

THE LEGAL DEPARTMENT – A USER’S GUIDE

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On behalf of the League’s Legal Department, I’d like to congratulate you on taking office. Or better yet, congratulations on surviving the election process! Having gone through the election, many of you several times now, you may already be familiar with the legal department at the League of Municipalities. One of the League’s most important functions is responding to legal inquiries from its member municipalities. In addition to responding direct legal inquiries, attorneys for the League also participate in numerous training sessions for elected officials and municipal employees.

I have been with the League since 2001 and have had the privilege of serving as your General Counsel since 2011. One of the things I love most about my role as General Counsel is guiding our member municipalities, elected officials and employees as they deal with the multitude of legal issues that present themselves on any given day at city hall. I am fortunate to have a wonderful team to help me in serving our members. In addition to me, the legal department consists of Rob Johnston, Assistant General Counsel, Tenee’ Frazier, Assistant General Counsel, and Sharon Carr, Legal Services Administrator. To learn more about each of us please visit the staff section of our webpage at www.alalm.org.

While the legal department has many roles, with over 450 members – representing literally thousands of officials, employees, board members and others who may make requests – there are limits to what the department can do. This article will help readers make the most effective use of the legal department. It is intended simply as a guide, and should be read that way. Because our goal is to serve our member municipalities, League attorneys attempt to remain flexible in the services they provide.

What Services Are Available?

The legal department’s primary function is to represent the interests of member municipalities throughout Alabama. Therefore, we attempt to have an attorney available by telephone every day during regular business hours. However, the Legal department is not a substitute for local legal representation. The volume of requests we receive makes individual representation impossible. Therefore, we have to restrict our activities to those which we feel best serve all our member cities and towns.

In addition to providing direct legal assistance, the Legal department provides other services, such as: preparation of *amicus curiae* (friend of the court) briefs in appellate cases; preparation of monthly summaries of court decisions and Attorney General’s Opinions for the League magazine and the League’s Law on Disc computer program; monthly legal articles in the *Alabama Municipal Journal*; drafting manuals explaining the duties and responsibilities of municipal officials and employees; providing sample and model ordinances; conducting educational and training seminars; managing the Alabama Association of Municipal Attorneys (AAMA) and the Alabama Municipal Judges Association (AMJA); and assisting with the League’s lobbying efforts.

Who Can Inquire?

This question raises complex ethical conflicts of interest issues concerning the responsibilities of the League’s attorneys. Explaining it simply, the League represents its member municipalities and not individuals, even if they are municipal officials.

The League answers inquiries from mayors, council members, board members, clerks, attorneys and other representatives of member municipalities. League attorneys do not advise officials about their private legal matters. Additionally, conflict of interest rules generally prohibit us from advising members of the public regarding municipal legal matters, although we do share articles or other general information we have on hand with private citizens. Please do not encourage

citizens who are not municipal officials or employees to contact the League for legal advice as we may have to refuse assistance.

Further, the League's attorneys cannot take sides in disputes involving one municipality against another or in conflicts between municipal officials. League attorneys exercise discretion in these situations and will generally refer you to your local attorney where a potential conflict of interest appears likely to arise. If it appears that we are being asked to resolve a dispute between two or more officials, we may ask that the question be reduced to writing with an agreed to statement of facts between the concerned parties so that we may respond to all sides jointly. We will also make every effort to encourage cooperation on questions involving disputes between municipal officials.

How to Use the Legal Department

Whether you inquire by telephone, e-mail, letter, or fax, the following guidelines will help us give you the most prompt, accurate response:

- Call or write as soon as possible after identifying your problem – immediate deadlines make responses difficult since often a question requires research.
- Give us as many facts as possible. On questions involving boards, it is best to know under what section of the Alabama Code the board was created.
- If you are following up on an issue you have been discussing with one of our attorneys, please advise the receptionist so that your call may be directed to that attorney.
- If you have inquired with a particular attorney but have not received a response please indicate that information in any follow-up inquiry so as to avoid duplicate effort on the part of attorneys in the department. Please be patient as some responses take time and may require discussion among all the attorneys in the legal department in order for us to develop a consensus answer and avoid conflicting and/or confusing responses.
- If you are under a deadline, let us know when it is and we will try our best to meet it.
- Municipal officials and employees are welcome to discuss matters in person at League headquarters in Montgomery. Please call in advance to make an appointment. If your questions involve a review of documents, we may ask that they be forwarded prior to the meeting so that we may review them.

Telephone Inquiries

As noted above, the legal department's primary goal is to have an attorney available by telephone every day during business hours. Of course, there are exceptions, such as during the League's convention or when we are trying to meet a publication deadline, or on hectic meeting days of the Alabama Legislature. We try to return calls either the same or the following day and we try to give an answer over the telephone. However, not every question has a clear legal answer. In these cases, we will try to give you our best legal opinion, based on years of municipal legal experience and knowledge of state and federal laws.

Further, some questions require research before a knowledgeable answer can be given. Therefore, it is best not to put off calling until just before a deadline. Of course, not every question can be anticipated, and when a quick legal response is needed, we will make every effort to provide a speedy answer.

Written Inquiries

Because of the volume of calls, it is difficult to confirm telephone advice in writing. However, we are happy to answer written inquiries in writing and try to do so in a timely fashion. All requests for written responses should be submitted in writing, laying out the question and any relevant facts. Written inquiries are generally answered in the order received and the response time depends upon time available to draft a response. Again, we will try to accommodate a deadline, but this is not

always possible. As always, it is generally best to work with your local attorney if a quick response is needed.

We generally treat faxed messages the same as written requests. A carefully written legal opinion takes just as long to prepare in either case. If you simply want us to call you back with an answer, please indicate that in your request.

E-mail

Because of the nature of e-mail requests, they may be treated as either a written request or a telephone inquiry. League attorneys attempt to respond to electronic questions as quickly as possible, but please bear in mind that when our attorneys are out of the office, they may not have access to a computer, which will delay any reply. If you have an e-mail question that must be answered quickly, but have not received a response, it is generally advisable to follow up with a telephone call to be sure that the message was received, and that the attorney you are attempting to reach is in the office. Please inquire as to the status of the attorney you are requesting information from before simply sending your request to another attorney in the office. This will help us avoid duplicate effort on inquiries.

***Amicus Curiae* Briefs**

While the League does not file lawsuits on behalf of its members, we do sometimes file *amicus curiae* briefs in cases on appeal to either the Courts of Appeal or to the Alabama Supreme Court if the issues involved in the case have statewide significance. If you are involved in a case on appeal and you think the Court should have input from the League, please send a written request for an amicus brief, with supporting documentation, to the legal department.

Sample Ordinances

We maintain a large supply of sample ordinances on many topics. These samples come from several sources. Our most important source for ordinances is our members. If you adopt a new ordinance, it would benefit all League members if you could forward a copy to the League's legal department for our files.

Please remember that these ordinances have not been drafted by the legal department. Before using one as a guide, it is important to adapt these ordinances to your local needs and to obtain advice from your local attorney regarding compliance with statutes and case law.

We are often called upon to review ordinances or to interpret a word or phrase in an ordinance. While we can offer a cursory reading of an ordinance, we cannot be familiar with the circumstances which require the adoption of an ordinance, nor can we investigate facts which might influence the meaning of specific words or the inclusion of specific sections. Our interpretation is not intended to be definitive and should be used merely as a second opinion for your local municipal attorney. He or she is in the best position to provide you with a detailed analysis of your ordinance and provide you with a final answer.

Coordination with Local Attorneys

Each municipality should have its own attorney. The League's legal department is a resource to assist your municipal needs; it is not a replacement for your municipal attorney. Nothing we do or say is meant to interfere with the critical relationship between your municipality and your attorney. When the law is unclear or the inquiry presents substantial risk of litigation, we'll often suggest that you seek advice from your attorney, because he or she will have to represent you should you have to go to court. When your attorney provides advice, he or she does so in the belief that the recommended action puts the municipality in the most defensible legal position. Your municipal attorney is also in the best position to know local factors which influence the need to proceed in a particular manner. Therefore, we generally encourage municipal officials and employees to follow their attorney's advice, especially on questions where the law is open to interpretation or factual

matters require further development. Of course, we are always happy to discuss an issue with local attorneys or to verify their interpretation of a statute or case.

You should not seek our advice in the hopes that we will second-guess your attorney. We are here to assist, and not compete with, your attorney. If you have already discussed the matter with your attorney, please advise us of this when you call or write. Legal opinions are fact-specific and people who are not lawyers are often unaware of how a fact which seems unimportant to them might affect the legal response. Thus, if our opinion differs from that of local counsel, we will generally advise you to follow the advice of your local attorney.

To further help municipal attorneys represent their clients, the League created the Association of Municipal Attorneys (AAMA) in 1992. AAMA provides a number of services to municipal attorneys. It conducts two training seminars annually for municipal attorneys, publishes updates of ongoing litigation and also maintains an internet forum to enable attorneys to communicate with each other on legal issues. In addition to AAMA, the League created the Alabama Municipal Judges Association (AMJA) in 2007 to provide similar services and training opportunities for municipal judges. We strongly encourage all municipal attorneys, prosecutors and judges to join AAMA or AMJA and hope that all municipal officials will request that their local attorneys and judges join and participate in these important organizations. For more information, contact the League's legal department, or visit the League's web site, where links to information about AAMA and AMJA are posted.

Local Political Disputes

As attorneys, we answer your questions regarding municipal law. We often receive calls for "legal assistance" where the caller is seeking resolution to a political disagreement. Every municipality has political disagreements; most cannot be resolved by looking at a statute. In many cases, statutes are subject to multiple interpretations, especially where the responsibilities and duties of municipal officials are concerned. These calls are awkward, and we cannot give you an answer about who is right and who is wrong. These disputes are best resolved in the political arena through compromise and cooperation rather than through legal guidance.

Coordination with Other Agencies

The League often serves as a contact point on municipal issues for other agencies, including state departments like the Attorney General's office, as well as other entities, such as regional planning commissions. League attorneys often provide advice to representatives of these offices and frequently serve as speakers at educational conferences and seminars run by these agencies. Because of our relationships with these agencies, we may refer you to one of them if we feel they can assist you with your questions.

Relationship with the Municipal Worker's Comp Fund (MWCF) and the Alabama Municipal Insurance Corporation (AMIC)

The League administers two risk-pooling type programs for municipalities – Municipal Workers Compensation Fund, Inc. (MWCF), and the Alabama Municipal Insurance Corporation (AMIC), which provides liability coverage for municipalities. It is important to understand that the League's legal department does not represent these entities. We do not provide advice regarding coverage or on matters in which one of these entities has an interest. Further, following our legal advice does not guarantee coverage. Questions regarding specific coverage issues or other matters related to these entities should be directed to them, and not to the League's legal department.

Limitations

Excluded from our advisory services are matters such as:

- drafting individualized ordinance and contracts
- comprehensive review of ordinances, contracts, applications for grants or legal responses

- on-site training for individual municipalities (although League attorneys will meet with representatives of a municipality at League headquarters if an appointment is made)
- litigation
- direct representation or negotiations with third parties on an individual municipality's behalf

Further, it is important to remember the following:

- we cannot take sides with one municipality or one official against another
- we generally cannot respond to questions regarding the League's worker's compensation or liability programs; inquiries on these programs should be directed to the appropriate representative

Have a Question? Don't Hesitate to Call

This user's guide is not meant to discourage you from contacting the League's legal department. On the contrary, Rob, Tenee', and I hope that understanding the scope of our services will help you make better use of them. When in doubt about whether we can help you, please don't hesitate to call. Of course, if ethics prohibit us from responding to your question we may have to refuse to answer it, or may refer you to someone who does not have a conflict. We hope you will take advantage of League services and programs. If there is anything we can do to help, please let us know.