's compensation during the period of his or her military service must be based on the rate of pay the employee would have received from the employer but for the absence during the period of service. If the employee's compensation is not based on a fixed rate such that the determination of such rate is not reasonably certain, then it must be based upon the employee's average rate of compensation during the 12 month period immediately preceding such period or, if shorter, the period of employment immediately preceding such period.

As far as a returning municipal employee's repayment of contributions, he or she has up to 3 times the length of military leave, up to a maximum of 5 years, to make any contribution payments he or she would have made to establish retirement credit without having to pay any interest. No such payment may exceed the amount the municipal employee would have been required to contribute had the person remained continuously employed by the municipality throughout the period of military service.

Q. Does a municipality have to pay the retirement credit for municipal employees who are on active military duty during the time the employee is serving?

A. No. As discussed above, USERRA provides generous time periods for the payment of missed contributions without any interest penalties. Upon returning from active military duty, the employee would have to exercise his or her option of remitting any missed retirement contributions and not until that point would the municipality be obligated to pay its portion of any retirement benefits missed. ■

¹ Please note that a returning employee must still be considered "eligible" for reemployment under USERRA. The specifics of eligibility are not covered in this article. However, as a general guideline, any person called into "active duty" by the "uniformed services" would be covered by USERRA. If there is a question as to whether an employee is eligible, a municipality should seek further advice and counsel.

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John W. Hurtt, Sr.

John W. Hurtt, Sr., former mayor of Powell, died on January 21, 2003, at age 77. He was elected to the Council in 1980 and served three terms before being elected mayor in 1992. He served as mayor of Powell until February 2000.

Hurtt was a member of New Sardis Baptist Church, a Mason, a life member of the Section Lodge No. 565 and a member of Eastern Star. He was also a member of the Veterans of Foreign Wars, Post No. 10370 of Rainsville.

He is survived by one son, three daughters, two stepchildren and six grandchildren. ■

Emmett Wilkinson, Jr.

Emmett Wilkinson, Jr., former city council member of Citronelle, died on January 22, 2003. He was 80. He was a U.S. Navy veteran of World War II, a member of Citronelle Lodge No. 637 F&AM and a member of Citronelle United Methodist Church.

He is survived by one son, four children and three great-grandchildren. ■

Rufus E. Floyd

Rufus E. Floyd, former mayor of Hokes Bluff, died on January 26, 2003. He was 95. Floyd served as mayor from September 1952 until October 1964. He retired from Goodyear Tire & Rubber Co. in 1969 after 40 years and continued to operate his variety/hardware store for 50 years until recently.

He is survived by his wife, two sons, six grandchildren and five great-grandchildren. ■

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