

# The Alabama Municipal JOURNAL

November/December 2013 Volume 71, Number 5

# ETHICS

A CONVERSATION WITH THE DIRECTOR OF THE ALABAMA ETHICS COMMISSION

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# The Alabama Municipal JOURNAL

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## On the Cover:

Established by the Legislature in 1973, the Alabama Ethics Commission is the state agency responsible for monitoring the ethical behavior of public officials and employees at the municipal, county and state levels. See page 11 for a candid conversation with Jim Sumner, Director of the Commission.

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# A Message from the Editor



This past August, I had the unique opportunity to visit with Jim Sumner, Director of the Alabama Ethics Commission, to discuss Alabama's ethics laws, the Commission and his role with this important organization established by the Legislature in 1973 to monitor the ethical behavior of public employees at the state, county and municipal levels. Presented in a question/answer format, the article begins on page 11. For a copy of the "Guidelines for Public Officials and Employees," visit [www.ethics.alabama.gov](http://www.ethics.alabama.gov). There's a prominent link to this 24-page pdf on the homepage.

## Have you liked us on Facebook?

In September, the League launched its official Facebook page at [www.facebook.com/ALALM](http://www.facebook.com/ALALM). If you have a Facebook account, please like our page so League updates will appear in your newsfeed. We will be using this platform as another means to deliver information as well as a place to post pictures during various League events, particularly the 2014 Annual Convention in Mobile May 3-6.

Social media platforms are growing exponentially and rapidly becoming a common means for people to seek information and participate in a larger dialogue. Conversations have grown from a few people in a room to thousands of people throughout the world. Facebook opened to everyone 13 years and older with a valid email address on September 26, 2006, and had 12 million users by the end of that year. By March 2013, Facebook claimed 1.1 billion active monthly users and 665 million active daily users. The League recognizes that digital technology is quickly becoming an expected means for communication. Our Facebook page will be another way for us to promote the activities and successes of both our organization and our membership so I encourage you to establish a personal Facebook account if you don't have one already. There's no doubt you will be hearing much more about social media platforms and the impact of digital technology on municipal government in the coming months and years.

## Annual Convention Scheduled for May 3-6

Mobile is the host city for our 79th Annual Convention May 3-6. Several changes will be made to the 2014 schedule to include more roundtable and discussion groups. See "The Municipal Overview" on page 7 for an advance look at the League's plans to make the convention more interactive and to provide more opportunities for you to discuss problems and solutions with your colleagues from around the state. Hotel room blocks open November 5th, so look for notices from the League by mail, email and via our webpage, [www.alalm.org](http://www.alalm.org), with specific information. If you've not yet signed up for *This Week*, the League's weekly e-newsletter, please do so immediately as convention updates will be posted there as well. (You may subscribe to *This Week* by clicking on the red link near the top of our homepage that says "Sign up for our e-newsletters." Simply fill out the information requested.) In addition, registration information for the 2014 Convention has been included on pages 28-30 of this publication.

## Congratulations to League Executive Director Ken Smith

Ken was presented with the Outstanding League State Counsel Award by the International Municipal Lawyers Association (IMLA) during its annual convention in October. This award recognizes attorneys who serve as counsel to their state league of cities or association of counties, towns or other local government entities and who are recognized for their valued service to the members of their organizations and for their skills as attorneys.

Carrie

# The President's Report

By Mayor Walt Maddox, Tuscaloosa



## Questioning the Status Quo Seeking New Solutions

I have always found sound advice in a quote by Arthur Ralph Nichols who stated: “The most basic of all human needs is the need to understand and to be understood. The best way to understand people is to listen to them.”

When you provided me the honor of being President of the Alabama League of Municipalities, I pledged to conduct a listening tour with our members so we could understand the challenges you face. Through understanding your needs, I believed we could strategically position the League to serve you by remaining relevant and strong.

At recent CMO trainings in Loxley, Montgomery, Huntsville and Tuscaloosa, Vice-President Wally Burns, Executive Director Ken Smith, Lori Lein, Cindy Price and I heard from nearly 200 members. To say the least, we all learned a great deal, and have gained a wealth of new ideas and information to move forward with in the coming months.

### A Strong League is Critical to the Future of Alabama's Municipalities

Why do we need to question the status quo or seek new solutions to provide services? For me, I believe if we become too comfortable in the League's past traditions or reputation, it will be building to the policies and practices of the past and not advancing with a plan that is focused on the future. And, speaking of the future, the horizons for municipalities are clouded with multiple challenges, as we learned at the CMO meetings.

Regardless of population, our cities and towns are facing issues in transportation, corrections, mental health, zoning and new regulations filtering from Washington D.C. and Montgomery. From Scottsboro to Bay Minette, these de facto, unfunded mandates are squeezing already tight budgets.

Standing in the gap is the League, which serves as our voice in the corridors of the Capital. The League's strength is reflective of our large membership and, more importantly, our active participation.

I firmly believe that municipalities are the engines of innovation and ingenuity with a focus on solving problems and improving the quality of life of our citizens. To ensure a brighter future collectively, we must also work as individual members to protect the relevancy of our League. To that end, that is why we listened. We want to understand how you see the League and what you feel is important to meet present and future challenges.

### What Are League Members Saying?

The consistent theme is that you are satisfied with the League and that our services in training, legal and legislative advocacy are efficient and effective. Further, nearly every CMO attendee stated that they are receiving League communications and the electronic formats are popular. This made Mayor Burns and me very proud and the credit belongs to our dedicated and talented staff.

Looking to the future, it was clear that League members wanted to see more roundtable discussions at convention, particularly with towns/cities in the same population range. Another desire was moving towards more web-based content, especially as it relates to training materials. We heard clearly that more concurrent sessions were encouraged with emphasis on understanding governmental budgeting, applying technology/social media in municipal services and learning more about annexation.

If there was one area of concern, it was the decreasing number of members who attended the four regional training sessions. It is my understanding that this trend has emerged in recent years. The lack of attendees, in and of itself, is an indicator that we need to explore alternatives to communicate and encourage our members to access training opportunities. Mayor Burns, Ken and I have discussed this at length, and we are hopeful to unveil some new ideas in the coming months.

### The Process

I will admit that when we hear the word “process” in Alabama we think of something other than the League's listening tour. However, engaging our members directly was a critical process for us to ensure relevancy as an effective organization. Thanks to your participation, we were able to understand how you value the League and understand your expectations in the coming months and years.

The official listening tour has concluded but your opportunities to shape the League are continuous. By being active, and attending Convention and CMO trainings, you will be prepared to meet the challenges of your community. In addition, being active gives you a chance to provide us feedback and ideas on how to improve the League's services.

Also, I want to encourage you to email or Tweet me directly if you have any ideas that can shape our League or concerns you feel need to be addressed. I can be reached at mayor@tuscaloosa.com or @waltermaddox. ■



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# Municipal Overview

By Ken Smith, Executive Director



## An Advance Glimpse of the 2014 League Convention

**A**t this year's League graduation ceremony for Certified Municipal Officials, Montgomery Mayor Todd Strange provided a compelling reason for municipalities to consider attending the 2014 Annual League Convention. After congratulating the attendees for their accomplishments, Mayor Strange praised the League for its training efforts when he said: "An idea developed at a League meeting has produced a major annual revenue stream for the City of Montgomery."

Comments like that are music to the ears of your League staff. We love to know that our efforts are helping make our members more successful. Of course, not every story is that dramatic. And, while we can't guarantee that you'll find an idea that brings extra money into your municipal coffers, the League's annual convention stands as the showcase event for municipal officials and staff and provides you with an opportunity to meet face-to-face with individuals from similar municipalities across Alabama and learn the latest developments affecting you. Plus you never know – the next great suggestion may be waiting for you during the next session or conversation.

Last year, more than 1,100 officials, staff members and spouses attended the League's convention in Montgomery, discussing common issues and working with each other to solve common problems. Representatives came from municipalities across Alabama with populations ranging from Lowndesboro at 115 to Birmingham at 212,237. This year, the League's 79<sup>th</sup> Annual Convention will be held May 3 – 6 in Mobile. Although October may seem early to be discussing a Convention that won't take place until May, it's not too early to remind you to add the Convention to your calendar and make plans to attend. Hotel room blocks open November 5th, so look for notices from the League by mail, email and on our webpage. Also, the League is making several significant changes to the Convention schedule, and we want you to know about these changes *now* so you won't accidentally miss any of your favorite sessions in Mobile.

### What did the evaluations show?

The changes will be implemented as a direct response to member requests as determined from member evaluations and surveys the League conducted regarding the 2013 League Convention in Montgomery. While by almost any measure the Montgomery Convention has to be considered a success, the evaluations indicated that there is always room for improvement.

After giving the evaluations due consideration, our staff determined that several key changes were warranted.

The League asks attendees' their opinions both during and following each Convention. During the Convention, evaluation forms are provided as part of the Certified Municipal Official Program for each attendee's immediate impressions of an event. These forms tell us whether the program achieved its goals and indicate if the speakers were effective. As we all know, initial responses are often the most important. In addition to the on-site surveys, we conduct a more detailed, post-Convention survey of attendees designed to give us a better overview of the convention as a whole. First, let's take a look at the data from the CMO evaluation forms (*note*: not everyone who turned in a form completed the evaluation questions).

**Resolutions Committee** (number of CMO forms submitted was 104): 48 answered "very informative," 17 answered "informative," 5 "somewhat informative" and 0 "not informative".

**Opening Session** (number of CMO forms submitted was 313): 152 answered "very informative," 64 answered "informative," 3 "somewhat informative" and 0 "not informative".

**General Session – Building Communities and NLC Update** (number of CMO forms submitted was 508): 222 answered "very informative," 141 answered "informative," 14 "somewhat informative" and 0 "not informative".

**Concurrent Session 1 – Maximizing Recreational Facilities in Your Community** (number of CMO forms submitted was 153): 51 answered "very informative," 49 answered "informative," 7 "somewhat informative" and 1 "not informative".

**Concurrent Session 2 – Understanding City Financial Statements** (number of CMO forms submitted was 199): 84 answered "very informative," 69 answered "informative," 11 "somewhat informative" and 0 "not informative".

**Concurrent Session 3 – Walk This Way – Complete Streets** (number of CMO forms submitted was 120): 45 answered "very informative," 46 answered "informative," 1 "somewhat informative" and 0 "not informative".

**Concurrent Session 4 – Alabama's Immigration Law Overview** (number of CMO forms submitted was 75): 28 answered "very informative," 23 answered "informative," 2 "somewhat informative" and 0 "not informative".

**Concurrent Session 5 – Employees and Technology** (number of CMO forms submitted was 144): 53 answered "very informative," 50 answered "informative," 4 "somewhat informative" and 3 "not informative".

**Concurrent Session 6 – Helping Your Community Manage Disasters** (number of CMO forms submitted was 201): 94 answered “very informative,” 52 answered “informative,” 1 “somewhat informative” and 0 “not informative”.

**General Session – Building Communities and NLC Update** (number of CMO forms submitted was 424): 199 answered “very informative,” 114 answered “informative,” 0 “somewhat informative” and 0 “not informative”.

**General Session – Ask Your Attorney** (number of CMO forms submitted was 250): 144 answered “very informative,” 58 answered “informative,” 2 “somewhat informative” and 1 “not informative”.

While not all attendees completed and returned evaluations forms, we can still form a few overall impressions from this data, including a general idea of how attendance was split among each concurrent session, how many people attended each session and their thoughts on whether the information was useful to them. If the overall results of a session were favorable, that lets us know that similar topics may be helpful in the future. We also use this information to help us make sure that the concurrent session topics each attracted approximately the same number of attendees. If everyone attends one session over the other offerings, perhaps it should have been a general session.

The post-Convention survey is perhaps even more helpful. Although the number of responses we received to the survey this year was low, here are some of the key findings from that survey:

The majority of respondents listed Education Sessions as their main reason to attend the League Convention, with a strong majority responding that it was either the first or second most important activity. This was closely followed by Networking Opportunities. Another significant majority of attendees listed Discussion Opportunities as the first or second most important reason to attend. If you add the number of respondents who cited Discussion Opportunities to Networking Opportunities, the opportunity to connect with peers is clearly the prime reason individuals attend the convention. The least important activity at the Convention, as cited by our members, is Entertainment: a strong majority listed it last as the reason they attended the convention.

When asked what they liked most about the convention, Networking was again cited most often, followed closely by Roundtable Discussions. Again, these two are so closely related that they should probably be added together to help us determine what attendees most enjoy. Speakers, Training Sessions, the Expo Hall and the Opening Reception were also cited by several attendees as what they liked best.

The Annual Business Meeting was not evaluated, but several attendees provided comments regarding the Business Meeting. In fact, when asked what they liked least about the Convention, perhaps the activity most often cited was the Business Session. The most common reason for this seems to be that the meeting is simply “too long.” Of course, the Business Session is a necessary part of the Convention as this is where our membership elects leaders and sets the direction for the upcoming year. So, we can’t simply cancel it. We can, however, look at ways to streamline it and make it more accessible for our members. Therefore, expect significant changes to the Business Session in Mobile.

## **So, what changes are coming?**

While an overview of the numbers is helpful, reading individual comments is often more instructive – and entertaining. When members take the time to include comments on their evaluations, we want to make sure to read them and consider them carefully. This year, there were several similar comments regarding the sessions that we took into consideration as we developed the agenda for next year’s convention.

First, as noted above, you’re likely to see several differences in the Business Session to help us hold members’ attention and hopefully move it along more quickly. In addition, the League staff has come up with several tentative changes we think will better serve our members’ needs, as reflected by this survey data. Keep in mind, the ideas presented here are still in progress and the staff is continuing to solidify the 2014 agenda.

### **Saturday**

The Convention, as in the past, starts on Saturday. The opening events follow the same schedule as in previous years: Resolution Committee meets at 11:00; AMIC will hold its Annual Meeting at 1:00; and the Opening Session is from 3:00 to 5:00. The only change in the Saturday schedule is that the ABC-LEO Reception moves from Sunday evening to Saturday evening from 5:15 to 6:15, placing it after the Opening Session. The Host City’s Reception will follow the ABC-LEO reception. This will allow for better spacing for events than we’ve had in the past where events overlapped each other on Sunday.

### **Sunday**

You’ll notice major changes to the Sunday schedule. The Roundtable Discussions have been moved to Monday for a reason that will be discussed in a moment. Concurrent Sessions will replace the Roundtables on Sunday and, possibly, a General Session for all attendees. The topics have not yet been selected, of course, but a major change that is being considered for at least some of the Concurrent Sessions is to change the format from one using a presenter to either an opportunity for group discussions around specific topics or Topical Roundtables.

What is a Topical Roundtable? The concept is fairly simple. Rather than separating attendees into groups based on population, attendees will be able to attend one of several sessions broken down into topical areas. For instance, one topic group might focus on animal control, while another covers issues related to solid waste collection. The discussions in these rooms should relate to the topics assigned for that session.

Whichever format these Sunday afternoon sessions follow, the idea is to provide a forum for members to educate each other on issues affecting them. This accommodates the many, many requests we’ve had for more Roundtable Discussion groups.

As in the past, the Exhibitors Reception will follow Sunday’s training events. The Sunday morning prayer session will return to the schedule in Mobile as well. One thing that is not likely to change on Sunday in Mobile is the golf tournament format. In Montgomery, the golf tournament was a nine-hole event. Although at least one golfer indicated that he would prefer playing 18 holes, by our standards, the event proved successful. More attendees played golf than in the past; there was greater participation by our

*continued on page 23*

# The Legal Viewpoint

By Lori Lein, General Counsel



## Expenses of Municipal Officers and Employees

Last month we specifically discussed the payment of legal expenses of municipal officers and employees who are involved in civil suits or criminal actions. Continuing with the theme of payment of expenses, this month we will discuss more broadly the payment of expenses, other than legal expenses, of officers and employees. Generally, in the absence of any legal provision to the contrary, municipalities are not liable for the expenses their officers and employees incur. McQuillen, *Municipal Corporations*, 3rd Edition, Section 12.190. Most states, however, have enacted laws authorizing municipalities to reimburse officers and employees for expenses they incur in the performance of their official duties.

In Alabama, Sections 36-7-1 through 36-7-5, Code of Alabama 1975, provide a method for municipalities to reimburse officials and employees for expenses incurred while traveling beyond the municipal limits on official business. In addition, the Attorney General's office has consistently held that officials may be reimbursed for all expenses incurred in the performance of official duties.

This article discusses expense allowances and some of the issues which have arisen concerning reimbursement of municipal officials and employees for their expenses.

### Expense Allowances

While there is no express statutory or judicial requirement that municipalities in Alabama reimburse employees and officials for their expenses, most municipalities do so. By the same token, there is no prohibition on reimbursement, provided that the actions of the municipality do not violate Sections 68 and 281, or Amendment 92, of the Constitution of Alabama 1901, or Sections 11-43-9 and 11-43-80, Code of Alabama 1975. These sections prohibit granting extra compensation to officers and employees after a service is rendered and also prohibit increasing or decreasing the salaries of municipal officials during the term in which they serve. Additionally, to advance travel expenses, the municipality and the official receiving the advance must comply with Section 36-7-3, Code of Alabama 1975, which sets out mandatory procedures to account for travel advances.

Clearly, the reimbursement of actual expenses does not violate these laws. The municipal official or employee is not receiving any extra compensation when reimbursement is received for expenses. Instead, the official or employee is left in the same position which he or she occupied prior to incurring any expenses.

Similarly, a municipality may establish a flat expense allowance for its employees or officials. In an opinion addressed to Hon. W. W. Malone, Jr., city attorney for Athens, dated October 20, 1965, the Attorney General's office stated "this office has consistently held ... that a flat expense allowance, if based upon a reimbursement to the officer concerned for expenses incurred by him in the performance of his official duties and bearing a reasonable and substantially accurate relationship to the actual expenses incurred, is not considered as an increase in compensation." See, also, AGO 2008-038.

Thus, a municipality may, by ordinance, establish a flat expense allowance to be paid to its officials on a periodic basis provided the allowance bears a reasonable and substantially accurate relationship to the actual expenses incurred. To the extent an expense allowance exceeds actual expenses, however, it is an unauthorized increase in salary and violates the sections of the constitution and code cited above. AGO 1981-187 (to Hon. E. W. Patton, Jr., January 28, 1981). Also, amounts above actual expenses must be treated as income by the official or employee for income tax purposes.

Similarly, the Attorney General has ruled that a park board, formed and operating pursuant to section 11-86-1, et seq., of the Code of Alabama may create an expense account to pay travel and other expenses incurred by the director and staff of the Board while in performance of their official duties if the expense allowance bears a reasonable and substantially accurate relationship to the expenses incurred. To the extent an expense allowance exceeds actual expenses, however, it is an unauthorized increase in salary and violates sections 68 and 281 and Amendment 92 of the Constitution of Alabama. AGO 2008-016.

Recognizing the difficulty of determining whether an expense allowance is reasonably related to actual expenses incurred, the Attorney General's office advised, in AGO 1981-187, that the better practice is for municipalities to adopt a policy of reimbursing their officers for the actual expenses incurred while performing their duties only after receiving an affidavit from the officer listing the expenses. This method helps avoid the potential legal and tax problems encountered when a municipal official is paid a fixed periodic sum for expenses. The Attorney General's office, however, pointed out that no law is violated when a municipality authorizes paying its officials a fixed expense allowance.

A \$100 per diem provided to members of a board that is in addition to the reimbursement for travel expenses is considered

a salary or compensation. An expense allowance, however, is not compensation. AGO 2008-038.

### Items Allowed in Expense Allowances

Regardless of whether a municipality chooses to reimburse its officials only for their actual expenses or to authorize paying them a fixed expense allowance, the general rule appears to be that municipal officers are entitled to reimbursement for all reasonable and necessary expenses legitimately incurred in the performance of their official duties. Regarding the specific items which may be considered as legitimate expenses, the Attorney General's office has stated that this determination must ultimately be made by the municipal governing body.

Some guidance, however, was provided in the opinion to Mayor Patton cited above. In that opinion, the Attorney General stated that expenses for phone calls, gasoline and automobile repairs may be included in the expense allowance, provided that the expenses were incurred in the performance of official duties; the time spent performing these official duties cannot be included in the expense allowance. Municipal officials are compensated for their time by salary and any extra money received for their time equates to an impermissible salary increase.

In an opinion to Hon. George W. Ivy, Jr. and Hon. John M. Anthony, Jr., dated December 2, 1974, the Attorney General ruled that municipalities have no authority to furnish telephone service at a city commissioners business or residence, even if he or she establishes his or her official office at either location.

The provision of telephone service is particularly appropriate for demonstrating the difficulties of using a flat monthly expense allowance. If the official is allotted a certain amount of money for telephone expenses yet does not make enough official calls to justify this amount, the official would be required to refund the extra funds to the city. Similarly, if the official spends more money for telephone calls than is allotted, reimbursement would be requested from the city. Reimbursing the official for actual expenses removes these difficulties.

Finally, the Attorney General has ruled that municipalities may not pay the civic club dues of their officers or employees. Municipalities may, however, furnish city officials with automobiles, provided the automobiles are used solely for official municipal business. AGO to Hon. John M. Franklin, January 28, 1974. A municipality has the power to reimburse volunteers for mileage they incur on municipal business, if the council determines that reimbursing mileage serves a municipal purpose. AGO 1995-134.

### Travel Expenses

While flat expense allowances are permissible for municipal officials who incur expenses in the performance of their official duties while in the municipality, in an opinion to Hon. Emory Folmar, mayor of Montgomery, dated May 19, 1980, the Attorney General stated that this allowance cannot "include reimbursement for expenses incurred while traveling or remaining beyond the limits of the municipality." Instead, reimbursement for expenses "beyond the limits of the municipality" is governed by Sections 36-7-1 through 36-7-5, Code of Alabama 1975.

Section 36-7-1, Code of Alabama 1975, provides that no officer or employee of a municipality or county in Alabama shall be reimbursed from the treasury of the municipality or county unless an itemized statement of expenses is presented and is approved as

provided in Section 36-7-2, Code of Alabama 1975.

Section 36-7-2 requires the officer or employee, immediately upon return, to present the statement to the municipal comptroller in a commission-governed municipality and to the treasurer in a council-manager municipality. This statement must be presented to the council or commission at a regular meeting held within 30 days after it is presented to the comptroller or treasurer. If the governing body disallows the statement, the official or employee cannot be reimbursed. It is the opinion of the League that if the governing body finds only certain items should be disallowed, those items may be deleted from the statement and the statement approved as amended.

In an opinion to Hon. B. R. Winstead, Jr., director of finance for Birmingham, dated October 31, 1973, the Attorney General ruled that, although Section 36-7-2 requires the official who incurred the expenses to present the itemized statement of expenses immediately upon returning from his or her trip, the official must simply present the statement as soon as is practicable after returning. Then, in order for the official to receive reimbursement for those expenses, the municipal governing body must, at a regular meeting within 30 days after the statement is presented, approve the statement of expenses.

The Attorney General has held that a town council may require its municipally sanctioned volunteer fire department to provide the town with un-redacted copies of fire and emergency medical services reports to keep on file for use in determining the reimbursement of expenses of department personnel making fire and medical calls. 2007-111

### Advances

Section 36-7-3, Code of Alabama 1975, states that no sum shall be advanced from the municipal treasury to defray the travel expenses of a municipal official or employee unless the governing body passes a resolution allowing the expense. This resolution must state the purpose and object of the proposed trip.

The Court of Civil Appeals of Alabama has held that a city council may not retroactively approve an advance of travel expenses which were not properly made pursuant to Title 36, Chapter 7, Article 1, Code of Alabama 1975. *Cassady v. Claiborne*, 590 So.2d 339 (Ala. Civ. App. 1991).

When funds are advanced to a municipal official or employee, an itemized statement, as specified in Section 37-6-1, must be presented immediately upon the return of the official or employee. Failure to present this statement and to have it approved renders the officer or employee personally liable to the municipality for the advanced funds. If the officer or employee receives a salary for services, the amount of the advance can be deducted from any future salary received from the city.

The provisions of the code which deal with reimbursement of expenses for traveling beyond the municipal limits – including the provisions relating to advancement of funds – do not apply to the use of a municipal credit card beyond the corporate limits on official municipal business. *See* Section 36-7-1, Code of Alabama 1975. Thus, a municipal council does not have to approve, by resolution in advance, the use of a credit card issued in the name of a municipality for trips outside the municipality by municipal officers and employees.

*continued on page 27*

# ETHICALLY SPEAKING

A CONVERSATION WITH THE DIRECTOR OF THE ALABAMA ETHICS COMMISSION

By: Carrie Banks • Communications Director • ALM

**E**stablished by the Legislature in 1973, the Alabama Ethics Commission is the state agency responsible for monitoring the ethical behavior of public officials and employees at the municipal, county and state levels. In 1997, Jasper native James L. “Jim” Sumner, Jr. was appointed director of the Ethics Commission, which is headquartered in downtown Montgomery. Jim is a graduate of the University of Alabama and Cumberland School of Law. Earlier in his career, he was an assistant attorney general, served in the lieutenant governor’s office and worked in the administration of the University of Alabama system. Since his appointment, Jim has worked closely with ALM to provide the required ethics training to Alabama’s municipal officials and employees. This past August, I had the unique opportunity to visit with Jim and discuss Alabama’s ethics laws, the Ethics Commission and his role with this important organization. For more information about the Alabama Ethics Commission, or for a copy of the “Guidelines for Public Officials and Employees,” visit [www.ethics.alabama.gov](http://www.ethics.alabama.gov).

## What’s the purpose of the Alabama Ethics Commission?

The underlying purpose of the Ethics Law and Commission was to monitor and enforce the law with regard to the ethical behavior of public officials and employees at the state, county and municipal levels of government. It was put in place on the heels of Watergate in 1973 when most all the states adopted ethics laws or campaign finance laws. Alabama adopted our statute during the 1973 Regular Session.

## How many commissioners serve and how are they chosen?

There are five commissioners. The statute just says that they have to be of good, moral character and standing. Of course, they have to be citizens of the state. The Governor, Lt. Governor and Speaker of the House are the appointing authorities and must jointly decide who is appointed to the Ethics Commission. Each person they select and jointly recommend to the senate has to be confirmed by the senate. Commissioners serve five-year, staggered terms and are from all over the state and all walks of life. They may be laypeople, business people, attorneys, bankers ... They are compensated only \$50 per meeting – if they opt to take the compensation. Some of them don’t. Even so, it would only amount to \$300 per year.

We get one new commissioner each year as one leaves. The beauty of that is their terms generally exceed beyond the

terms of the people who had a hand in their selection, so it sort of removes them from politics. The statute also says very clearly that members of the Commission and the staff cannot be involved in partisan politics in any way other than voting.

## How often does the Commission meet?

The Commission currently meets once every two months – the first Wednesday of the even-numbered months. We’re a small staff working through somewhere between 250 and 300 complaints a year, so the schedule allows the staff to do its work in between the meetings. When they meet, the Commissioners have a full day with anywhere from five to eight cases during that day. Their role is to listen to testimony and to make determinations



as to whether or not there’s been probable cause that the law’s been violated. They’ll then vote on those cases. Prior to the meeting, our investigators have gathered documents, taken statements and prepared a case file for the Commissioners to consider and read before they come in.

The hearing itself involves actually listening to witnesses give live testimony – much as they would before a grand jury. It’s not an open process. The only thing open is the beginning and the end. They always vote in public. They come to a conclusion at the end of each case – they generally vote the case that day. There are times when they might need to interview a person again; they will then continue the case until the next meeting. I would say probably nine times out of 10, if not 95 times out of 100, it is dealt with at the hearing.

### How many people are employed by the Ethics Commission?

There are currently 16 people employed by the Commission. That virtually takes us back to where we were when I came on in 1997. At one point, in 2004, we got down to eight employees. We worked our way back up incrementally to about 13. Once the reforms were passed in 2010, (then) Governor Riley and the Legislature saw to it that we had an additional appropriation and we've taken that number back to 16. There's a director who happens to be an attorney – the statute doesn't require it, although I think it's essential to the job – and there's a general counsel. So there are only two attorneys at the Commission. We have five POST-certified (Peace Officer Standards and Training) investigators, a finance person and the rest are clerical positions.

Ours is not an agency that would ever grow to 35-50 people. I think with the number of people we currently have, we could run the agency until the end of time.

### What are the main functions of the Ethics Commission?

First and foremost we render advisory opinions as to what can be done under the statutes. Those can be granted to any person – you do not have to be a public official or employee to get an opinion from the Ethics Commission. We also receive complaints and conduct investigations – probably the most high profile and noted thing in terms of press coverage and so forth. We also have filed with us yearly Statements of Economic Interest and certain other filings that are required under the statute that indicate a person's source of income, family relationships, business relationships, property they may hold for investment and any nonspecific debts they might have. For instance, if a public official came into office indicating \$300,000 worth of debt and is in office two years and



suddenly has no debt, you'd have to figure out how that happened. These filings apply to public officials and public employees who meet certain criteria. Public officials are anyone elected or appointed to public office at the state, county and municipal levels of government. Last year we had approximately 57,000 people file Statements of Economic Interest out of the 308,000 people who are covered by the Ethics Law (public officials and employees).

Education is also a main function of the Commission. Over the last 16 years – the period of time since I've been here – we have conducted over 900 seminars on the Ethics Law. Our goal is to make sure people know what the law is before they run afoul of it. We take education very seriously. The 2010 amendments put in place mandatory training that now has to be done, by law, for all public officials and public employees who meet certain criteria. Therefore, a lot of that training is now done by a 55-minute video that's on our website, which prevents us from having to do day-to-day training in a classroom in another town or county. However, we

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will always do live training for the League of Municipalities, the county commission association, probate judges, sheriffs, members of the Legislature and the constitutional officers of the state.

Another main function of the Commission is to register lobbyists and principals – those people or businesses that hire lobbyists. In round numbers, we registered around 625 lobbyists this past year and over 800 principals. It's a huge number of filings that take place annually and quarterly. It's now done online. As recently as five years ago, it was all done by paper. So we've gone from essentially handling somewhere in the range of 500,000 pages of paper between the lobbyists and the Statements of Economic Interest to where 87 to 90 percent of all the Statements of Economic Interest and lobbyist and principal filings are done online. And it's all public information – always has been. Since 1973, every single filing with the Ethics Commission not related to an investigation is public information. (**Editor's Note:** During our discussion, Jim noted the number of lobbyists has grown exponentially since the mid-1970s when he first began his career. At that time, he said there were probably less than 15 lobbyists, but that the numbers began to explode in the mid-1990s and have grown annually since.)

### **What is the Commission's annual budget?**

The budget is \$1.7 million dollars for this year (beginning October 1<sup>st</sup>). Last year it was \$1.4 million and got down in 2004 to about \$600,000. With the amendments and the statute and the commitment that was made to the Commission, the legislative leadership and the Governor have seen to it that we are adequately funded to carry out our mission. We're very pleased with the budget that we have now.

### **What's the cost to operate the Commission?**

The budget just covers what it takes to actually run the Commission.

### **How many complaints does the Commission receive yearly?**

Essentially we get a complaint every day for each day the Commission is open – in the range of 250 to 300 or so. They can be anything from frivolous to extremely serious. All complaints go through the same process – a mechanism that has served us well and allows us to make sure we're making the right determination with regard to each complaint. We also come down on the side of over communicating with people involved in the complaint – either in writing or directly.

### **What's the process for investigating a complaint?**

The process is very simple. The complaint can be filed by letter – we might send them back a complaint form because it has some language in it that states you are beginning a legal process, you may have to provide testimony, you may have to provide additional information, you need to understand what you're doing. On every single complaint that is filed with us, a file is opened, assigned a case number and reviewed in our legal counsel's office. Once it goes through that process to determine whether or not it's under our jurisdiction and whether or not it meets the minimal criteria for an investigation, then it is sent to the chief of our investigative division who then assigns it to someone to be investigated. They then will seek to get documents and materials and will interview the complainant, respondent, witnesses, so forth and begin to

put together a case file. At that point, it is put on the schedule to go before the Commission at its next regularly scheduled meeting. Nothing happens quickly because, at any point in time, our investigative division is juggling between 60 and 75 cases. So it takes somewhere between several weeks to several months to work through the process. The 2010 amendments require that we conduct our investigation within six months. We're the only investigative agency in the state that has a limitation on how long we can investigate something. The statute does provide that we can seek from our Commissioners an additional 180-day extension.

### **Is the time limit beneficial?**

I don't think it will ever be changed, but you should never put a constraint on an investigative agency because some things are extremely complex and you may just be getting started good at the six-month point. Certainly, I don't advocate that something go on for two or three years, but you don't want to have an artificial constraint that says you have to have this done by a certain time. We're not in charge of all the documents and the people and so forth. It has been enormously helpful, however, to have subpoena power (via the 2010 amendments), but even that takes time.

### **What's the most common ethics complaint the Commission receives?**

The most common we receive is from the local level – cities, towns and counties – where someone is using their position to benefit not necessarily themselves but their family – getting someone in their family a job, a promotion, a contract – or they're doing something that benefits their business. Those things are not allowed under the Ethics Law.

### **How can municipal officials avoid this common ethics violation?**

The simple answer is to think in terms of: "is this decision or act that I'm about to undertake going to benefit me, my family or my business – or my family's business – in some way?" If it doesn't, then they're free to move ahead with that decision. However, if the answer is "yes, it does in some way benefit me or my family or my business," then step away.

### **How many ethics complaints lead to actual referrals?**

The Commission is limited to finding probable cause that the law's been violated. We then forward the case to the district attorney or the Attorney General. I would say 25 to 35 cases a year are sent to a DA or the Attorney General. From there, the DA or Attorney General makes the decision whether or not to take it forward to a grand jury and a trial.

### **Does your process quickly identify vendetta and invalid complaints and how many of those do you receive a year?**

We fairly quickly see where there is a vendetta complaint – such as a political rival filing a complaint against someone – and we quickly weed that out. I've said all along we're not going to allow the Commission to be used as a political drive-by shooting over a vendetta. Of that category, probably two-thirds of the cases are quickly set aside and closed – either by the staff or by the Commission.

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### How many advisory and informal advisory opinions are issued each year and what's the difference?

Normally we would issue five or six opinions at each meeting. Over the period that I've been here, we have probably issued something in the range of 25 to 30 advisory opinions a year. The last two or three years, altogether we've only issued about 17. I think it had to do with the fact that right after the 2010 amendments, we issued some extremely complicated and lengthy opinions about what those changes meant, so we covered a lot of territory by those opinions.

Informal opinions – and there are many more of those – could equal two to three times as many as the formal opinions. Informal opinions are simply the director or the general counsel writing a letter to someone answering an inquiry based on the previously rendered opinions of the Commission and their understanding of the Ethics Law. In other words, it's the director and general counsel saying here's what the Commission has decided about this issue and here's how we think you should conduct yourself.

### What kinds of questions do you receive from municipal officials and employees?

Probably the most common question we get from municipal officials is generally from a councilmember wanting to know whether or not they can vote on an issue that may affect them or their family or their business. Often times we receive the question the afternoon of the Council meeting that night – which makes it a little more difficult for us to sort through.

### What's the most important advice you give to elected officials?

If it's not going to look good in the headline of the local newspaper the next day when you get up, it's probably not a good idea to do whatever it is you're contemplating doing.

### Have you seen a beneficial trend with the new laws?

Yes, we've seen a beneficial trend – mainly because we have had to do the mandatory training for officials and employees. We've had fewer complaints. And because of the subpoena power granted to the Commission, we've been able to get through complicated cases more quickly. I think the 2010 amendments were enormously important and helpful to the Ethics Commission. It was revolutionary to get the changes that were made at that time. Things like that only happen when the stars align perfectly.

### How do Alabama's ethics laws compare to those of other states, particularly the Southern Region?

In every credible study I've seen over the past several years and since the 2010 amendments, Alabama has ranked in the top three, four, five in the country in terms of the statute. But occasionally – and I think everyone can relate to this – you'll see some study based on some limited set of criteria. The most recent one I saw had to do with judicial filings. It just looked at statements of financial interest for Supreme Court justices around the country, and, in that particular study, we did not do well. But I don't think that was a mainstream study and it looked at a very finite area of what the law covers. Generally, whether it's the Center for Public Integrity, the Council of State Governments or the National Conference of State Legislatures, if they're looking



at the statutes from all the ethics commissions from around the country – and only 41 states have ethics commissions – we have always ranked in the top 10.

### How has technology changed the Ethics Commission?

Technology has taken us from the days of several clerical people sorting and filing 500,000 pages of paper a year to having almost all of those filings come in electronically. There are now helpful online tools: the video that's a 55-minute, section by section, walk-through of the statute and is exactly the same seminar I do if I'm in a city, town or county around the state; all of our advisory opinions since 1995 forward are on the website; and we've also posted "Guidelines for Public Officials and Employees" that brings in the 2010, 2011 and 2012 amendments to the Ethics Law. What's great about that particular piece is it's not too thick for someone to read through and literally includes questions and answers and dos and don'ts about all the various areas of the statute. The 2010 amendments also required a Transparency Database be included on our website. So everything that is filed with the Ethics Commission that is not related to an investigation is scanned and entered into

*continued on page 21*

# Legal Clearinghouse

Rob Johnston, Assistant General Counsel

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

## ALABAMA COURT DECISIONS

**Criminal Law:** The trial court's violation of the defendant's Sixth Amendment right to counsel, by failing to inform defendant of his right to counsel at a hearing on motion to withdraw his guilty plea to murder that defendant had filed without the assistance of his appointed counsel, required a reversal of denial of the motion and remand for a hearing on his motion to withdraw the plea. *Ex parte Pritchett*, 117 So.3d 356 (Ala.2012)

## UNITED STATES COURT DECISIONS AFFECTING ALABAMA

**Labor Decisions:** The overtime exemptions under the Fair Labor Standards Act are to be applied only to those employees who are "plainly and unmistakably" within the terms and spirit of the Act. A fact issue existed as to whether a lieutenants' primary duty was responding to and extinguishing fires, and a fact issue existed as to whether the city misrepresented and concealed the basis for its decision to stop paying lieutenants overtime. *Watkins v. City of Montgomery*, 919 F.Supp.2d 1254, (M.D.Ala.2013)

**Civil Rights:** An arrestee's failure to respond to motion for summary judgment by chief of police was an abandonment of his § 1983 claims against the chief alleging negligence in hiring, training, supervision,

and retention. There was no evidence of any city policy or ordered unlawful act related to the arrestee's alleged false imprisonment and malicious prosecution, as required for § 1983 claims against the city for malicious prosecution and negligence in hiring, training, supervision, and retention. *James v. City of Birmingham*, Ala. 926 F.Supp.2d 1260 (N.D.Ala.2013)

**Labor Decisions:** An accommodation is not reasonable, for Americans with Disabilities Act (ADA) purposes, if it requires the employer to eliminate an essential function of a job. Similarly, reasonable accommodation does not require that an employer create a new permanent position for an employee who cannot carry out the essential functions of existing jobs under the Americans with Disabilities Act of 1990. *Daughtry v. Army Fleet Support, LLC*, 925 F.Supp.2d 1277 (M.D.Ala.2013)

## DECISIONS FROM OTHER JURISDICTIONS

**Employees:** Two former sheriff's department employees who lost their jobs because they expressed support for a rival candidate on his Facebook campaign page can bring First Amendment retaliation claims. *Bland v. Roberts*, --- F.3d ---, 2013 WL 5228033 (4<sup>th</sup> Cir.2013)

## ATTORNEY GENERAL'S OPINIONS

**Nuisances:** Class 5, 6 and 8 municipalities are not required to adopt the provisions of sections 11-53A-1 through 11-53A-6 of the Code of Alabama to demolish structures determined to be unsafe. AGO 2013-068.

**E-911:** Alabama law does not exempt instrumentalities of the United States from the statewide 911 charge imposed by section 11-98-5 of the Code of Alabama. Whether they are exempt pursuant to federal law is not addressed. AGO 2013-064

**Property:** A town may lease surplus real property to a non-employee, or to an employee who does not participate in the discussion of the consideration of the lease by the town council, for rent in an amount determined by the council to be adequate consideration. AGO 2013-067



**Contracts:** A municipality may enter into an agreement with the U.S. Army Corps of Engineers (“Corps”) to provide trash removal, janitorial services, mowing, landscaping, nominal maintenance, and surveillance for a park and campground that is owned by the Corps and is located in the municipal police jurisdiction. The agreement would not obligate the municipality to provide such services throughout the police jurisdiction. AGO 2014-001

**Courts:** Section 155 of article VI of the Constitution of Alabama prohibits a person from being appointed as a full-time or part-time municipal judge after the person reaches the age of 70. A person serving as a municipal

judge who reaches the age of 70 during his or her term may continue to serve as a municipal judge until the end of that person’s term of office or until a successor is appointed. AGO 2014-002

**ETHICS COMMISSION ADVISORY OPINIONS**

**AO 2013-09:** An administrator of a Municipal Housing Authority who serves as a city council member may not, as a city council member, vote, attempt to influence or otherwise participate in financial issues between the housing authority and the municipality regardless of whether or not the property at issue is in the council member’s district. ■



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### 2014 Safe Workplace Guidelines

The Statement of Commitment has been renamed “Safe Workplace Guidelines” for 2014 to better identify the objectives of this document which is comprised of safety guidelines that each member is encouraged to follow. It is updated annually and mailed to every MWCF member during November. **If it is signed and returned by December 1, 2013, a 3% discount will be reflected on the 2014-2015 billing. This two-page document must be renewed each year.**

### Post Accident Drug and Alcohol Testing Program

The MWCF provides an additional 3% discount for those members that commit to a Post Accident Drug and Alcohol Testing program. In order to qualify, a member must sign a “Participating Commitment” (which will be enclosed with the above mentioned document) and have such program certified by their attorney that the member’s drug and alcohol policy is Fourth Amendment compliant. Unlike the Safe Workplace Guidelines, this document does not have to be renewed each year.

### Medical Protocol

Another 3% discount is available to those members who establish and implement a Medical Protocol. This program is a great benefit to both the member and the claims management team. A sample protocol will be included in the November mailout for those members that do not yet have one on file. For further information, call MWCF at 1-888-736-0210.

## Bonus Discount!

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MWCF members who participate in all three programs will receive a bonus 1% discount – earning those members a full 10% discount on their annual premium for 2014! All members are encouraged to watch for the Safe Workplace Guidelines information packet coming to you in November and return it promptly to take advantage of these benefits. It will also be available for downloading on our website by going to the MWCF page at [www.almwcf.org](http://www.almwcf.org).

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our database and is accessible by the public 24 hours a day, seven days a week.

Technology has also reduced the number of questions we receive because all these resources are online. We still get a number of calls every day because a lot of people just want to talk to somebody. But, for the most part, people seem to be going to the online resources first and then calling just to confirm what they've decided on their own.

### Does the Ethics Commission receive a lot of media inquiries?

Yes. We probably receive, on average, 10 inquiries during the course of a week. Because this law covers so many people at every level, those inquiries could be regarding anything and come from one end of the state to the other, from a weekly paper to a local radio or television station.

### What changes have been made to the Ethics Law in the past 40 years?

The original law in 1973 was probably amended five or six times over the next five to eight years and then it stayed fairly constant until the 1995 revision, which was really a top-to-bottom overhaul of the Ethics Law – literally Section 1 through Section 30 got rewritten in that revision. And then that stayed constant until the 2010 amendments. I think it will remain constant for a while because 2010 was a significant rewrite as well.

### Do you think there are areas that still need improvement?

For the most part, I think the statute is in excellent shape. The reason I say that is we had a long look at the '95 revisions and what was needed to fill in the gaps there. We built what

we called a “wish list” of about 10 or 12 things over that period of time. The 2010 amendments actually put eight of those 10 or 12 things into the statute. The remaining items are just so minor that they're basically housekeeping types of things.

### How many directors has the Ethics Commission had since its inception?

There have only been three since the Ethics Law was enacted 40 years ago on September 15, 1973. The first, Melvin Cooper, served for 21 years. Mac McArthur served two and a half years. And I was hired after a search in April 1997.

### You were appointed director in 1997. What's a typical day for Jim Sumner?

An enormous amount of reading and a lot of time with the staff. I may meet with our general counsel individually and then I may meet with him and our chief investigator to discuss a case or two. Then I might have a meeting with our finance person about what we're going to do with the budget for the coming year – how we're going to take that appropriation and break it down. Then there's what I call the external part of my job, which may be speaking to a civic club at Noon and then leaving later in the day to drive to some other city where the next morning I would conduct a two-hour seminar. So there's a lot of travel involved and a lot of public outreach to this position.

Because we're a small agency, every person here wears several hats. The director wears not only the director's hat, but that of the public liaison – the person who's most often doing the civic club speeches and press relations. The director also ends up being asked to do a lot of the seminars that organizations such as

*continued on page 23*

## Ken Smith Honored by IMLA

*League Executive Director Ken Smith (left) pictured with Chuck Thompson, Executive Director of the International Municipal Lawyers Association (IMLA), was honored last month with the Outstanding League State Counsel Award presented to those attorneys who serve as counsel to their state league of cities or association of counties, towns or other local government entities and who are recognized for their valued service to the members of their organizations and for their skills as attorneys. This award expects the recipient to exhibit the traditional qualities of excellence in the practice of law, but also seeks to recognize a practitioner who has provided outstanding service to local governments and who possesses an exemplary reputation in the legal community, the highest of ethical standards, exceptional legislative achievement, and who is devoted to improving local governments.*





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trade associations want done because they want the director in the room. Then, of course, I'm also responsible for interacting with the Governor, Lt. Governor, Speaker of the House, President Pro Tem of the Senate, cabinet officers and so forth.

### As director, what is your greatest challenge?

I think my greatest challenge is the fact that the statute is complicated enough that it's very difficult to try to explain to someone who doesn't deal with us on a regular basis. In other words, trying to explain the statute in a way that's understandable to a press person or to a local official or employee. Beyond that, I think that all the other major hurdles have been crossed. We've gotten the statute in good shape; the Commission in good shape; the budget in good shape; and we have the staff I think we need to do our job. So we're in a very good place in terms of going forward.

### What is the Commission's greatest challenge?

If I had to make a list right now of things we need to make better, I'd be hard-pressed to think of something.

### What are you most proud of?

I'm most proud of the creditability we've built over the years. I think people understand that if you go before the Ethics Commission, you're not going to get mistreated. It's not going to be an issue of *who* you are; it's not going to be an issue of

what your politics are. It's going to be an issue of whatever the facts are and how the law is applied to those facts. Everybody is going to get the same treatment. They're going to get the same answer regardless of who they are, whatever their station in life is, whatever their politics might be.

### What do you enjoy most about your job?

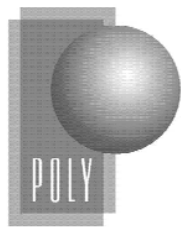
The satisfaction of knowing what I do and what *we* do here makes a difference in the lives of the public.

### How would you like for the Commission to evolve over the next five to 10 years?

I think we're in a great place – with the statute, our Commission members, the staff, our budget. We've had enormous hurdles, but we've come beyond the day where we didn't have an adequate budget or adequate tools with which to do our jobs. So I think going forward we just need to maintain our stability and continue the momentum in a positive way.

### Tell me something about Jim Sumner that's not in your bio.

A couple of things ... had it not been for a serious discussion with my father when I was home for Christmas my senior year in college, I would have gone to dental school. During junior high and high school, I played trombone in the band. ■



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"JCS has provided great cooperation with the County to cut these overhead costs that have been growing...It's everyone's goal not to have to build more jails. That and these high costs of keeping someone in jail are a big drain on county resources that can be better used elsewhere."

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"We have saved on jail expenses and issued fewer warrants."

- Court Clerk  
Large Municipal Court

"...we found that a full service probation provider like JCS can be instrumental in controlling the growth of the jail population and assuring the appropriate use of expensive jail cells."

- Judge  
Alabama Court

### Benefiting the Defendants...

"JCS has helped me understand the bad decisions I have made in my life. Through their guidance I have been given a chance to start over."

- Emma G., Defendant  
Florida State Court

"...thank you for getting me into a treatment program. I'm loving my sobriety. It's a wonderful life. It does work One Day At A Time."

- Danny B., Defendant  
Marshall County, Alabama

"Thank you for everything. Even though you did not have to do it, you did it anyway and it was much appreciated. You kept me out of jail."

- Craig A., Defendant  
Foley, Alabama

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vendors and sponsors; and, more importantly, everyone had a great time and the tournament ended early enough for our members to return for the Sunday afternoon training sessions. So, this year we will once again hold a nine-hole tournament for the members. If you've never played in the League's golf tournament before, perhaps the news that you can make it back in time for the Sunday afternoon sessions will encourage you to participate. It's certainly a fun opportunity for golfers of all skill levels.

## Monday

You'll also notice significant changes in the Monday schedule. The population-based Roundtables have been moved to Monday morning, although the format will remain the same as in the past. Moving the Roundtable Sessions to Monday addresses a need that was cited on several Convention evaluations – the need for the League's attorneys to answer questions from members following their discussions. To make this happen, the Ask Your Attorney panel session has been moved from Tuesday morning to Monday afternoon. The Exhibitor Luncheon will follow the Roundtable Sessions and we will have the reception, dinner and entertainment that evening as in the past.

## Tuesday

Tuesday's events are different as well, composed of Concurrent Sessions and a General Closing Session. These Concurrent Sessions will be similar to what we've had in the past – training sessions conducted by speakers. The General Session will be a topic that we think has broad appeal to a majority of our members, although as mentioned before, it is too early to select the topic. The Convention will adjourn following the Closing General Session. However, in case you're thinking of leaving before the end of this Session, we will be providing special incentive for you to stay until the end. We'll provide more on this later. (That's what's known as a teaser.)

## Conclusion

The League Convention is already successful. After 78 years, this event has stood the test of time and demonstrated its worth and merit. It is the cornerstone meeting for us each year and allows our members a chance to gather and learn from speakers and each other how to improve their communities. But despite its success, we're always looking to improve it. And where we can, the League will continue to strive to improve our Convention to keep it as the showcase, "can't miss" event, for members.

So, in conclusion, if you don't complete evaluations forms because you think they are not helpful or used by the League, I hope you will reconsider this view. We carefully review the evaluations and use them to help us plan for future events. Also, when you don't respond, you allow those that do return an evaluation to influence future events, which may not fit with your desires.

If you have not responded in the past, I hope in the future you will complete these even if you choose not to provide individual comments. Breaking down these numbers is always helpful as we start planning the next year's convention. Of course, the survey data often conflicts. For example, this year one attendee requested fewer sessions on the weekends while another wanted more content on the weekends. Obviously, it is impossible to meet both needs.

Evaluations help us determine the impact of our Convention. They help us determine whether we were successful in achieving our goals by meeting the needs of our members. They also help us identify areas for improvement, which enables us to provide content, speakers and events that appeal to our members and meet your needs. ■

For registration information on the  
**2014 Annual Convention**  
refer to pages 28-30.

Check the website for a convention  
quick guide and other updates:  
[www.alalm.org](http://www.alalm.org)

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## Reimbursable Travel Expenses

While no Attorney General's opinions or Alabama cases deal with the question of what items may be claimed as travel expenses, it seems clear that items such as gasoline, business-related phone calls, automobile expenses, hotel rooms and meals are permissible. In addition, traveling officials and employees can probably participate in special planned events, assuming that the events are part of a convention or meeting the official or employee is attending. Again, however, the time the official spends away from the municipality is generally not reimbursable. These are questions that must be answered on a case-by-case basis with the ultimate decision on the items which are allowable resting solely with the municipal governing body.

In addition, no opinions or cases explain what trips are reimbursable. The general rule is that if the trip is related to official municipal business, the officer or employee is entitled to be reimbursed for expenses.

It is clear, however, that a municipality may not pay the expenses incurred by the spouse of an official or employee while traveling. AGO to Hon. George W. Ivy, Jr. and Hon. John M. Anthony, Jr., December 2, 1974. Further, a city may adopt a personnel policy that provides for the reimbursement of travel expenses for select candidates for employment with the city and for the reimbursement of moving expenses for select new employees, subject to restrictions to prevent abuse and promote fiscal responsibility. AGO 1999-278.

Some boards or municipalities have legislative acts that specify the items which can be included as reimbursable expenses or which limit the amount of expenses an official can claim. These acts would govern the amount or the type of expenses which can be claimed in these instances. Officials should be aware of the acts and code sections which govern their operation.

## Penalties

Any officer or employee drawing or approving any warrant drawn on the municipal treasury in violation of these provisions shall be guilty of a misdemeanor and punished as provided by law. Therefore, proper care should be taken before deciding what items to allow as part of the expense allowance and the municipal governing body must ensure that the expenses which are being claimed by the officer or employee are legitimate.

Additionally, officers and employees who fail to account for travel advances may be convicted for a violation of the Ethics Law. *Langham v. State*, 662 So.2d 1201 (Ala. Crim. App. 1994).

## Recommended Accounting Procedures

There appears to be a conflict in the Attorney General's opinions regarding flat expense allowances and actual expense reimbursements. The opinions indicate that officials may receive

a flat expense allowance, but this allowance may not exceed actual expenses incurred. The better practice seems clear – municipalities should reimburse officials for the actual expenses incurred. This satisfies all the requirements of the various code sections as well as the accounting requirements of the Internal Revenue Service.

In deciding which expenses to allow, one requirement is common to both the IRS and state laws – the expense must be both reasonable and necessary. Reimbursing officials only after they present a list of actual expenses helps the municipality ensure that this requirement is met.

Regarding travel expenses, in most cases, an official or employee will request an advance from the municipal treasury to help defray expenses. As noted above, the Code of Alabama permits this practice, provided a resolution to this effect is passed by the governing body of the municipality. This resolution should include detailed instructions concerning the accounting to be made by the official or employee upon his or her return. When the accounting, in written form, is made to the municipality, it relieves the employee from making an accounting to the IRS, provided the procedure is done properly. The League suggests enlisting the aid of the city auditor to ensure that the proper procedure is followed. ■



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## NEW THIS YEAR! PASSPORT PRIZE PROGRAM at the 2014 Annual Convention EXPO

The League has developed a fun opportunity for our members and vendors during the 2014 EXPO. Our inaugural Passport Prize Program is uniquely designed to give convention delegates the opportunity to speak more directly with participating vendors during convention EXPO hours (May 4-5) **as well as** the chance to win a prize during the Tuesday morning closing general session.

**How it works:** Passport Prize cards listing the names and booth numbers of participating vendors will be distributed to convention delegates during registration. **NOTE:** *Only registered convention delegates – mayors, councilmembers, clerks, municipal personnel – are eligible to participate in this prize program. (Spouses and guests are not eligible).*

Participating vendors will receive a customized stamp for use on Passport Prize cards. Once the vendor and member have concluded their conversation, the vendor will stamp the area on the delegate's card that correlates with the vendor's name and booth number.

Participating vendors will be listed in printed convention material and there will be a designated area in the EXPO Hall for delegates to submit their stamped tickets. League staff will verify the eligibility of each submission. If the information is not complete, the card will not be accepted or entered into the drawing. **For more information on the 2014 EXPO, visit [www.alalm.org](http://www.alalm.org).**

**Prizes will be drawn on Tuesday, May 6, 2014, during the closing general session.  
Delegates MUST be present to win.**

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# 2014 Annual Convention Information

Arthur R. Outlaw Convention Center  
Mobile, Alabama • May 3 - 6, 2014

**NOTE:** Use the form provided in this issue of the *Journal* or register online at [www.alalm.org](http://www.alalm.org).

**Online registration will be available January 17.** (Registration materials will not be mailed.)

**Online Registration:** To make the registration process more efficient, delegates are encouraged to pre-register. Pre-registration will assist the League staff in making arrangements for attendance at this year's convention. **The deadline for pre-registration is 5:00 p.m. on April 11, 2014.** After 5:00 p.m. on April 11, delegates must register at the Convention Registration Desk. It is also important for delegates and their spouses who plan to participate in the golf tournament to register as soon as possible.

**Hotel Accommodations:** Hotel information was mailed in October to all municipal officials and clerks. Please note that Municipal Officials are responsible for making their own reservation at their choice of hotel. Please visit [www.alalm.org](http://www.alalm.org) for hotel contact and room block information.

## IF NOT REGISTERING ONLINE:

1. Complete the convention registration form in this issue of the *Journal* to register yourself and your spouse/guest (if applicable). Use one form for each delegate registered.
2. Complete golf tournament section on convention registration form if applicable.
3. Enclose a payment for the appropriate convention registration fee and golf tournament fee (if applicable). Payment in full must accompany each registration form.
4. Return the form and payment or credit card number to Alabama League of Municipalities, Attention: Convention Registration, P.O. Box 1270, Montgomery, AL 36102. (You may fax your forms with credit card payment to 334-263-0200.) **Credit card numbers will not be accepted by email.**

**NOTE:** Although a separate convention registration must be completed for each delegate, the municipal clerk may send registration forms and a payment for all municipal officials and employees to the League in a single envelope. **NO CONVENTION REGISTRATIONS BY PHONE WILL BE ACCEPTED.**

Envelopes must be postmarked by the dates below. Registration forms and payment must be received by the deadline or they will be subject to a fee increase. There is no extra charge for children under 6; however, children must be pre-registered. The full convention fee covers the following events for each delegate and children under 6: Saturday Night Welcome Party, Sunday Night Exhibitors Showcase and Reception, Monday Luncheon and Monday Reception and Banquet. The registration fee for spouses includes Saturday Night Welcome Party, Sunday Night Exhibitors Showcase and Reception, Monday Spouses Breakfast, Monday Luncheon and Monday Reception and Banquet.

## CONVENTION REGISTRATION FEES:

\$350 through March 28, 2014 by 5:00 p.m.	(\$50 nonrefundable registration fee for spouse/guest*)
\$375 from March 29 through April 11, 2014 by 5:00 p.m.	(\$60 nonrefundable registration fee for spouse/guest*)
\$425 after April 11, 2014 (on-site registration)	(\$80 nonrefundable registration fee for spouse/guest*)

*\*Spouse/guest registration cannot be paid by the municipality; therefore, registration must be paid by the official at the time of registration. Spouse/guest registration fee is restricted to persons who are not municipal or public officials, are not affiliated with any exhibitor, and would have no professional reason to attend the convention.*

The astronomical cost of putting on a convention makes it impossible to allow free admittance of guests of delegates at any function. Delegates who bring a guest may purchase additional tickets for the various events at the registration desk. For children ages 6 and over and guests, the full registration fee must be paid or single tickets to events may be purchased at the registration desk at the following discounted prices:

**Monday Luncheon - \$35.00      Monday Banquet - \$60.00**

*If you need assistance due to disability or other special services, please call Theresa Lloyd at (334) 262-2566 before April 11, 2014. For additional guest information, please contact Krystle Bell at (334) 262-2566.*

### CONVENTION REFUND / CANCELLATION POLICY:

In order to receive a partial refund of your registration fee, your cancellation request must be received in writing by **April 11, 2014**. A \$60 administrative fee will be charged for all cancellations regardless of the reason for cancellation (including medical emergencies). No refunds will be given after this date. Registration fees for spouses/guests are nonrefundable. **ALM cannot make exceptions to this policy.**

**Distinguished Service Awards:** The Alabama League of Municipalities presents municipal service awards during its annual convention to municipal officials and staff recognizing 20, 30 and 40 years of service earned during the previous calendar year. **Awards are only presented to individuals who notify the League of a service milestone by March 20, 2014.** Awards will not be given to those who fail to notify the League by the deadline. However, if a person reaches 20, 30 or 40 years of service but fails to notify the League, he or she may receive an award during the following convention, provided the League is notified by the deadline for that convention. Service awards will not be given beyond the second year for which they were earned. You can download a form for this purpose at [www.alalm.org](http://www.alalm.org).

### 2014 ANNUAL MUNICIPAL GOLF OUTING:

**May 4, 2014 • TimberCreek Golf Club • Daphne, Alabama**  
**7:30 a.m. Shotgun Start**

The fee is \$50 for each participant, including riding cart, green fees and lunch. The deadline for refund requests is April 11, 2014. You will return in plenty of time for the afternoon sessions.

**For additional information go to [www.alalm.org](http://www.alalm.org).**

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### 2014 MUNICIPAL FLAG SHOWCASE:

The League will hold its Fourth Annual Municipal Flag Showcase at this year's ALM Annual Convention in Mobile. More information and registration form for the Municipal Flag Showcase can be downloaded from [www.alalm.org](http://www.alalm.org).

**Visit [www.alalm.org](http://www.alalm.org) for more information.**



# 2014 Annual Convention Registration

Arthur R. Outlaw Convention Center  
Mobile, Alabama • May 3 - 6, 2014

## DELEGATE REGISTRATION FORM

(Mayors, Councilmembers, Clerks and Municipal Personnel) Please print or type all information

Mail completed application to: Alabama League of Municipalities, Attn: 2014 ALM Convention, P O Box 1270, Montgomery, AL 36102

Name \_\_\_\_\_ Municipality \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_  
*(to appear on badge)*

Daytime Phone # \_\_\_\_\_ E-mail \_\_\_\_\_

Address \_\_\_\_\_ City/Town \_\_\_\_\_ Zip \_\_\_\_\_

Spouse/Guest Name: First \_\_\_\_\_ Last \_\_\_\_\_  
*(see registration fees below)*

### Through March 28, 2014 by 5:00 p.m.

- \$350 Delegate Registration** *(Cancellation request must be received in writing by April 11, 2014)*
- \$ 50 Golf Registration** Choose Category A, B, C, or D Category \_\_\_\_\_ *(Email required for Foursome Info)*
- \$ 50 Spouse/Guest Registration** *(Non-refundable)*

### March 29 - April 11, 2014 by 5:00 p.m.

- \$375 Delegate Registration** *(Cancellation request must be received in writing by April 11, 2014)*
- \$ 50 Golf Registration** Choose Category A, B, C, or D Category \_\_\_\_\_ *(Email required for Foursome Info)*
- \$ 60 Spouse/Guest Registration** *(Non-refundable)*

### After April 11, 2014 *(On-site registration only)*

- \$425 Delegate Registration**
- \$ 50 Golf Registration** Choose Category A, B, C, or D Category \_\_\_\_\_ *(Email required for Foursome Info)*
- \$ 80 Spouse/Guest Registration** *(Non-refundable)*

<i>Golf Teams must be as equal as possible. Use this list of Player Categories to help form a foursome. Each team registering as a foursome must consist of an A, B, C, and D player. Please list your category in the appropriate place on the registration form.</i>	<b>A Player</b> = Average Score 80 or below <b>B Player</b> = Average Score 81 - 90 <b>C Player</b> = Average Score 91 -100 <b>D Player</b> = Average Score 101 +
--	--

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