THE ALABAMA MUNICIPAL
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President Bush Visits Montgomery

Photo by: Craig Banks

President George W. Bush held a town hall meeting on Social Security reform at Auburn University Montgomery's campus on March 10, 2005. The President, who is touring the country in an effort to garner public support for his proposal, spoke to more than 4,000 people from the tri-county and surrounding areas.

Inside:

- **Working with the Municipal Attorney**
- **NLC Releases 2005 State of America's Cities Survey**
- **Federal Government Offers Urban Forestry Assistance to Storm-Ravaged Communities**

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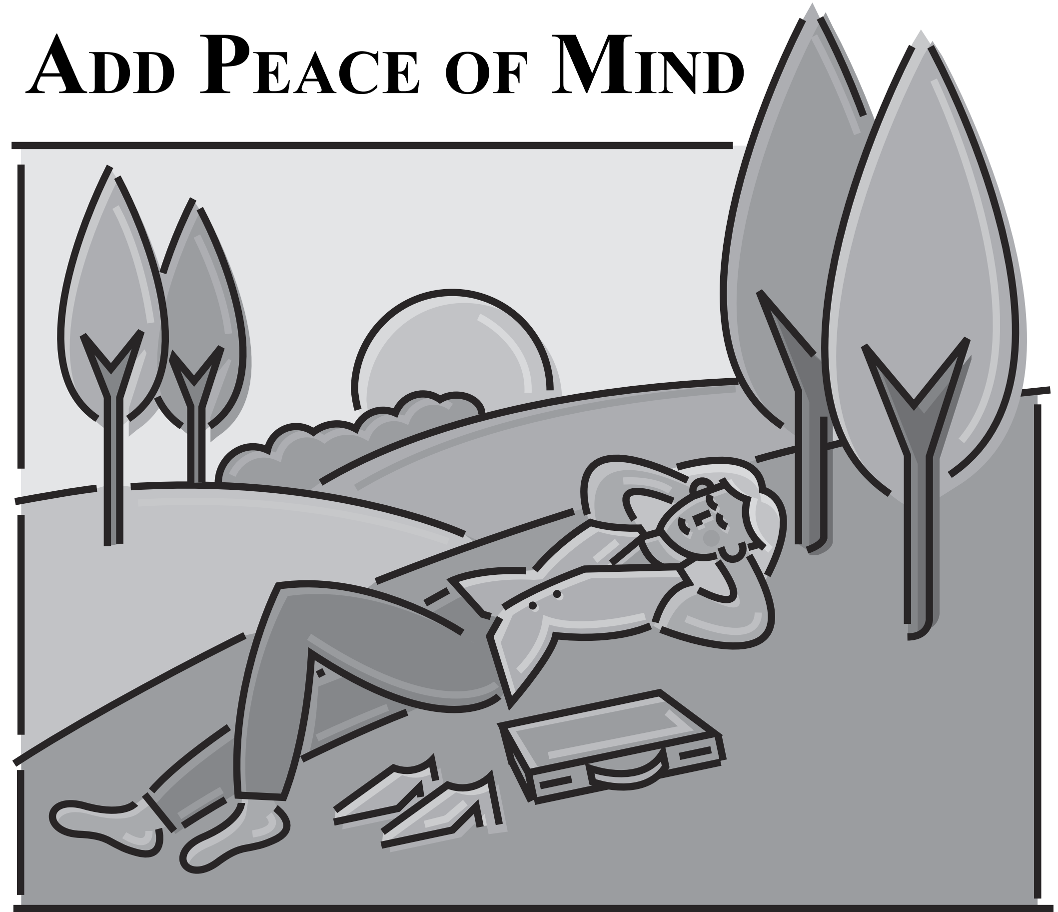

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Federal Government Offers Urban Forestry Assistance to Storm-Ravaged Communities

Communities may soon benefit from emergency supplemental funding provided by Congress to mitigate the effects of Ivan and other similar natural disasters.

The almost $1.7 million appropriation for Alabama's Urban and Community Forestry Financial Assistance Program comprises part of this funding. Auburn University has a three-year contract with the U.S. Forest Service to serve as a pass-through entity for the program in Alabama. The program is administered through the Alabama Cooperative Extension System.

In early May, communities can submit proposals to repair the damage Ivan caused to their urban forestry resources, according to Neil Letson, coordinator of the program.

"The appropriation is part of a larger package of money Congress awarded to Alabama and Florida as part of the response to the extraordinary impact of the hurricanes last year," he says.

The provisions, Letson says, underscore the damage these hurricanes caused not only to forestland throughout the most heavily affected areas but to many of these communities' urban forestry resources.

Communities will be able to submit projects that address specific storm-related mitigation needs such as urban tree assessments, tree inventories and tree remediation, Letson says. Assistance can also include informational and educational needs, tree mitigation and replacements of downed trees.

Repairing or removing these trees can be a major financial burden for many small communities that already were saddled with the initial burden of cleanup in the immediate aftermath of the hurricane. Letson believes that the program will go a long way toward repairing and, when the need arises, replacing trees that were structurally damaged during the storms.

The primary focus – and the bulk of the funding – for the program will be on the 12 counties that suffered moderate to severe damage to their urban forest resources. These counties include Baldwin, Butler, Clarke, Coffee, Conecuh, Covington, Crenshaw, Escambia, Geneva, Mobile, Monroe and Wilcox. For more information, contact Neil Letson at **(334) 240-9630**. ■

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The President's Report

Jim Byard, Jr.
Mayor of Prattville

NLC's Congress of Cities – Something for Everyone

I want to thank all of my fellow Alabama Municipal Officials who traveled to Washington DC last month for the National League of Cities annual Congressional City Conference. I hope your trip was very productive for your community. Our annual Washington trip is always packed with action, issues and a little time for taking in the sights, sounds and tastes of our nation's capital city. I always enjoy going to Washington, but I also enjoy getting to Reagan National Airport for the return trip home!

This year was a celebration of sorts. We – local cities, counties and states – are celebrating the 10th anniversary of the Federal Unfunded Mandates Act. It's hard to believe that just 10 short years ago we were lobbying our congressional delegation on behalf of this important measure. At the opening general session, former Idaho Senator and now Idaho Governor, Dirk Kempthorne, spoke on the passage of this important piece of legislation during his tenure in the Senate. Governor Kempthorne discussed the blow-by-blow, day-in and day-out account of the fight for the Unfunded Mandate Bill. He also spoke of his pleasure of being in the Rose Garden at the White House watching President Clinton sign the bill into law.

Also at the general session, Alabama Representative Artur Davis spoke on "Perspectives of the Federal Budget", in which he emphasized that government needs to make decisions based on the needs of the people, and not strictly along partisan lines. While our country is one of diversity, he noted that our Senators and Representatives must come together to work for the common good and allow American communities to make decisions which affect their citizens. His passionate words resonated throughout the meeting hall and impressed local officials from around the country.

As is the usual tradition, Alabama delegates had the opportunity for face-to-face conversations with their United States Representatives. Dinners were held in various restaurants throughout Washington where smaller groups, broken down by U.S. Congressional districts, gave officials the opportunity to speak informally with their Congressman about specific issues and concerns affecting their district. These dinners are extremely important to the local official. Not only does the municipal official get valuable time with their elected member of the U.S. House, but they also meet many of their Congressman's staff members. These "staffers" are instrumental in helping officials with day-to-day issues that often come up with our constituency.

Municipal officials had the opportunity to join our U.S. Senators for breakfast during the conference. Senator Shelby and Senator Sessions both spoke on several issues presently before Congress. Both Senators have a high regard for our Alabama League of Municipalities and strive to always assist our League and local officials where they can. This year, we were also joined by the President of the NLC, Mayor Anthony Williams of Washington, DC. Mayor Williams was reminded that our League had the *largest* delegation in attendance at this year's conference.

Several issues important to cities and towns were mentioned regularly during the entire meeting. By far, the issue that probably affects most of us is the Community Development Block Grant program, commonly known as CDBG. Please join me in letting our representatives in Washington know that we cannot afford any cuts to the CDBG program. CDBG is important to all cities – large and small. We must join together and save this important grant program.

An Alabama official that rarely misses a Congressional Cities meeting is former League President Leon Smith, Mayor of Oxford. Mayor Smith was absent due to the health of several family members. Mayor Smith's absence was noted and he was included in our thoughts and prayers. Another longtime Alabama mayor and former two-time League President, Mayor Al DuPont of Tuscaloosa, was attending his last Congressional Cities meeting. Mayor DuPont announced last month that after 24 years as mayor, and 30 years as a city employee, he would not be running in his city's mayoral election this August. His recent 80th birthday was noted and he was congratulated on a long and successful career leading Tuscaloosa.

In closing, let me congratulate all of the newly elected officials – both mayors and councilmembers – who took the time to attend the Congressional Cities Conference. I appreciate your willingness to become involved. Your participation makes our League stronger. ■

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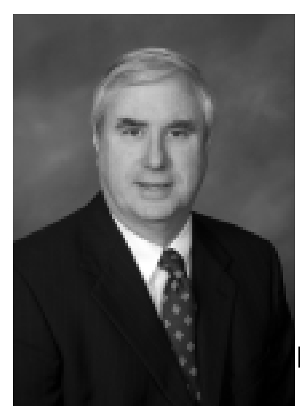

Municipal Overview

By
PERRY C. ROQUEMORE, JR.
Executive Director

NLC Releases 2005 State of America's Cities Survey

Transportation congestion, rising health care costs, uncertain economic development programs, inadequate housing and growing unemployment are at the top of the list of issues facing America's city officials, according to a new survey released by the National League of Cities. The State of America's Cities Survey also found that half of city officials are more pessimistic about the direction the country is heading. Not since 1995 have 50 percent of officials held this view.

NLC President Anthony A. Williams, mayor of Washington, D.C., released the report at the opening press conference of the Congressional City Conference, where he discussed the importance of partnering with the federal government to reverse the trends in economic conditions. "Six years ago, the nation's capital was struggling under a mountain of debt. Our downtown was rife with boarded up stores and parking lots." Williams said. "Today, we're a changed city. Gone are the deficits. We've had eight balanced budgets.

We've got $34 billion in economic development pouring into our city. Our progress came from hard work, but also from supportive programs like the Community Development Block Grant, Section 8 and the Community Oriented Policing Program." All of these programs, NLC officials noted, are under fire in President Bush's proposed budget. "When you look at the proposed FY 2006 budget, we see that it may adversely affect cities and towns of all sizes, precisely in those areas where we need federal assistance the most," said NLC First Vice President James Hunt, council member from Clarksburg, W.Va.

The report also cited health care as a major source of concern for many local elected officials. A majority of city officials (55 percent) cite the cost and availability of health services as a condition in their city that has worsened over the past year. During the past few years, the cost and availability of health services has consistently ranked as a top deteriorating condition (21 percent), one that poses a "major problem" for city officials (35 percent), and that needs to be addressed in coming years (15 percent).

City officials also saw growing unemployment as a major source of concern. Six in 10 city officials note that unemployment is either a major or moderate problem (18 percent and 42 percent, respectively) in their city. It is ranked as one of the top 10 conditions that city officials say have worsened in their communities during the past five years (15 percent) and needs to be addressed during the next two years (14 percent).

When city officials were asked in 2000 how unemployment had changed in the past year, only 6 percent responded that it had worsened. In 2005, nearly one in three city officials said that unemployment had worsened in the past year. Another significant finding is that four in 10 city officials saw an increase in the need for survival services for people in their city, including food, shelter, heating, clothing and healthcare.

Other major concerns cited by local elected officials in the survey were the impact of unfunded mandates and preemption of local authority, the availability of quality affordable housing, and racial and economic inequalities. Fifty percent of city officials are pessimistic about the general direction the country is heading (up slightly from 45 percent in 2004). Despite the national concerns, city officials are generally optimistic about the state of their individual cities.

The survey revealed that 90 percent of respondents feel that services are being adequately provided, that community and in quality of life factors are improving, and that there is the potential for better relations with other levels of government through positive impacts of federal and state government, and through collaboration with other local governments in their region.

"These and the many other critical issues facing local governments require a deliberate and effective partnership and a collaborative spirit between Washington, D.C., and Main Street USA," said NLC Second Vice President Bart Peterson, mayor of Indianapolis. "We are here in Washington to extend our hands to Congress and the Administration and to begin the work that needs to be done."

Details: To obtain a copy of the full report please contact Christy Brennan at 202-626-3036, or via e-mail at brennan@nlc.org. ■

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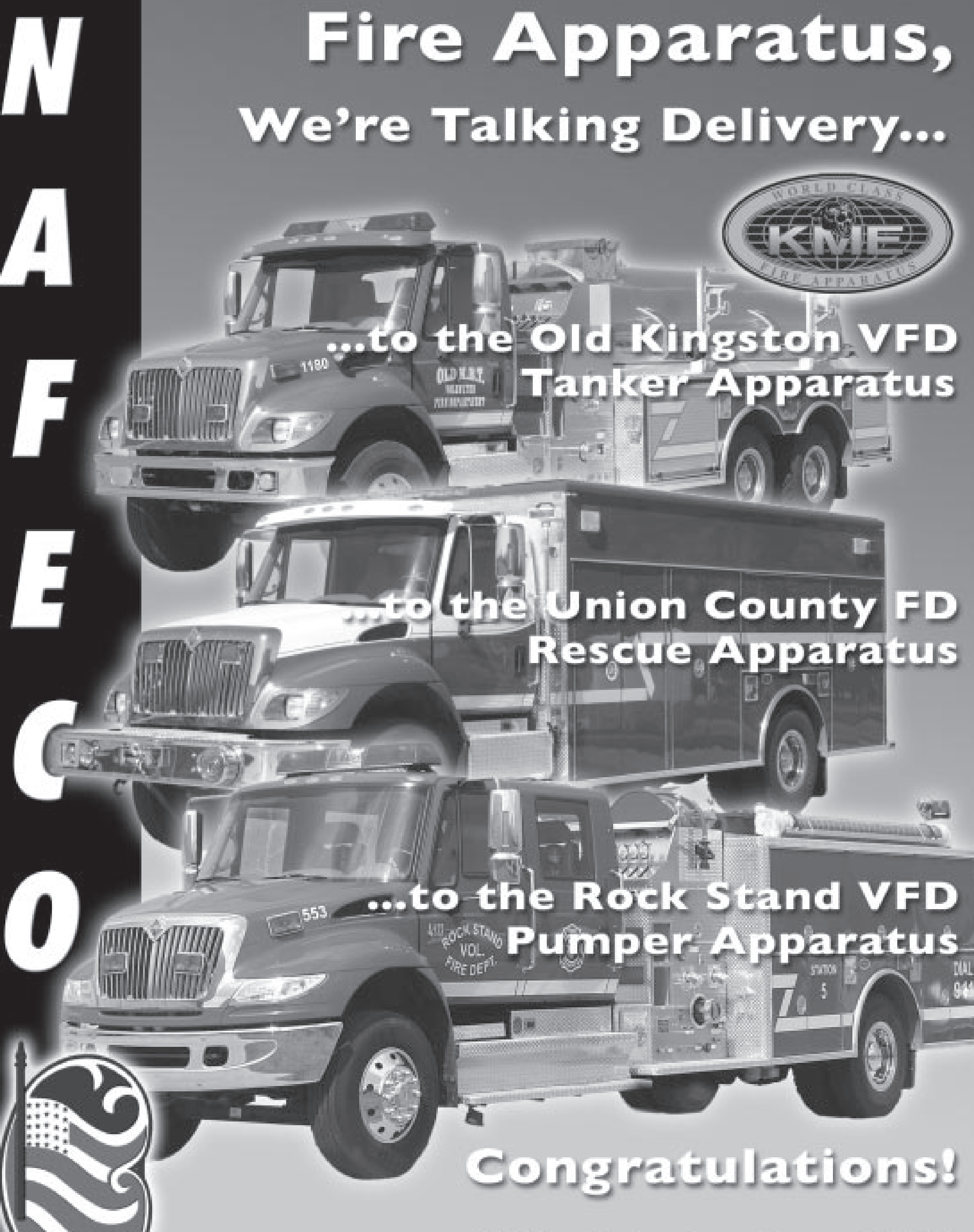

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ENVIRONMENTAL OUTLOOK

By Gregory D. Cochran
Director, Intergovernmental Relations

EPA Initiating Lead Reduction Plan

Lead Reduction Plan to strengthen, update and clarify existing requirements for water utilities and states to test for and reduce lead in drinking water. This action, which follows extensive analysis and assessment of current implementation of these regulations, will tighten monitoring, treatment, lead service line management and customer awareness. The plan also addresses lead in tap water in schools and child care facilities to further protect vulnerable populations.

"We need to free people from worrying about lead in their drinking water," said Ben Grumbles, EPA assistant administrator for water. "This plan will increase the accuracy and consistency of monitoring and reporting, and it ensures that where there is a problem, people will be notified and the problem will be dealt with quickly and properly."

From 1995-2004, states have concluded 1,753 enforcement actions to ensure compliance with the Lead and Copper Rule (LCR), and EPA has concluded 570. Under the Safe Drinking Water Act, state agencies take a lead role in enforcing the LCR. Lead is a highly toxic metal that was used for many years in products found in and around homes. Even at low levels, lead may cause a range of health effects including behavioral problems and learning disabilities. Children six years old and under are most at risk because this is when the brain is developing. The primary source of lead exposure for most children is lead-based paint in older homes. Lead in drinking water adds to that exposure. Drinking water does not start out containing lead. Lead is picked up as water passes through pipes and household plumbing fittings and fixtures that contain lead. Water leaches lead from these sources and becomes contaminated. In 1991, to reduce lead in drinking water, EPA issued the LCR. The LCR requires water utilities to reduce lead contamination by controlling the corrosiveness of water and, as needed, replace lead service lines used to carry water from the street to the home.

Under the LCR, if 10 percent of required sampling show lead levels above a 15 parts per billion (ppb) action level, the utility must 1) take a number of actions to control corrosion and 2) carry out public education to inform consumers of actions they can take to reduce their exposure to lead. If lead levels continue to be elevated after anti-corrosion treatment is installed, the utility must replace lead service lines.

Because virtually all lead enters water after it leaves the main system to enter individual homes and buildings, the LCR is the only drinking water regulation that requires utilities to test water at the tap. This also means that individual homes will have different levels of lead in their tap water due to the age or condition of pipes, plumbing materials and fixtures or other factors. For this reason, customer awareness and education are important components of the LCR and state and water utilities lead reduction programs. EPA plans to propose regulatory changes to the LCR in the following areas by early 2006:

Monitoring: To ensure that water samples reflect the effectiveness of lead controls, to clarify the timing of sample collection and to tighten criteria for reducing the frequency of monitoring.

Treatment Processes: To require that utilities notify states prior to changes in treatment so that states can provide direction or require additional monitoring. EPA will also revise existing guidance to help utilities maintain corrosion control while making treatment changes.

Customer Awareness: To require that water utilities notify occupants of the results of any testing that occurs within a home or facility. EPA will also seek changes to allow states and utilities to provide customers with utility-specific advice on tap flushing to reduce lead levels.

continued next page

Lead Service Line Management: To ensure that service lines that test below the action level re-evaluated after any major changes to treatment which could affect corrosion control.

Lead in Schools: The agency will update and expand 1994 guidance on testing for lead in school drinking water. EPA will emphasize partnerships with other federal agencies, utilities and schools to protect children from lead in drinking water.

In addition, the agency will convene a workshop in mid-2005 to discuss actions that can be taken to reduce the lead content of plumbing fittings and fixtures. EPA will also promote research in key areas, such as alternative approaches to tap monitoring and techniques for lead service line replacement.

The Drinking Water Lead Reduction Plan arose from EPAs analysis of the current adequacy of LCR and state and local implementation. From 2004-2005, EPA collected and analyzed lead concentration data and other information required by the regulations; carried out a review of implementation in states; held four expert workshops to further discuss elements of the regulations, and worked to better understand local and state efforts to monitor for lead in school drinking water, including convening a national meeting to discuss challenges and needs.

EPA's review of state and utility implementation shows that the LCR has been effective in more than 96 percent of water systems that serve 3,300 people or more. EPA will add elements and actions to the Drinking Water Lead Reduction Plan as needed based on results of any further research, analysis, and evaluation.

More information on National Review of LCR Implementation and Drinking Water Lead Reduction Plan is available online at: **www.epa.gov/safewater/lcrmr/lead_review.html**. Information about lead in drinking water is available online at: **www.epa.gov/safewater/lead** or by calling the Safe Drinking Water Hotline at 800-426-4791. Information about lead around the home is available online at: **www.epa.gov/lead** or from EPA's National Lead Information Center (NLIC) at 1-800-424-LEAD (5323). ■

The best thing about the future is that it only comes one day at a time.
– Abraham Lincoln

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THE LEGAL VIEWPOINT

By Ken Smith
Deputy Director/Chief Counsel

Working with the Municipal Attorney

What role does the municipal attorney play in your city or town? Is the attorney contacted on a regular basis and kept apprised of what's going on in the community, or is the municipal attorney only contacted when there's a crisis? The municipal attorney can play a valuable role in helping a municipality carry out its responsibilities and accomplish its objectives in a lawful manner. This article is designed to help officials and employees better understand who the attorney is and what the municipal attorney does, and offers some lessons and advice for using the municipal attorney more effectively.

Who is the municipal attorney?

This question may not be as easy to answer as it seems. Consider just how many attorneys municipalities use for various purposes. At different times and for different reasons, one municipality may employ an attorney for a bond issue, several attorneys to handle various litigation issues confronting the city, attorneys who are familiar with specific types of development programs or contract issues, or an attorney for personnel issues. The mayor may have an attorney, while the council has a separate attorney. And the list goes on.

Is one of these the municipal attorney? Or is it someone else?

The answer, of course, is that all or any one of these may be the municipal attorney. Often, a municipal attorney is called on to be familiar with the aspects of a broad range of issues that can confront his or her client, the municipality. It is not an overstatement that a municipal attorney probably has to confront, on a daily basis, a broader range of legal issues than attorneys practicing in almost any other field.

The answer varies to some extent from municipality to municipality. As a starting point for this analysis, Alabama law does not require that a municipality hire an attorney.[1] The League, though, strongly encourages every municipality to have an attorney, either in-house or on retainer (the well-known "out-house attorney") that it can call on for regular advice. It is advisable that either at or soon after the organizational meeting, the municipal appointing authority should obtain the services of an attorney and designate that person as the municipal attorney.

This attorney may or may not regularly attend council meetings or meetings of municipal boards and committees, but in any case should be expected to be available to answer and/or research questions the municipality needs to have resolved. Legal questions often depend on local factors and concerns that a local attorney can investigate and research. It is difficult to imagine that any municipality could effectively operate very long without the assistance of a local attorney.

Thus, the quick answer to the question of who is the municipal attorney is that he or she is the person designated for this role by the appointing authority.

In this age of specialization, municipal law is one practice area that requires lawyers to acquire at least a working knowledge of just about every legal arena. This is because of the broad range of issues that can confront a municipality. Municipal attorneys can be expected to answer questions in every field, ranging from criminal law to bankruptcy. Thus, municipal attorneys must attempt to acquire at least a working knowledge of all other practice areas, and to keep up with current developments. But the kind of intimate knowledge of every court decision, Attorney General Opinion, statute and regulation affecting all operations of municipal government required to competently handle every issue – much less provide an immediate answer to a question – is impossible.

In reality, a wise municipal attorney will at times encourage the municipal client to associate other attorneys or firms with more expertise to handle certain issues. An experienced municipal attorney recognizes his or her

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limitations and can advise the client when it should seek outside representation.

Municipal law is often quite complicated and there may be no clear-cut answer to your question. The attorney may have to examine city ordinances, the city charter, state statutes covering the form of government for your city, general statutes covering municipal government, state statutes on the particular legal issue(s), and/or appellate court opinions on the issue(s) involved. Simple facts can alter the attorney's opinion. Tracking down, sorting out, and evaluating all the authorities can take a lot time and study and the "final answer" may still not be clear.

Or the "legal" answer may seem to defy common sense. For instance, one lawyer recounted a story concerning a member of the public who complained during a meeting about stray cats getting into her garbage. She wanted to know why the City's ordinance against roaming dogs couldn't be used to deal with the problem. An elected official explained that "a cat is not a dog, isn't that right, City Attorney?" In this particular instance, the City's existing dog ordinance defined "dog" by incorporating by reference the definition of "animal" appearing in the old State rabies statute, which included cats in the definition. In this case, the city's ordinance did, in fact, define "dog" to include "cats."

So, designating a municipal attorney doesn't prevent the municipality from hiring other attorneys for specific purposes. In some cases, the municipal attorney may have a conflict. Or, the attorney may have to urge an employee or official to hire their own attorney because the interests of the municipal client and the individual are different. Or, the municipality may simply want different attorneys to handle different aspects of the municipality's legal business.

Who Appoints the Municipal Attorney?

In Opinion 90-00173, the Attorney General ruled that the council appoints the municipal attorney, "unless that position is covered by a civil service system or some uncodified provision of law." This answer, though, needs a more complete explanation.

Some municipalities have their own legislatively passed acts spelling out who makes the appointment of the municipal attorney. These are the exception, though, not the rule. General Alabama law does not explain who appoints the municipal attorney. And, again, the answer will vary from municipality to municipality.

Unless the council has removed this power by a general and permanent ordinance, most municipal employees are hired by the mayor pursuant to Section 11-43-81, Code of Alabama, 1975. At the same time, though, the council has the authority to approve municipal contracts by virtue of their authority to control municipal finances and property under Section 11-43-56 of the Code.

Most municipal attorneys are appointed pursuant to contract; they are not considered employees of the municipality. These attorneys represent other clients, and the municipality is merely one of these clients. In this case, the municipal attorney is appointed by the council.

On the other hand, in a few municipalities, most often municipalities that are larger in population, the attorney IS an employee. The position is created in the municipal civil service or other personnel rules and a person is hired to fill the job. In these instances, the attorney would be appointed as are all other municipal employees, unless some specific exception for this position exists. Since this is most often the mayor, the municipal attorney would be appointed by the mayor.

Who Does the Municipal Attorney Represent?

Although many lay people never consider this issue, a municipal attorney must always keep in mind just who he or she represents. Are the individual public officials (mayor and councilmembers) the clients? Is the "public" the client? Is it the corporate entity itself? Does the answer vary based on the circumstances? How this question is answered can alter the way in which the attorney confronts municipal legal problems.

Municipal attorneys, like all attorneys, are governed by the ethical standards of the profession. In Alabama, these standards are contained in the Rules of Professional Conduct of the Alabama State Bar.

Rule 1.13(a) states that "A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents."

The Comments to this Rule provide that "An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents." The constituents are defined as the "officers, directors, employees and shareholders . . . of the corporate organizational client." Thus, although the organization itself is the client, the attorney's immediate duty seems to be toward the officers themselves.

The Comments also make clear that this Rule applies to government lawyers as well. The Comments note, though, that "when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful official act is prevented or rectified, for public business is involved. . . ." Therefore, defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context. Although in some circumstances the client may be a specific agency, it is generally the government as a whole.

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Legal Notes

By Lorelei A. Lein
Staff Attorney

COURT DECISIONS

Annexation: Requiring annexation of property as a condition to providing water services is a reasonable condition precedent to the obligation of a utility to serve an applicant. *Brown v. City of Huntsville,* 891 So.2d 295 (Ala. 2004).

Eminent Domain: When the scope of an easement burdening a portion of a landowners' property is so sweeping as to be the equivalent of the taking of fee simple title to the property, it is a question of law for the trial court to decide, from the four corners of the deed granting the easement and the condemnation order, whether the condemnation constitutes a complete taking. In light of the sweeping, pervasive taking of a landowners' property as authorized by a condemnation order, particularly its broad reservation of future rights, the trial court properly deemed the easement at issue to be the equivalent of a taking of fee simple title to the entire property. *City of Huntsville v. Rowe,* 889 So.2d 553 (Ala. 2004).

Police Jurisdiction: A city which has been providing sewer service to the residents of the police jurisdiction for a number of years, but not pursuant to any agreement or contract, is not equitably estopped from no longer providing the service. Any municipal services being provided in a police jurisdiction without a formal contract or agreement can be prospectively altered in scope or terminated completely after appropriate public notice. *City of Attalla v. Dean Sausage Co., Inc.* 889 So.2d 559 (Ala.Civ.App. 2003).

ATTORNEY GENERAL OPINIONS

Elections: Under the Fair Campaign Practices Act , a principal campaign committee, upon terminating and dissolving the committee, may give the remaining funds in its bank account to a church of which the committee's candidate/chairman is a member if the church is a charitable organization as defined in Section 17-22A-7 of the Code of Alabama 1975. 2005-062.

Community Development Districts: A community development district, established pursuant to Section 35-8B-1, et seq. of the Code of Alabama 1975, is authorized to have a social club and the social club is authorized to hold an ABC Board license for the retail sale of alcoholic beverages even if it is located in a dry county or municipality. If a community development district is located in a dry county or in a dry municipality, the county or municipality is included in the distribution of taxes levied on the sale of alcoholic beverages in the same manner as those taxes would be distributed in a wet county or municipality. 2005-065.

Elections: The Secretary of State does not have the authority to require counties to select a certain type of voting system or to designate a certain vendor or several vendors from whom the county must purchase its electronic vote counting systems. Moreover, the Secretary of State does not have the authority to prevent a county governing body from purchasing its electronic vote counting systems from certain vendors. 2005-067.

continued next page

Boards: A director of a water and sewer authority organized pursuant to Section 11-88-1 et seq. of the Code of Alabama 1975, whose term has expired, continues to serve as a board member and chairman of the board until the director is reappointed or and new member is appointed. The term of office of the director begins to run retroactively to the date the prior term expired. 2005-070.

Offices and Officers: Mayors and councilmembers can receive a cost-of-living raise during their term of office pursuant to provisions in an ordinance providing for cost-of-living raises for municipal employees if the ordinance was adopted six months prior to the last general municipal election and before their present term of office. 2005-071.

Appropriations: The determination of whether a city may expend funds to improve drainage on private property must be made by the city governing body based on whether the improvement will serve a public purpose, and the city must have an easement on the land. A public purpose is served if the expenditure confers a direct public benefit of a reasonably general character, and this must be determined by the governing body on a case-by-case basis. 2005-073.

Offices and Officers: A city council cannot, by ordinance or resolution, establish the office of mayor as a full time position during the mayor's present term of office. Local or municipal class legislation is required to make the position of mayor a full-time position. The mayor, as a full time officer generally cannot, during his or her term of office, receive benefits that full time city employees collect unless the mayor is already receiving such benefits or had an expectation of receiving them as an incident of entering office. 2005-076.

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Federal Legislative and Regulatory Issues

Mary Ellen Wyatt Harrison
Staff Attorney

Community Development Block Grant (CDBG) Cuts are Imminent

The House Budget Committee plans to take up budget legislation that may have a drastic impact on funding for the Community Development Block Grant (CDBG) program. The committee will set overall spending caps for the various federal agencies. The Administration has proposed to move the CDBG program to the Department of Commerce at a drastically reduced level. If the Budget Committee sets spending caps based on the Administration's proposal, it would be difficult to fully fund CDBG within the Commerce Department budget and would pit funding for the CDBG program against other programs administered by the Department of Housing and Urban Development (HUD) if the program is not moved. At press time, the Senate was expected to take up its budget resolution the week of March 14.

Transportation Reauthorization Near?

The House Transportation and Infrastructure (T&I) Committee agreed in a voice vote on March 2 to send H.R. 3, the Transportation Equity Act: A Legacy for Users (TEA-LU), a bipartisan, multi-year transportation reauthorization bill to the full House for consideration. The bill calls for $284 billion in guaranteed spending through fiscal year 2009, endorsed also by the Administration in its fiscal year 2006 budget proposal. Nevertheless, the bill does not recommend what minimum guaranteed percentage of gas tax revenue states receive back in formula spending. This critical issue awaits final negotiation during an eventual House-Senate conference.

The committee quickly approved several largely technical amendments to the bill. Don Young (R-Alaska) offered the first amendment that, among other changes to the original bill, authorizes more than 3,300 member-requested transportation projects. The second amendment, by Rep. Spencer Baccus (R-Ala.) would exempt the motion picture industry from proposed hours-of-service regulations governing commercial truck drivers. The committee adopted a similar amendment in last year's House bill.

Committee members offered other amendments but then withdrew them in deference to moving the bipartisan bill out of committee, and with the expectation that their amendments may resurface during consideration by the full House. The House leadership expected the full House to consider H.R. 3 during the week of March 7. In a related development, the House Ways and Means Committee may complete its work by March 3 on H.R. 996, a companion tax bill to H.R. 3 that would extend the life of the Highway Trust Fund through fiscal year 2011.

Federal transportation programs currently operate under an extension of the Transportation Equity Act for the 21st Century (TEA-21), which originally expired on September 30, 2003. The current extension, the sixth enacted to date, expires on May 31, 2005.

On the Communications Front

The House Energy and Commerce Committee recently held hearings with telecommunications providers meant to assist lawmakers when they begin to rewrite the Communications Act. Since February 9, the committee has met with leaders in the communication industry to discuss Internet protocol, public safety communications and mergers in the telecommunications industry.

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Internet Protocol

On February 9, the Committee held a hearing entitled "How Internet Protocol-Enabled Services are Changing the Face of Communications" with testimony from the CEOs from Motorola, Siemens, Alcatel, Qualcomm and Lucent. The CEOs pushed for deregulation of communications at every level, emphasizing that technology is changing drastically. Deregulation is needed, they said, because almost any communications service existing today will be available using any technology. For example, Internet technology will allow someone with a cellular telephone to watch television programs.

Several CEOs also sought deregulation as a means to remedy the United States' low ranking in the world in broadband deployment. The CEOs also asked for more spectrum for advanced telecommunications technologies. The CEOs touched on several issues of particular concern to cities. The CEOs were supportive of legislation introduced by Rep. Cliff Stearns (R-Fla.), and Rep. Rick Boucher (D-Va.) that would deregulate all services over the Internet, including voice and video services—a move that is seen as detrimental to cities. When asked if they would support cities offering broadband service to citizens, the CEOs were supportive, but they expressed concerns that industry should not have to compete with municipalities because municipalities have advantages over industry.

Public Safety Communications

Rep. Joe Barton (R-Texas), chairman of the House Committee on Energy and Commerce, declared that he would introduce legislation that will force broadcasters to vacate from the frequency dedicated for public safety communication. At a hearing examining the clearing of the spectrum, Barton said he intends to be firm with the broadcaster and force them to observe the Dec. 31, 2006, deadline set by Congress nearly 10 years ago. The panelists, who represented the broadcast, cable and consumer electronics industries, did not focus on the fact that a lack of sufficient radio spectrum is resulting in serious congestion for critical communications between first responders.

The Government Accountability Office (GAO), which also testified at the hearing, limited its remarks to the feasibility of making the transition from analog to digital. With the exception of the broadcasters, all the panelists agreed that the 2006 deadline is achievable with minimal interruption for television viewers, provided that households relying solely on over-the-air transmission are provided with the equipment to transition from analog to digital. Many municipalities have lobbied for the release of the spectrum for public safety communication since the 1995 Oklahoma City bombing, and then again with the Sept. 11, 2001, terrorist attacks.

Major Mergers

On March 2, the Committee hosted a group of CEOs from the six telecommunications companies that will soon merge into three larger companies. Edward Whitacre and David Dorman represented the merger between SBC and AT&T. Ivan G. Seidenberg and Michael Capellas represented the Verizon/MCI merger. And the Nextel/ Sprint merger was represented by Gary Forsee and Timothy Donahue.

The CEOs described the SBC/AT&T merger and the Verizon/MCI merger as being driven by very similar forces. They explained that regulatory changes and new competition from cable companies and wireless drove AT&T and MCI out of the consumer market. The Bells wanted to gain strong players in the business market, and the nationwide and worldwide Internet infrastructure that belong to AT&T and MCI. Nextel and Sprint representatives said they are merging to increase their nationwide competitive stance in the wireless market, and plan to spin off the local telephone companies owned by Sprint to focus on wireless offerings. After the merger, Nextel and Sprint combined will be the third largest wireless competitor in the country.

Most of the committee members expressed support for the mergers, although many had significant concerns with competition in rural areas. They also questioned the companies' failures to deploy high-speed broadband services in rural areas. None of the CEOs made specific commitments in response to sharp questioning by several of the representatives on the committee. One representative stressed that he hoped these mergers would improve access to E911 services. The discussion of cities offering broadband service surfaced at this hearing as well, and again, the concerns of municipalities having an unfair advantage were raised. These hearings are part of a series of hearings to assist the House Energy and Commerce Committee as it prepares to draft new legislation rewriting the Communications Act. ■

Working with the Municipal Attorney continued from page 14

Despite the fact that the attorney's initial ethical obligation is to the mayor and councilmembers, the Rule states that if one or more of these officers plan to act in a manner that the attorney believes will be harmful to the organization, the attorney must take action to protect the organization. The Rule provides:

> "(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization."

The Comments suggest that if the lawyer fears that an action will result in substantial injury to the organization, the lawyer should first ask the officer to reconsider his or her decision. Failing that, the lawyer's next action may be to "have the matter reviewed by a higher authority in the organization." This, of course, is somewhat confusing in the case of a municipality. If an individual councilmember wants to take some action, then the higher authority would be the council as a whole.

But what about actions of the mayor? The council has no direct supervisory role over the mayor, so even referring this matter to them may not correct the situation. Neither the Rule nor the Comments provide much guidance on how the attorney should proceed in this instance, concluding only that, "At some point it may be useful or essential to obtain an independent legal opinion."

This Rule specifically preserves the duty of confidentiality that a lawyer owes a client. Additionally, the Comments to Rule 1.6, state simply that, "the requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance." The Comments to Rule 1.13, though, do seem to allow for some slight lessening of the standard since "public business is involved."

The Rule itself, though, makes no exception.

But to whom is the duty owed? Based on Rule 1.13, the attorney's first obligation seems to be to the individual officers, unless the action would substantially injure the organization. In that case, the attorney owes a duty to the organization since the Rule notes that the lawyer should bear in mind "the risk of revealing information relating to the representation to persons outside the organization" when attempting to prevent the harm.

Individual officers and employees are not the attorney's client. Officials and employees should not attempt or expect to persuade the municipal attorney to act in a manner that is inconsistent with the attorney's obligation to the client, the municipality. The attorney's interest must be to represent the municipality to the best of his or her ability. At times, the municipal attorney may not be able to keep everything he or she is told confidential. This may arise when the legal interests of the municipality and those of the individual differ. At these times, the attorney may even have to encourage the individual to seek independent legal representation.

This is not meant to discourage full and complete discussions with the attorney. Although it is clear that sometimes the attorney will ask you to reveal information that you may find embarrassing or possibly even irresponsible. But if you want your attorney to adequately represent you, you MUST be willing to reveal any and all pertinent data, even if to you the information seems completely irrelevant. Legal answers can often depend on minute facts that to a lay person seem private or unrelated, so a lawyer will often be forced to seek this information, sometimes even if he or she can't fully identify how it will impact the issue. No lawyer wants to have something revealed to them for the first time by opposing counsel during a trial.

A municipality can only be adequately represented by an attorney who is receiving full cooperation and assistance. Thus, it is crucial that you trust the attorney you hire. If you don't trust your attorney, you should find someone you do trust. You must be willing to take advice from the attorney and follow it.

It seems that this should go without stating, but it is human nature to want to look good. Everyone wants to put the best spin on stories that involve them. Remember, though, that when confronted with a legal issue, your lawyer is not asking questions in order to embarrass you. Your lawyer is trying to help you help him or her develop facts so that he or she can better represent you.

Questions asked by an attorney are designed to obtain

continued next page

ALL the facts. Concealed facts tend to come to light anyway – often when raised in court by opposing counsel with no time to adequately prepare a defense. This is not a position you want your attorney in.

If you disagree with the advice your lawyer gives you, explain to him why you disagree. You may be aware of facts that might change the lawyer's conclusion. Or, your reasoning may alter the lawyer's advice. On the other hand, the lawyer may be able to convince you that his or her guidance is correct by elaborating on the legal, political or practical ramifications of a particular course of action.

The League urges officials and employees, not to disregard the lawyer's advice without a full understanding of the potential outcome and a willingness to assume the risks pointed out to you by the lawyer. As one attorney said he sometimes tells clients, "My job is to buy lunch and keep you out of jail. If you insist on proceeding in this manner, there will be no reason to make lunch reservations with me next week."

The Spirit of Cooperation

As indicated, legal representation of a municipality is a team effort. No lawyer represents any client alone. There are many ways clients can assist their attorneys.

For instance, you can provide your lawyer with any and all paperwork you have concerning the matter at hand. Your lawyer will need access to all material, hardcopy or in electronic form, and will need your assistance in locating this material. Search your memory and files to be sure that all documentation has been discovered. Documents you can't locate have an odd habit of turning up in the hands of the person who either is or may soon be suing you.

Similarly, let your lawyer know about any witnesses to any events you're describing, and help your lawyer locate those witnesses.

Another tip is to make and keep readable records. Save copies of important documents in an organized fashion. Without documentation, proving an action becomes much more difficult. Frequently, factual issues arise about whether the municipality actually did take a particular course of action. Sometimes, the reasons behind an action are crucial. You can help your lawyer by documenting these facts at the time they occur.

Avoid making statements to other people about an on-going case. These comments, often made innocently, may present a different view of facts or issues than your lawyer wants to present at trial, and what you tell someone may be used to contradict you on cross-examination. Remember, you can think a thought as much as you want, but once you say it, it's said.

Keep your lawyer in the loop. Let him or her know of any new developments on an issue.

Discuss questionable actions with your lawyer prior to taking them. This is one instance when it is generally better to ask for permission rather than forgiveness. Contracts, ordinances and other written actions of the municipality should be reviewed by your attorney before they are adopted or approved. The League urges you to involve the attorney before taking disciplinary actions against employees. There are many other instances where your attorney may either urge you not to act at all, or may be able to help you avoid some legal mine fields along the way.

The old adage is worth heeding: An ounce of prevention is worth a pound of cure.

More General Advice

A couple of tips about seeking advice from the attorney may be in order.

When possible, get legal advice from your attorney in private. Municipalities are public entities, so at times it may be necessary, or even legally required, that the advice you want has to be asked for during a public meeting. If so, try to avoid putting the attorney in a situation where the answer must be provided immediately. If the question concerns an issue where the answer is not readily clear, and the action can wait until the next meeting, it may be appropriate to let the matter lay over so the attorney can fully research it. If an issue is going to be raised in an open meeting, try to give your attorney notice so he can be prepared to respond. This not only ensures the attorney has ample opportunity to research and uncover the correct answer, it also gives him or her time to defuse any political bombs that might arise as a result of the current situation.

Even outside of a public meeting, be sensitive to your surroundings when asking a question. This advice applies equally to lawyers and their clients. Asking or responding to questions in an inappropriate location can show a startling lack of sensibility. Almost every lawyer has been asked legal questions in unusual circumstances—in the bathroom or while shopping, sometimes even within hearing of the very people being discussed.

Similarly, avoid asking questions in front of a citizen or constituent. In cases like this, an official may be putting the attorney in the impossible position of trying to find some way to avoid perpetuating a misstatement of law while at the same time avoiding publicly embarrassing the official.

Don't ask the attorney to resolve legal questions for a constituent. This is wrong on many levels. Remember that your attorney's livelihood depends on clients and he or she is representing you at the moment. If you ask the attorney to work for a private citizen, he or she has every right to send that citizen a bill for his time, potentially embarrassing the elected official. Another problem raised by this is that sometimes, the very question being asked requires an answer

that is not in the interests of the municipality. In this instance, the attorney simply cannot respond and is put in the awkward position of finding a graceful way to refuse to help, making both the official and the attorney look bad.

When asking a question, your goal should not be to prove your attorney wrong. You may have given the issue a lot of thought. You may even have discussed it with friends and family, or researched it yourself. If you have come to a conclusion ahead of time, it may be appropriate to give the lawyer your thoughts, then ask for his analysis. Not doing this can have a number of adverse effects, such as embarrassment, an appearance of incompetence, and a lack of credibility – both for the questioner and the answerer.

Closely related to this is the situation where a client asks the attorney a question, then, seeks the advice of another attorney, or of the League. While there may be valid reasons to ask for a second opinion, try to avoid using lawyers to second-guess each other. Warn the second lawyer that you have already sought the advice of someone else, and let them know what that advice was. This is simply common courtesy.

Obviously, these recommendations cannot always be followed to the letter. Sometimes, questions have to be asked in public and need an immediate response. However, a sensitivity to the reality of the complicated nature of municipal law can help limit these instances, helping ensure that all legal inquiries are adequately researched so that all ramifications can be considered.

Conclusion

The idea behind this article was that a fuller explanation of the crucial relationship between the lawyer and the client can only help both parties better serve the public. Nothing included was intended to offend anyone. We all share a common goal: making your municipality successful. Part of that is to make certain that all laws are complied with.

The League encourages municipal officials and employees to discuss expectations with their attorney, even before hiring. This will help the lawyer understand exactly what the municipality wants the attorney to do. Do you want the attorney at council meetings? Is the attorney expected to represent any municipal boards? Who can ask the attorney questions on behalf of the municipality? These, and any other matters you can think of, should be part of the agreement.

The relationship, though, will probably change and develop over time. There may be other aspects of municipal operations that officials feel need advice from the attorney. These matters can be dealt with as they arise.

Hopefully, this article has been helpful to both municipal clients and the attorneys who represent them. ■

(Footnotes)

[1] Some municipalities are required to hire a municipal attorney by the specific legislation setting up their form of government. These municipalities should refer to this legislation to determine the method of appointment and other aspects concerning the attorney.

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3. Interest calculated at four percent on your monthly retirement benefit and member contribution deposits made to your DROP account.

The monthly retirement allowance you will receive after withdrawal from service may be recalculated to include accrued sick leave. However, the number of days converted cannot exceed the number of days you had on the date you entered DROP. You are not allowed to change the option for the month-ly retirement allowance chosen at the beginning of the DROP participation period.

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If you **withdraw from service voluntarily** within the first three years of DROP, you will forfeit the DROP funds based on the monthly retirement benefits paid to your account. You may elect to receive the following in either a lump-sum payment or make a direct rollover to a qualified plan:

1. Member contributions deducted from your salary and deposited into your DROP account.
2. Interest calculated at four percent on your monthly retirement benefit and member contribution deposits made to your DROP account.

The monthly retirement allowance you will receive after withdrawal from service may be recalculated to include accrued sick leave. However, the number of days converted cannot exceed the number of days you had on the date you entered DROP. You are not allowed to change the option for the month-ly retirement allowance chosen at the beginning of the DROP participation period.

If a member **dies anytime during the DROP participation** period and the beneficiary is the **spouse**, the spouse may elect to receive the following funds in either a lump-sum payment or make a direct rollover to a qualified plan. **Non-spouse** beneficiary(s) may only receive the following funds in a lump-sum pay-ment:

1. The monthly retirement benefits deposited into your DROP account. Benefit deposits are based on the retirement option elected upon entering DROP.
2. Member contributions deducted from your salary and deposited into your DROP account.
3. Interest calculated at four percent on your monthly retirement benefit and member contribution deposits made to your DROP account.

Any retirement benefit based on the retirement option selected by the member at the beginning of the DROP participation period will be paid to the beneficiary(s). The monthly retirement allowance may be recalculated to include accrued sick leave. However, the number of days converted cannot exceed the number of days the par-ticipant had on the date he or she entered DROP. The beneficiary is not allowed to change the option for the monthly retirement allowance chosen at the beginning of the DROP participation period. No death before retirement benefit will be paid to the estate or beneficiary.

If you **do not withdraw from service** after completing your DROP participation, you will resume active contributing membership in the ERS for the purpose of earning creditable service. No time spent participating in DROP will be counted as creditable service.

DROP participants may receive distribution of their DROP account funds in two ways:

1. Receive a lump sum-payment of the total DROP account balance less the required 20% federal income tax withholding. No portion of the distribution is subject to state of Alabama income tax.
2. Rollover all or a portion of the account balance to a traditional IRA, another employer retirement plan, a 403(b) Tax Sheltered Annuity, or a governmental 457(b) plan that accepts rollovers. **The RSA-1 Deferred Compensation Plan (457 plan) now accepts rollovers from your DROP account.**

Read the SPECIAL TAX NOTICE REGARDING RSA PAYMENTS that will be distributed to you prior to making your selection. All of the forms listed in this section are available from the ERS, your payroll officer or may be downloaded from our Web site at **www.rsa.state.al.us**. No distribution from your DROP account will be made until you terminate employment with any RSA participating agency.

Applying for DROP Distribution – Early Termination

1. Complete the REQUEST FOR DISTRIBUTION form (RSA 10 D-D) required to authorize distribution of the DROP account balance. The election to receive either a lump-sum payment or to make a rollover will be made on this form. The form must be signed and notarized, but no employer certification is required.
2. Complete the REQUEST FOR EARLY TERMINATION OF DROP form (ERS 10 D-E). Indicate the reason for the early termination and complete the federal income tax withholding certificate. Sign and have the form notarized before sending it to your employing agency for them to certify your employment. You and your employer need to complete the Insurance Authorization information on the reverse side of the form.
3. Send both the completed REQUEST FOR DISTRIBUTION and the REQUEST FOR EARLY TERMINATION OF DROP to the ERS. Both forms must be completed and returned to the ERS at least 30 days prior to termination of employment, if possible.
4. Supporting documentation must be included with the forms. If the termination is involuntary, submit a copy of the termination letter. If the termination is due to a disability, the DROP participant must complete and submit the REPORT OF DISABILITY PACKET. The STATEMENT OF EXAMINING PHYSICIAN form (also used to apply for a disability retirement) in the REPORT OF DISABILITY PACKET must be signed by the member and completed by his or her attending physician. If the termination is due to involuntary transfer of spouse, submit a copy of the transfer letter on company letterhead.
5. If you elected to have all or a portion of your account balance rolled over to a qualified plan, the ERS will send you the REFUND ROLLOVER ESTIMATE AND ELECTION form (RSA-ROLLOVER) after receiving the REQUEST FOR DISTRIBUTION and the REQUEST FOR EARLY TERMINATION forms. You will elect how your account balance will be rolled over and to which eligible retirement plan you want your funds rolled into. Sign and have the REFUND ROLLOVER ESTIMATE AND ELECTION form notarized before sending it to the Plan Administrator of the eligible retirement plan you have elected to roll your account balance into. Your Plan Administrator should mail the completed form to the ERS.

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DROP Distribution

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Applying for DROP Distribution – Participation Period Completed

1. Complete the Request For Distribution form (RSA 10 D-D) required to authorize distribution of the DROP account balance. The election to receive either a lump-sum payment or to make a rollover will be made on this form. The form must be signed and notarized, but no employer certification is required.
2. Complete the Request For DROP Termination Participation Period Completed form (ERS 10 D-C). Complete the federal income tax withholding certificate. Sign and have the form notarized before sending it to your employing agency for them to certify your employment. You and your employer will also have to complete the Insurance Authorization information on the reverse side of the form.
3. Send both the completed Request For Distribution form and the Request For DROP Termination Participation Period Completed form to the ERS. Both forms must be completed and returned to the ERS at least 30 days prior to termination of employment, if possible.
4. If you elected to have all or a portion of your account balance rolled over to a qualified plan, the ERS will send you the Refund Rollover Estimate and Election form (RSA-ROLLOVER) after receiving the Request for Distribution and the Request for Termination forms. You will elect how your account balance will be rolled over and to which eligible retirement plan you want your funds rolled into. Sign and have the Refund Rollover Estimate and Election form notarized before sending it to the Plan Administrator of the eligible retirement plan you have elected to roll your account balance into. Your Plan Administrator should mail the completed form to the ERS.

Applying for DROP Distribution – Death During DROP Participation

1. The beneficiary must complete the Application for Beneficiary Payment – DROP form (RSA-DROP BEN). The beneficiary will complete Part I and Part II, sign and have the form notarized. The employer of the deceased member will complete Part III and send the form to the ERS. A copy of the death certificate must accompany this form.
2. How the DROP account balance is distributed depends on whether the beneficiary is a surviving spouse or not. A non-spousal beneficiary must take the distribution in a lump-sum payment. Rollovers are not available to non-spousal beneficiaries. If the beneficiary is a surviving spouse, the surviving spouse may elect to either have the full account balance paid directly to them less the 20% mandatory withholding on taxable portion of payment, or have all or a portion of the account balance rolled over into an eligible retirement plan.
3. If the surviving spouse elects to have all or a portion of the deceased member's account balance rolled over to a qualified plan, the ERS will send him or her the Refund Rollover Estimate and Election form (RSA-ROLLOVER). The surviving spouse will elect how the account balance will be rolled over and to which eligible retirement plan the funds will roll into. Sign and have the form notarized before sending it to the Plan Administrator of the eligible retirement plan you have elected to roll your account balance into. Your Plan Administrator should mail the completed form to the ERS.

DROP Participation Period Completed – Will Continue Employment

1. Complete the Request for DROP Termination Participation Period Completed/Continued Service form (RSA 10 D-CCE). Check the box indicating you will be continuing employment after you have completed the DROP participation period. Sign the form and have it notarized. Have your employer certify your employment and have them return the form to the ERS.

Prepared by the Communications staff of the Retirement Systems of Alabama.
To have your questions answered in "Speaking of Retirement", please address them to:
Mike Pegues, Communications, Retirement Systems of Alabama, P. O. Box 302150, Montgomery, AL 36130-2150

Horace Edward Johnson

Horace Edward Johnson, former councilmember of Brewton, died November 21, 2004. He was 89. Johnson served on the Council from 1988 to 1992. He was a school teacher and owned his own general contracting business in Michigan. He served the U.S. Army during World War II, was an active member of the NAACP, the International Benevolent Society and was chair of the Deacons of the west Florida/South Alabama Association of the Primitive Baptist Church for many years. He is survived by his daughter and grandchild. ■

Joseph W. "Jodie" Taylor

Joseph W. "Jodie" Taylor, former councilmember of Lincoln City, died December 5, 2004. He was 94. Taylor served on the Council from 1967 to 1979 where he helped to establish an ambulance service, create a full-time Fire Department and upgrade the Police Department. After leaving the Council, Taylor served as supervisor for the Water Department for many years. He is survived by two stepdaughters, one son and one grandson. ■

Robert "Bobby" L. McKinney

Robert "Bobby" L. McKinney, former councilmember of Tuscumbia, died December 8, 2004. He was 74. McKinney served in the Colbert County school system for many years as a teacher, coach, principal, guidance counselor and superintendent. He was a member of the First Baptist Church of Tuscumbia and is survived by his daughter, son and two grandchildren. ■

Chester Hilton Roberts

Chester Hilton Roberts, former mayor of Silas, died January 2, 2005. He was 88. Roberts was self-employed as a forester and is survived by his daughter, several grandchildren and five grandchildren. ■

Clarence Edward "Ebb" Dawkins

Clarence Edward "Ebb" Dawkins, former mayor of Cordova, died January 29, 2005. He was 74. He served as mayor from 1992 until 1996. He was also the superintendent of the Cordova Water & Gas Board, where he served as a member until 2000. He also filled a five-year term on the board of the Cordova Housing Authority.

Dawkins was retired from Pullman Standard and Cordova Clay Company and was a retired member of the Army National Guard. He was a member of Mt. Carmel Baptist Church and is survived by his wife, two daughters, two sons, nine grandchildren and three great-grandchildren. ■

Robert Limbaugh, Sr.

Robert Limbaugh, Sr., former mayor of Childersburg, died February 14, 2005. He was 90. Limbaugh was first elected to the Council, where he served for eight years before being elected mayor. He created the first Zoning Board in Childersburg, the first Board of Adjustments and Appeals and organized the East Alabama Planning Commission. He opened Limbaugh hardware in 1945, which he operated for 39 years.

He was an active member of First United Methodist of Childersburg and is survived by his wife, two sons, two daughters, 11 grandchildren and 13 great-grandchildren. ■

Jane Gullatt

Jane Gullatt, former mayor of Phenix City, died March 8, 2005. He was 72. Gullatt, who was the first female mayor of Phenix City, served from 1980 until 1990 and then joined the Alabama Legislature, becoming one of only seven women serving in the House of Representatives.

Prior to her political career, Gullatt was a journalists for 20 years working for the *Columbus Enquirer, Pensacola News* and *Tuscaloosa News*. For seven years, she was editor and publisher of the *Phenix Citizen*. She began her political career when she was elected to the City Council in 1977 -- the first woman councilmember.

She is survived by her husband. ■

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