



# COURT NEWS

NEWSLETTER OF THE ALABAMA JUDICIAL SYSTEM

Volume 6/Number 8

August, 1982

## JUDICIAL CIRCUITS ATTACK BACKLOG OF CASES

### Etowah Implements Circuit Court Reforms

In less than one year, the Etowah County Circuit Court reduced its pending criminal caseload from 1,153 to 265 cases. "This 77 percent reduction in pending criminal caseload was brought about by the hard work and cooperative spirit of all components of the county's criminal justice system - circuit judges, district attorney's office, circuit clerk's office, and defense attorneys," said Judge Julius S. Swann, presiding circuit judge.

In the summer of 1981, the circuit judges of Etowah County undertook a study of their criminal court procedures with the help of the State Trial Court Operations Division of the Administrative Office of Courts. Pending case files were reviewed, time lapse information was gathered and each step of the criminal case process was studied. Following this preliminary research, the circuit judges and the State Trial Court

Operations staff met numerous times to work out a detailed case management system. At the request of the circuit judges, a group of criminal defense lawyers worked jointly with the court to develop the system.

Implementation of the new system began in Oct. 1981 and by Jan. 1982, all components of the system were in operation. "In developing a criminal case management system, our goal was to reduce the pending caseload and to speed up the processing of criminal cases," said Judge Swann. To accomplish this goal, the bench and bar of Etowah County set forth the following objectives which were to be met:

- Maintain pending criminal caseload at approximately 250 cases;

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### Mobile Institutes "Crash Docket" Program

The Mobile Circuit Court's crash program to reduce the heavy backlog of criminal cases was a fantastic success, according to Presiding Judge Robert E. Hodnette, Jr.

Four hundred six cases were wiped off the criminal docket by trying nothing but criminal cases during the two weeks ending July 2, 1982. "It was a tremendous undertaking and its success can be attributed to the splendid cooperation of judges, the clerk's staff, prosecutors, and attorneys. Everyone came through like gangbusters," Judge Hodnette declared.

Chief Justice C. C. Torbert, Jr., assigned five judges to Mobile during the two weeks to assist the six

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- Dispose of criminal cases within an average of 90 days from indictment;
- Randomly assign cases utilizing an individual calendar;
- Combine civil and criminal terms of court;
- Increase the frequency of grand jury terms;
- Schedule arraignments within 12 to 14 days following each term of the grand jury;
- Announce trial dates at arraignment;
- Announce youthful offender hearings at arraignment;
- Adopt and publish a strict case continuance policy.

"The goals and objectives of the new criminal case management system required sweeping changes in the court's procedures and provided a system by which the court can stay ahead of the increased filings," said Tom Davis, president of the Etowah County Bar Association.

The establishment of a maximum number of criminal pending cases helps to ensure that the criminal caseload will not become backlogged in the future. A 90-day goal from indictment to disposition helps to ensure that all defendants receive equal attention and are afforded a speedy trial.

The random assignment of cases and the individual calendar gives each judge more responsibility and at the same time provides more control over caseload. Under the new system, each judge manages the cases assigned to him from filing to disposition. As circumstances permit, the judges "back-up" fellow judges when particular cases require lengthy trials.

Combining the criminal and civil jury terms provides the court more flexibility in the scheduling of cases. This new procedure as well as increasing the number of grand jury terms has helped to distribute the workloads in the district attorney's and clerk's offices more evenly.

Scheduling arraignments within 12 to 14 days following the grand jury ensures minimum delay from indictment to arraignment. One judge holds arraignments and

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regular judges assigned to the court's civil and criminal dockets. Judge Hodnette was especially complimentary of these judges. "Without their help, I don't think we could have succeeded," he said.

Judges assigned to Mobile during the two weeks were Circuit Judges Bobby R. Aderholt, Haleyville; Telfair J. Mashburn, Bay Minette; James A. Avary, LaFayette; Paul J. Miller, Phenix City; and Inge Johnson, Tuscumbia.

Of the 728 cases set for trial during the two-week "crime blitz," 406 were disposed. The 322 remaining cases will be reset and tried at a later date, according to Judge Hodnette who planned and directed the program.

When queried as to plans for another such "crash program," Judge Hodnette stated, "We will assess our dockets in about six months and decide."

Catherine May, deputy clerk in charge of the court's criminal division, directed the administration of the program. At its conclusion, she uttered a weary sigh and headed to the beach for a well-earned rest.

Cases Set for Trial.....	728
Cases Disposed.....	406
Jury Trials.....	45
Convictions.....	28
Acquittals.....	10
Guilty Pleas.....	254
Dismissals and Not Prosses.....	114
Cases Carried Over.....	322
Mistrials.....	4
Cases Crowded Out.....	28
Cases Passed on Motion of Defense.....	135
Cases Passed on Motion of State.....	22
Cases Passed by Consent.....	69
Witness Subpoenas Issued.....	2500

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announces the trial terms as set by the judge assigned to a particular case. Newly arraigned defendants receive trial dates for the following month.

A calendar clerk position was established to track all criminal cases. The clerk monitors caseflow, follows up on any problems such as attorney conflicts, coordinates all caseflow activity and publishes the trial docket. The docket displays each judge's settings for each day of the trial term. The calendar clerk is also responsible for lining up the next day's cases at the end of each day of the trial term.

Case status reports prepared by the calendar clerk provide the judges with workload information which aids them in planning their calendars. Through the reports, judges can identify caseflow problems at an early stage and act on them in a timely fashion. In the 16th Circuit, this information has been computerized; however, a condensed version of these reports can be produced in courts where computer resources are not available.

As a result of the success gained in the criminal division, work has already begun on a case management plan for the civil division. The civil system will embody concepts similar to those utilized in the criminal division, such as pending caseload and time-frame goals and a case monitoring system. Additionally, the civil division will feature a scheduling conference. This is a brief 10-15 minute conference which will be held on all new civil cases approximately 90 days after filing. Essentially, the conference is a planning session in which the judge and attorneys can determine the most acceptable time frames for completion of motions, discovery, and pre-trial (if necessary) and establish a firm trial date.



## We Couldn't Have Said It Better !

The following appeared in the Mobile Press Register:

### Jury Service

Because a new system is used to select jurors, your chance to serve is greater than ever before.

When you receive your invitation, be at the courthouse at the time shown on the notice.

Stick a note under your windshield wiper stating your name and that you are serving on the county jury. This will enable you to park free in the auditorium parking lot. Following a short walk, you enter the county courthouse and take the elevator to the second floor. Located on this floor, you will go to an exclusive assembly room for jurors only. Here you will be served "jailhouse coffee."

The wall clock in the assembly room does not work properly, but the court clerk will gladly synchronize watches with you and will also help make you glad that you came.

Around the walls of the assembly room are hung pictures of 32 judges. These pictures appear to approve of you folks who make up these panels.

As a juror, you are a very important part of the structure of law that prevails over our nation. Jury duty, as voting in elections, is a privilege that is the envy of numerous areas of the world. You will learn how important jurors are in helping to protect yourself and your neighbors from those who "plan and persist" in troubling and hurting their fellow beings.

Based on evidence presented to you as a juror, you will be asked to make decisions that are impartial even if the attorneys involved are persuasive. You will know the satisfaction of helping solve the ever present problem of crime.

--RALPH HUGHES  
P. O. Box 344  
Theodore

## Alabama Juvenile Crime Rate Decreases

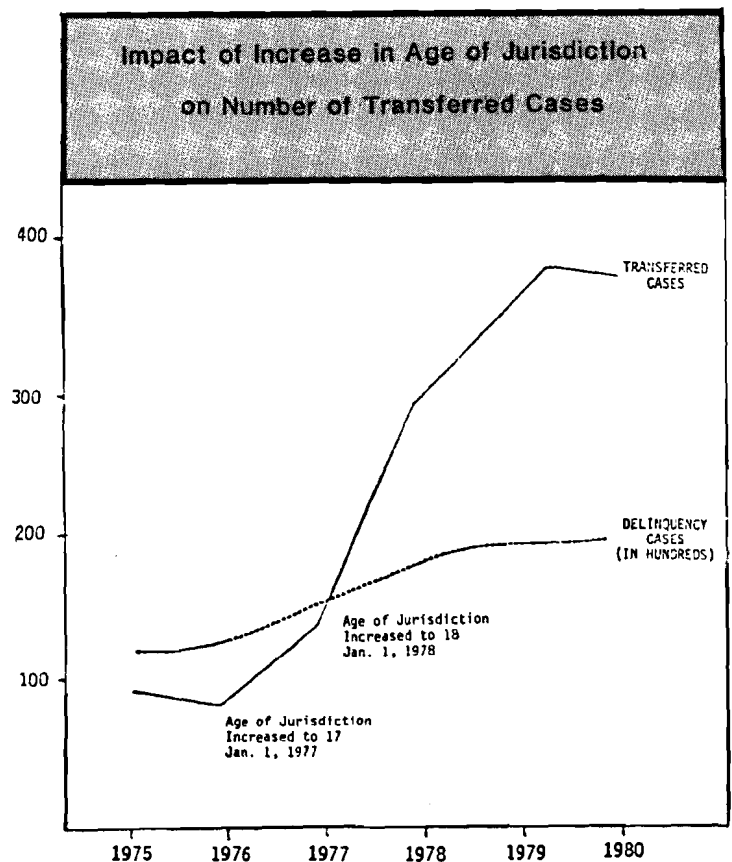
According to a recent report prepared for the Jefferson County Family Court, Alabama juveniles accounted for 10% of all arrests for violent crimes in 1977 while in 1980, this figure dropped to 8.3%. The report, prepared by Dr. Howard N. Snyder, director of Systems and Information Research, National Center of Juvenile Justice, also indicated that between 1977 and 1980 juvenile arrests for violent crimes in Alabama decreased by 10%. A violent juvenile offender is defined as "an individual below the age of 18 who is charged with one of the following crimes: murder or non-negligent manslaughter, forcible rape, robbery, or aggravated assault."

In the report, Dr. Snyder stated that much of the decrease in the number of juveniles arrested for violent crimes can be explained by the decline in child population between 1977 and 1980. However, in 1977, the rate of juvenile arrests for violent crime in Alabama was 1.25 for every 1000 children below the age of 18 while in 1980 this rate dropped to 1.19.

Focusing on Jefferson County, the report indicated that when comparing that county with the other counties of the state, the rate of violent juvenile cases in Jefferson County in 1979 was 2.4, compared to 1.4 elsewhere in Alabama. However, when comparing Jefferson County and other urbanized areas across the country, the rate of violent juvenile cases in Jefferson County was substantially lower than in other similar jurisdictions. In Jefferson County for every 1000 children between the ages of 10 and 17, the juvenile court disposed of 2.4 cases in 1979, compared with an average case rate in similar urbanized jurisdictions of 3.7. This difference in case rates indicates a lower incidence of violent behavior among the children of Jefferson County compared to other urbanized areas.

Though the rate of violent crime arrests of Alabama juveniles and the number of violent crime cases seen by the Alabama juvenile courts have decreased, Alabama judges have increased the number of juveniles that are transferred to criminal court. Based on information from the

National Center For Juvenile Justice, Alabama's transfer rate is steadily increasing. In comparing Alabama to a sample of nine other states in 1979, Alabama juvenile courts transferred 6.4% of the 16-and-17-year-old serious offenders who came before them while the transfer rate for such offenders in the rest of the sample was only 1.8%. These statistics suggest that juvenile court judges in Alabama have a different perception toward serious juvenile offenders as compared to judges in states where the upper age of jurisdiction has remained 18 for many years. As shown by the transfer rate, juvenile court judges in Alabama, who are more accustomed to dealing with younger less serious offenders, perceive that a greater number of the older serious offenders are not amenable to juvenile treatment.



## NEWS FROM THE JUDICIAL COLLEGE

### JUDICIAL SECRETARIES HOLD ANNUAL CONFERENCE

Approximately 125 circuit, district, appellate and administrative court secretaries from all over Alabama met in Tuscaloosa July 7-9 for the annual Judicial Secretaries Education Conference.

Presiding over the conference were Sandra G. Huovinen of Montgomery, president of the Alabama Association of Circuit Judges' Secretaries, and Jacqueline C. Heartsill of Hayneville, president of the Alabama Association of District Judges' Secretaries.



*OFFICERS, CIRCUIT JUDGES' SECRETARIES*



*OFFICERS, DISTRICT JUDGES' SECRETARIES*

During the conference, meetings of the two secretarial associations were held. The newly elected officers of the Association of Circuit Judges' Secretaries are Sharon Goldman, president; Faye Edmondson, 1st vice president; Teresa Cox, 2nd vice president; Pat Kirkland, secretary; and Marilyn Michael, treasurer. The new officers of the Association of District Judges Secretaries are Marvagene Clark, president; Cynthia Yelverton, vice president; Beverly Floyd, secretary; Cheryl Hawkins, treasurer; and Carolyn Rea, historian.

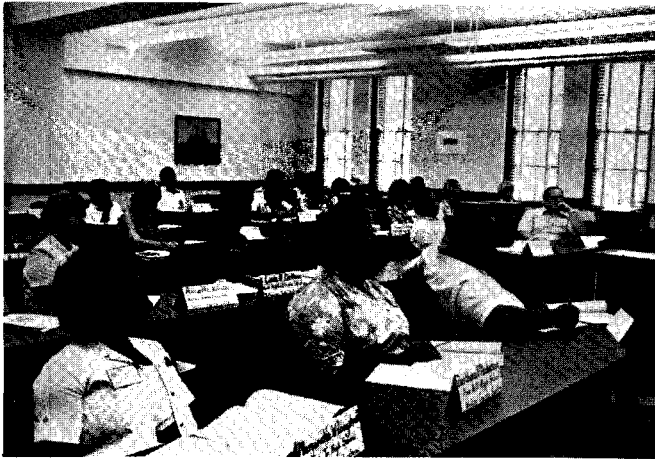
### TEACHER WORKSHOP HELD IN TUSCALOOSA JULY 18-24

A teacher workshop on the Alabama Court System, conducted for a second year, was held at the Judicial College in Tuscaloosa July 18-24. Twenty-nine teachers, representing 26 different city and county school systems, attended the week-long workshop which was jointly sponsored by the Administrative Office of Courts and the Division of Continuing Education at the University of Alabama.

The course, designed for eighth-grade civics and law teachers and 12th grade government and economics teachers, is run in two phases. "The workshop portion gives the social studies teachers background knowledge for teaching law-related education. The second part of the course requires the teachers to go back to their individual school systems and hold an in-service program for all other eighth and 12th grade social studies teachers in their system," explained Thelma Braswell, director of the Judicial College. The participants receive three hours of graduate credit for each part of the course.

The sessions of the workshop, which dealt with the various court processes and jurisdictions, were presented by judges and other court officials and by representatives from all areas of the criminal justice system.

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Judge William Bowen of the Alabama Court of Criminal Appeals taught a session at the workshop, as did Circuit Judges Edgar P. Russell, Jr., and J. C. Norton, 4th Judicial Circuit; Joseph A. Colquitt, 6th Judicial Circuit; Robert M. Parker, 7th Judicial Circuit; James C. Brotherton, 14th Judicial Circuit; Julius S. Swann, Jr., 16th Judicial Circuit; Robert R. Armstrong, Jr., 18th Judicial Circuit; William C. Sullivan, 29th Judicial Circuit; Robert E. L. Key, 35th Judicial Circuit; and Billy C. Burney, 36th Judicial Circuit.

District Judges who made presentations were A. Farrell McKelvey, Wilcox County; Patricia M. Smith, Shelby County; Robert E. Lewis, Etowah County; and John L. Haislip, Jackson County.

Other speakers included Mary Auburtin, circuit clerk of Perry County; William R. Hill, district attorney, 18th Judicial Circuit; Oliver P. Head, Esquire; Paul D. Smith, official court reporter; Jack Hunter, Department of Youth Services; and Bruce Howell, chief juvenile probation officer of Etowah County.

A panel of law enforcement officers who spoke consisted of Major Harold Hammond, Department of Public Safety; Beasor Walker, Tuscaloosa County Sheriff; and Rowdy McGee, Grove Hill police chief. Fred Smith, representing the Board of Corrections, Jack Lufkin, from the Board of Pardons and Parole, and Peggy Schmitz, assistant attorney general, also gave presentations.

Allen L. Tapley, administrative director of Courts, spoke about judicial administration, and other staff members from the Administrative Office talked about juror management and the Public Information and Education Program.

The teachers attended a luncheon on Saturday at the conclusion of the course, and Justice Samuel A. Beatty gave the keynote address.

"We've received good feedback as a result of the first workshop, and we know this group of teachers will do an excellent job this coming school year to promote the teaching of law-related education," said Tapley.

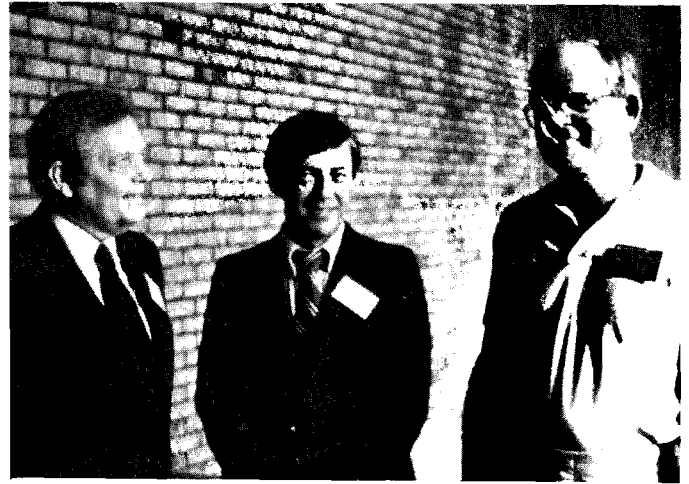
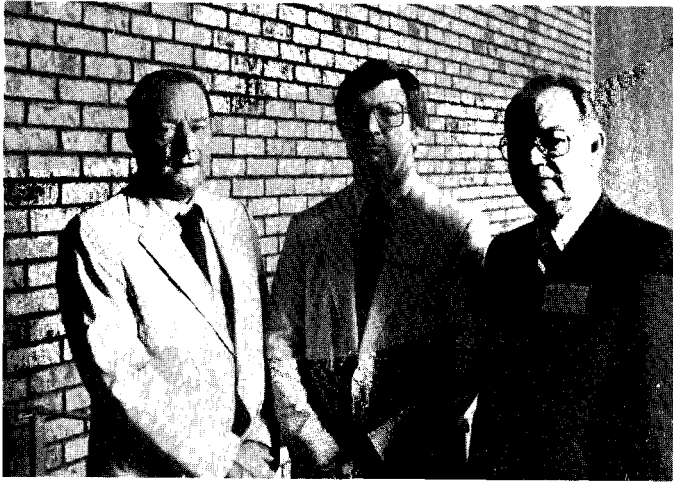
### **Alabama Hosts National Forum on Volunteers in Criminal Justice**

Alabama will host the Twelfth Annual National Forum on Volunteers in Criminal Justice. Each year, this conference brings together criminal justice professionals from all parts of the country who are interested in involving their communities in the operation of the Criminal Justice system. The conference will be held October 17-20 at the Hilton Hotel in Birmingham.

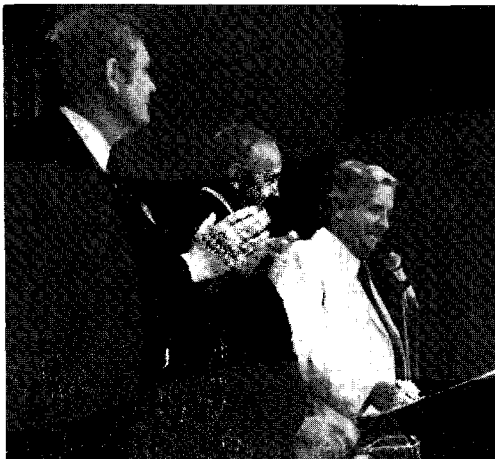
The Forum's theme will be 'Forging Partnerships', and the program will feature general sessions led by nationally known criminal justice experts. Also, 42 technical assistance workshops will be available to the conferees. The sessions will cover such areas as Victim Witness Programs, Neighborhood Watches, Volunteers Supporting Law Enforcement, Custody Investigation, and Mediation Counseling.

For more information on this conference for criminal justice professionals, contact NAVCJ Forum '82, P. O. Box 1000, University, Alabama 35484, Telephone: 205/348-6738.

## CIRCUIT AND DISTRICT JUDGES MEET IN HUNTSVILLE



*Circuit and district judges met in Huntsville July 14-15. New officers for the Association of Circuit Judges are Judge Jack W. Wallace, president; Judge Robert M. Parker, 1st vice president; Judge Robert E. Hodnette Jr., 2nd vice president; Judge Hardie B. Kimbrough, secretary-treasurer; Judge Joseph A. Colquitt, chairman of education committee. New officers for the Association of District Judges are Judge William G. Fowler, president; Judge Dominick J. Matranga, president-elect; Judge Harold Crow, 1st vice president; Judge William H. Robertson, 2nd vice president; Judge Bill Patton, secretary; Judge Joe Gilliland, treasurer.*





## ADMINISTRATIVE ANNOUNCEMENTS

### OPEN ENROLLMENT PERIOD FOR FAMILY HEALTH COVERAGE

UJS Employees who wish to add dependent coverage to their State Health Plan policy may do so effective the first of October or November, 1982. To begin coverage effective October 1, an enrollment form must be completed and signed by the employee, and forwarded to the Personnel Division at the Administrative Office of Courts no later than September 3, 1982. Since insurance premiums are pre-paid, this will ensure that a payroll deduction of \$61.77 is made from the warrant of September 17th.

If coverage is to be effective November 1, the form is due no later than October 15th, for deduction from the October 29th warrant. If enrollment forms are received too late for a payroll deduction, employees must pay the premium by personal check or money order, to be received by the Personnel Division no later than the last working day of the month. This will be the last open enrollment period until October/November of 1983. For further information, or for enrollment forms, contact Marie Porter at the Administrative Office of Courts, 1-800-392-8077, ext. 253.

### VOIDED UTC PROCEDURE

The UTC Control Unit of the Administrative Office of Courts is still receiving voided UTC's from Law Enforcement Agencies. As of November, 1981, it is no longer necessary to forward voided tickets to the Administrative Office of Courts.

The new procedure for handling voided tickets is explained in the Uniform Traffic Ticket and Complaint Manual on page 1-3, subsection C. This subsection states, in part, "when an officer voids a ticket, he should write VOID across the face of the ticket, enter the agency ORI, and return all four copies of the ticket

to the law enforcement agency, with a brief explanation. The agency should retain the voided ticket in its numerical file, along with the explanation".

### MOVED?

Each year a number of undelivered W-2 forms are returned to the AOC Payroll Section because of an incorrect address. If the address on your State warrant is not current, please notify your administrator so that a change of address Personnel Action form can be prepared and forwarded to the Personnel Division at the AOC.

## PEOPLE

**A**t the Mobile Circuit Court, Presiding Judge *Robert E. Hodnette* has a reputation for being tough on excusing citizens from jury service without a legitimate reason.

So his daughter, Martha Sue McNeil, found little sympathy when she was called as a prospective juror the week of July 26.

It was Judge Hodnette's time to empanel the jury, and Martha Sue ended up No. 1 juror in No. 1 panel.

**D**olores Parsons, circuit clerk of Etowah County, is a new grandparent of Cassie Marie Pritchett, born on July 21, weighing 6 lbs., 13 oz.

**R**ebecca Davis was employed as a Legal Secretary to District Judge Wayne Miller of Etowah County on May 17. Rebecca, previously employed in Judge Miller's office on a part-time basis, has been Temporary Bailiff since May 1980.

**H**arold L. Johnson, husband of Ruth Johnson, circuit court clerk in Tallapoosa County, died July 8. Funeral services were held July 10 in Reeltown.



## **Retirement Legislation Passed During 1982 Regular Session**

Restoration of Withdrawn Service. Under the provisions of Act 82-470, members may now make the lump sum payment required for restoration of withdrawn service any time between the completion of five years contributing membership service and the effective date of retirement. Members who lost their eligibility to purchase withdrawn service due to the eight-month deadline which was previously imposed are now eligible to make the purchase.

Act 82-470 also provides for a one-year reopening for retired members who have withdrawn service. Retired members who had five or more years of contributing membership service immediately prior to retirement may restore withdrawn service by making the appropriate lump sum payment on or after October 1, 1982, but not later than October 1, 1983.

Members who wish to restore withdrawn service should contact the Retirement Systems of Alabama Office to request a calculation of the payment amount. When requests are made, the member should provide his/her full name, social security number, and name under which the withdrawn account was established. The member should also specify the number of withdrawn accounts and the System (Teachers' or Employees') from which the accounts were withdrawn.

Deferred Retirement. In accordance with the provisions of Act 82-617, the Employees' Retirement System Board of Control, at the May 12, 1982, meeting, has established a service requirement of 10 years for deferred retirement (vesting). With this change, members of the Employees' Retirement System who complete 10 years creditable service prior to termination of employment with a member agency, and who choose to leave their contributions in the System, will be entitled to a deferred benefit beginning at age 60. Members are no longer required to meet any age requirement in order to be vested after 10 years service.

Pick Up of Member Contributions. Act 82-417 gives the State Personnel Board

the authority to pick up member contributions to the Employees' Retirement System for purposes of Federal Income Tax. It also grants the same authority to the Supreme Court with respect to members of the Judicial Retirement Fund. This bill results in an approximate 1 to 3 percent increase in take-home pay for State employees and judges.

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## **Retirement Systems of Alabama Will Offer IRA's For Public Employees**

Members of the Teachers' Retirement System, Employees' Retirement System, and Judicial Retirement Fund now have the opportunity to participate in individual retirement accounts through the Retirement Systems under the provisions of Act 82-776. The bill, sponsored by Representative Bob Gafford, was passed during the last Special Session and became effective immediately. The Retirement Systems' staff is in the process of developing at least two programs to be presented in September or October to the Investment Committees of the Teachers' and Employees' Retirement Systems which serves as the governing board of the "Public Employees' Individual Retirement Account Fund." The programs, which are to be finalized and implemented prior to the end of the year, are likely to offer a fixed income fund which would be composed of long term fixed instruments such as bonds and mortgages and a variable income fund consisting of some equities in addition to fixed incomes. Employees may make contributions to an IRA account for the 1982 tax year any time prior to April 15, 1983. The maximum annual contribution is \$2,000 for an individual.

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## 1980 Supplement To The Digest Of Bar Association Ethics Opinions Published

The American Bar Foundation announces a new supplement to the Digest of Bar Association Ethics Opinions with a comprehensive index to all the opinions through June 1980.

Like the previous volumes, the 1980 Supplement summarizes the Formal Opinions of the American Bar Association and the formal and informal ethics opinions of state and local bar associations and other organizations represented in the House of Delegates of the ABA.

Major changes in legal practice since the publication of the 1975 Supplement are accommodated in a 209-page index that covers all the key components in the approximately 13,200 opinions contained in the Digest and all its supplements. Revised headings in the index reflect

recent U.S. Supreme Court decisions on advertising, solicitation of business, lay intermediaries, referral of legal business, and provision of group legal services.

The 1980 Supplement has been prepared by Olavi Maru, Librarian, William Nelson Cromwell Library of the American Bar Foundation, and is available for \$50.00, plus \$2.00 shipping and handling, from The American Bar Foundation, 1155 East 60th Street, Chicago, Illinois 60637, (312) 667-4700.

Also available are: 1975 Supplement to the Digest of Bar Association Ethics Opinions (\$20.00), 1970 Supplement to the Digest of Bar Association Ethics Opinions (\$15.00), and the Digest of Bar Association Ethics Opinions (\$20.00).

## CORRECTIONS...CORRECTIONS...CORRECTIONS

Correction to Local Court Costs chart for the Clerks and Registers Manual:

Page number 1-9, Sumter County - the only local court cost collected in Sumter County is a \$2.00 law library fee, collected in all jurisdictions, pursuant to Act 79-751, Acts of Alabama 1979, page 1336.

Correction: In the article "United States Supreme Court Reexamines Warrantless Searches of Automobiles," July 1982 issue of Court News, a line was left out from Justice Marshall's quote. The statement should have read -

"the Government must show that the investigating officer knew enough but not too much, that he had sufficient knowledge to establish probable cause but insufficient knowledge to know exactly where the contraband was located" before the warrantless search of a container found within an automobile is justified under the automobile exception.

Corrections to list of Local Court Costs for Clerks and Registers Manual:

Choctaw County--

\$1.00 "law library", pursuant to Act 79-119, Acts of Alabama 1979, page 149.

\$4.00 "other", pursuant to Act 79-375, Acts of Alabama 1979, page 598.

\$5.00 "other", pursuant to Act 81-1023, Acts of Alabama 1981, page 212.

Clarke County--

\$1.00 in all cases for law library, pursuant to Act 457, Acts of Alabama 1967, page 1148.

\$6.00 in all cases for "other" pursuant to Act 80-413, Acts of Alabama 1980, page 577.

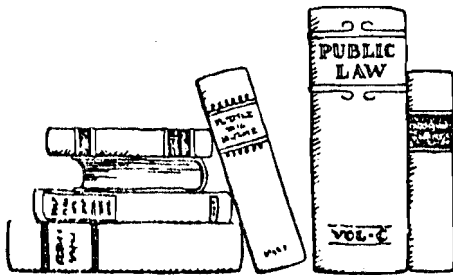
Cullman County--

\$1.00 all cases for law library, pursuant to Act 12, Acts of Alabama 1965, page 216.

\$3.00 in criminal cases for "juvenile" and

\$5.00 in criminal cases for "other", for a total of \$8.00, pursuant to Act 81-1037, Acts of Alabama 1981, page 237.

## LEGAL NOTES



## ATTORNEY GENERAL OPINIONS

Issuance And Execution OfMunicipal Alias Writs Of Arrest

In an opinion dated June 11th to the Mayor of the Town of Killen, the Attorney General addressed several questions concerning the issuance and execution of alias writs of arrests. After review of the pertinent Code sections, the Attorney General arrived at the following conclusions:

- (1) As long as the original warrant of arrest for violation of a municipal ordinance is issued within the time provided in Section 15-3-2 (12 months), alias writs may subsequently be issued "for as long as necessary." The Attorney General did note that this does not prohibit the municipal judge from formulating a recordkeeping policy that would result in very old warrants being removed from active files.
- (2) A police officer from one city may go inside another city within the same county and execute an alias warrant without first having to get a county deputy or police officer from that city to accompany him. Section 15-10-01.
- (3) An alias warrant is considered an

arrest warrant under Section 15-11-5 of the Code, and as such, may be executed on any day at any time of day or night. See Section 15-10-02.

- (4) An alias warrant issued by a judge or magistrate who, at the time the warrant is executed, is no longer a judge or magistrate of the town, is still a valid warrant.
  - (5) An endorsement from a city judge or magistrate within another county will satisfy the legal requirements of Section 15-10-11 if he is "an officer authorized to issue such a warrant".
- "Code of Alabama 1975, Section 15-10-11 requires an endorsement 'by an officer of that county authorized to issue such a warrant'. If a city judge or magistrate in the originating county can issue the warrant, then his or her counterparts in the defendant's county of residence may endorse the warrant."
- (6) A municipality may not charge mileage fees for costs incurred in the service of an alias warrant.

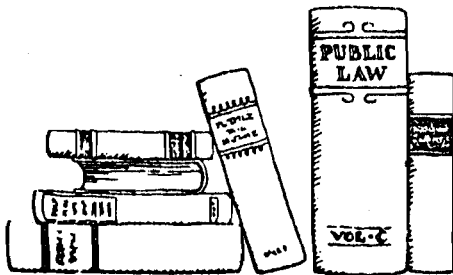
Use Of The Uniform Traffic Citation

In an opinion dated July 19, 1982, the Attorney General determined that Act 81-1136 does not authorize the Liquefied Petroleum Gas Board to issue uniform traffic tickets and complaints as provided in Rule 19 of the Alabama Rules of Judicial Administration, since its use is limited to infractions contained within the provisions of Title 32, Code of Alabama 1975. Quarterly Report of the Attorney General, Vol. 168, p. 18.

The opinion concluded, however, that Act 81-1136 does authorize the Liquefied Petroleum Gas Board to establish its own uniform traffic citation for the enforcement of the provisions of said Act.

*(Continued On Page 12)*

## LEGAL NOTES



## ATTORNEY GENERAL OPINIONS

*(Continued From Page 11)*

Motorcycles - Rules Of The Road

The Attorney General was recently asked to interpret Section 32-5A-243, Code of Alabama 1975, which provides, "No person riding upon a motorcycle shall attach himself or the motorcycle to any other vehicle on a roadway." In an opinion dated June 25, 1982, the Attorney General held that this statute did not prohibit the use of a motorcycle to tow a trailer. According to the Attorney General, the language of the statute indicates that the legislative intent was only "to prohibit persons on motorcycles from holding onto or attaching the motorcycle to other moving vehicles on the roadway", and not to prohibit the towing of another vehicle by a motorcycle.

Judicial Retirement

In an opinion dated July 9, 1982, the Attorney General addressed several questions submitted by the Administrative Director of Courts, regarding certain provisions of the Judicial Retirement statutes.

It was the Attorney General's opinion that Section 12-18-83, like Sections 12-18-8(b) and 12-18-54, Code of Alabama 1975, authorize a judge to use his discretion after reaching retirement age, as to when he shall file his certificate of

entitlement with the Secretary-Treasurer of the Employees' Retirement System. This opinion notes however, that "if a judge files at a date subsequent to reaching retirement age, he will only be entitled to those benefits which accrue after he has filed. He will not be entitled to retroactive benefits which he would have received had he filed immediately upon attaining a retirement age."

It was also determined that the "base sum to be used in calculating retirement benefits under Sections 12-18-40(e), 12-18-58 and 12-18-87(a), Code of Alabama 1975, varies under each Code section, but that the base sum for a probate judge under Section 12-18-87(a), *supra*, is the salary the judge was receiving at the time he resigned from office or terminated his service.

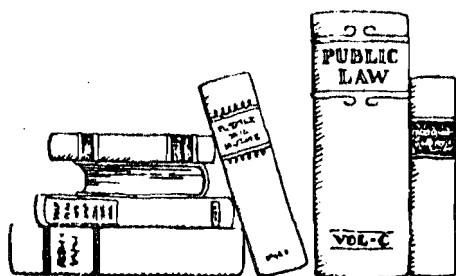
Lastly, the Attorney General determined that Section 16-25-1(e) Code of Alabama 1975, would normally require an ex-judge who becomes a "teacher" for purposes of the Teachers' Retirement Fund, to join the Teachers' Retirement System even though he is already a vested member of the Judicial Retirement System, unless the judge has already attained the age of sixty-one at the time he is employed in such position.

The Attorney General also noted that the mandatory membership requirement for teachers is inapplicable to an ex-probate judge who is already a vested member of the Judicial Retirement System at the time he becomes employed as a teacher as defined in Section 16-25-1(e), *supra*, by virtue of Section 12-18-90, Code of Alabama 1975, which provides in pertinent part that:

"No probate judge who elects to come under the provisions of this chapter shall be eligible to receive benefits as a supernumerary probate judge or benefits under any other state retirement program..." (Emphasis supplied).

*(Continued On Page 13)*

## LEGAL NOTES



## ATTORNEY GENERAL OPINIONS

*(Continued From Page 12)*

County Commissions May Seek

Competitive Bids For Publication

Of Legal Notices

In an opinion dated June 23, 1982, the Attorney General held that under the provisions of Section 6-8-60, Code of Alabama 1975, the party in interest or at whose instance a legal notice is to be published may designate the newspaper in which such advertisement shall be made. The opinion goes on to say that under this provision the county commission, when it is required by law to publish a legal advertisement, may designate the newspaper to carry the notice at the rates prescribed in Section 6-6-84 of the Code. However, as pointed out by the Attorney General, if the county commission or county officer chooses to do so, that body or the officer may take bids from several newspapers in the county which meet the standards set forth for such newspapers in Section 6-6-80, supra, in order to see if lower rates of publication may be obtained. Additionally, the county commission may request that county officers and department heads take bids from the county newspapers for the publishing of legal notices.

Written Declaration Of Exemption Not

Necessary For Certain Personal Property

In an opinion issued to the Hon. Thomas H. Benton, Sheriff of Baldwin County, the Attorney General stated that an exemption from attachment or execution can be claimed for those items of personalty listed in Section 6-10-126, Code of Alabama 1975, without filing a written and sworn declaration of exemption in the Office of the Probate Judge, as is provided in Section 6-10-20 of the Code. The Supreme Court of Alabama, in the case of Coffman v. Folds, 216 Ala. 133, 112 So. 911 held that it is not necessary to make a declaration of exemption in writing for those items listed in Section 6-10-126, supra, and that an informal, yet positive designation of the property is sufficient. Section 6-10-126 covers the following items:

1. Cooking utensils, cooking stoves, table, tableware, chairs, bed and bed clothing in actual use by the family;
2. Wearing apparel;
3. A vehicle used by and essential to the debtor's business;
4. Tools used personally by and essential to the debtor's business;
5. The library of the debtor.

District Attorney May File Civil Child

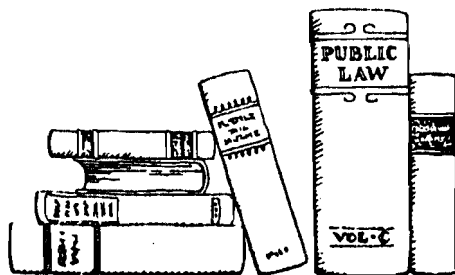
Support Actions In Non-A.D.C. Cases

In an opinion recently released and dated Jun 15, 1982, the Attorney General addressed the issue of the District Attorney's involvement in civil child support cases in which the complainant does not receive A.D.C. payments. Due to the importance of this opinion, it is reprinted in full below:

"Is a district attorney authorized under State law to represent a private litigant seeking child support in a civil action to collect from a non-supporting parent who

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## LEGAL NOTES



## ATTORNEY GENERAL OPINIONS

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is a resident of Alabama when the child or children are not receiving Aid to Dependent Children benefits, but said matter is referred to the District Attorney from the Department of Pensions and Security pursuant to federal regulations requiring DPS to provide legal services to collect child support in non-ADC cases."

"Your question must be answered in the affirmative. The following sections of the Code of Alabama relating to the authority of district attorneys authorize your office to represent such cases. First, Section 12-17-184(3) requires district attorneys to "prosecute and defend any civil action in the circuit court in the prosecution or defense of which the state is interested." Such cases would not involve the private practice of law since the members of the district attorney's office would be acting within the scope of their official duties. Code of Alabama 1975, Section 12-17-184(11).

"Child support proceedings are not strictly private actions but involve the interests of the State. Like paternity proceedings they are neither strictly civil nor strictly criminal but clearly concern the State as well as the private individuals involved.

"Further, the State is interested in the administration of Part IV-D, Child Support

and Establishment of Paternity, of the Social Security Act, 42 U.S.C., Section 651-664. This title provides that a state may design and administer a plan to enforce the provisions of the federal act, 42 U.S.C., Section 652. Federal regulations have been adopted which describe what services a state must provide in order for its plan to be approved by the U.S. Department of Health and Human Services, and for the state to enforce Part IV-D of the Act, 45 C.F.R., Section 301, et seq. The regulations specifically require the child support or paternity determination services provided by a state under a state plan must be available to any individual who applies whether or not he is eligible for ADC benefits. 45 C.F.R., Section 302.23 provides:

"(a) The state plan shall provide that the child support collection or paternity determination services established under the plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the IV-D agency"

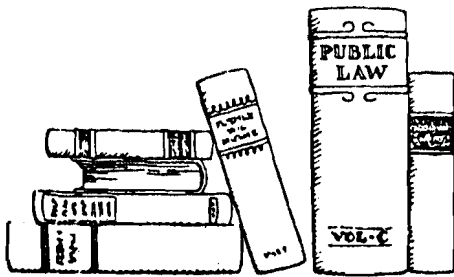
"The State of Alabama, therefore, has a clear interest in the provision of child support collection services.

"It is my conclusion that, as a general rule, your office is not precluded by Alabama law from providing child support collection services to individuals referred to you by the Department of Pensions and Security as the Administering Agency of Part IV-D, 42 U.S.C., Section 651, et seq."

It is the opinion of the Administrative Office of Courts, after consulting with the the Department of Pensions and Security, the Office of Prosecution Services and the Examiners of Public Accounts, that civil actions for child support initiated by a District Attorney on behalf of non-recipients of welfare should be treated as other civil cases initiated by the State for docket fee purposes. A civil filing fee should not be collected from the complaining witness or prepaid by the District Attorney, but the filing fee may be taxed as costs against the defendant if the District Attor-

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## ATTORNEY GENERAL OPINIONS

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ney is successful. Federal regulations also require equal treatment in this regard between A.F.D.C. cases and non-welfare cases.

Discussion Of Prohibition Against  
Political Activities By State Employees

In an opinion dated June 28, 1982, the Attorney General discussed the pertinent statutory provisions regarding political activities by public employees. The entire opinion is set out below:

"You have requested an opinion regarding various aspects of state employees' involvement in political activities which reads, in part, as follows:

"We have had numerous inquiries as to where in the law it states that employees of the state cannot participate in campaigns for state offices, and I would like to pose the following questions in order to give well-founded and precise information to state employees:

"What can state employees do as campaign workers in campaigns for people running for state office?

"Can employees of the state run for state office themselves?

"If state employees must resign to run

for state office (or county employees must resign to run for county office), when must they resign?

"Time is, of course, of the essence in getting this information to the people, therefore I would greatly appreciate your prompt attention."

"In response to your inquiries, state employees are prohibited under the Alabama merit system law from participating in political campaigns. Section 36-26-38, Code of Alabama 1975, provides, in pertinent part:

"...No employee in the classified service shall be a member of any national, state or local committee of a political party or an officer of a partisan political club or a candidate for nomination or election to any public office or shall take any part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote;..."

"This law has been modified by Section 17-1-7(3), Code of Alabama 1975, which states that "No person in the employment of the state of Alabama, whether classified or unclassified, shall be denied the right to participate in city or county political activities to the same extent as any other citizen of the state of Alabama, including endorsing candidates and contributing to campaigns of his choosing." (Emphasis added).

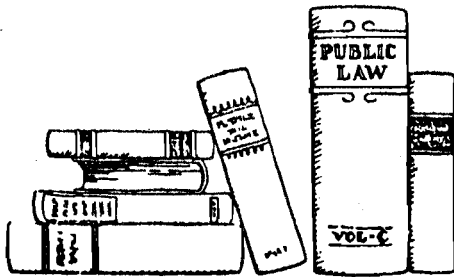
"Because this section authorizes state employees to participate only in city and county political activities, the prohibition of Section 36-26-38 still applies with regard to state political activities.

"Your first question is "What can state employees do as campaign workers in campaigns for people running for state office?" Section 36-26-38 provides that a state employee must not take any part in the "management or affairs of any political party or political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote."

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## ATTORNEY GENERAL OPINIONS

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While this language is not specific, it would seem to prohibit state employees from endorsing candidates and contributing to campaigns, inasmuch as Section 17-1-7(3) specifically authorizes these activities with regard to city and county campaigns.

"It should be noted that the Supreme Court of the United States in Broadrick v. Oklahoma, 413 U.S. 601, 37 L.Ed.2d 830, 92 S.Ct. 2908 (1973) upheld an Oklahoma state merit system act which is almost identical to Alabama's Section 36-26-38. However, the Court in Broadrick did not address the question of whether such activities as placing bumper stickers on cars or wearing campaign buttons were unlawful.

"This office has long taken the position that Section 36-26-38 is not a strict prohibition against all political expression and that pursuant to an employee's right to express his opinion privately he may 1) wear political buttons while not at work, 2) place a bumper sticker on his car, or 3) attend political meetings purely as a spectator. Opinion to Hon. Tom Drake, September 23, 1975, Quarterly Report of the Attorney General, Vol. 160, p. 28.

"In response to your second question, this office has previously ruled that pursuant to Section 36-26-38 a state employee

may not run for state office unless he resigns or takes a leave of absence. Opinion to Lewis W. Headley, August 30, 1973, Quarterly Reports to the Attorney General, Vol. 152, p. 19. The determination of whether a leave of absence will be granted is within the discretion of the employer. If a leave of absence is not granted, the state employee must resign in order to run for state office.

"In response to your third question, it is my opinion that a state employee must resign or take a leave of absence no later than the date that he qualifies for a particular office because it is at that time that he officially becomes a candidate for nomination or election to a public office in conflict with Section 36-26-38. However, if the employee begins to campaign prior to the time that he qualifies or to do anything that is otherwise prohibited by Section 36-26-38, he should resign at that time.

"These are questions that frequently arise in all areas of state and local government, and it is my hope that this opinion is of some help in answering them."

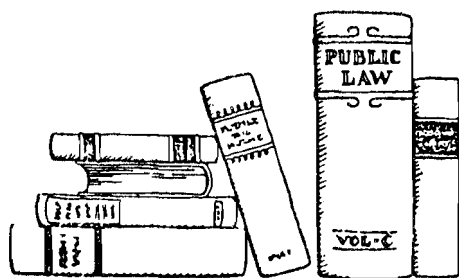
### "Compensation" Of Probate Judge Does

#### Not Include Local "Expense Allowance"

The Attorney General was recently asked whether a local "expense allowance" was to be considered in calculating the salary and compensation due a probate judge who, under a later enacted statute, was to receive a "...total compensation (emphasis) of not less than \$27,500". The Attorney General, in the opinion dated July 8, 1982, cited the case of Hart v. deGraffenried, 388 So. 2d 1196 (Ala.) and an earlier Attorney General's opinion of November 20, 1980, to the Hon. John A. Teague, for the proposition that expense allowances are not part of an officer's "compensation" unless the particular statute states that they are so constituted. Thus, under this reasoning, the probate judge in question is entitled to both the \$27,500 "compensation" and the \$3,000 "expense allowance".

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## ATTORNEY GENERAL OPINIONS

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Political Activities By UJS Employees

In an opinion dated July 8, 1982, the Attorney General determined that the prohibitions against political activities outlined in Section 36-26-38, Code of Alabama 1975, apply to all UJS employees, whether classified or unclassified, unless otherwise excepted by law. This opinion is included in its entirety below:

"Dear Mr. Tapley:

I am responding to your request for an opinion regarding the applicability of Section 36-26-38, Code of Alabama 1975 to certain employees of the Unified Judicial System. Specifically you ask "Are those confidential employees of the Unified Judicial System who are appointed and terminated at the pleasure of the appointing officer, subject to the general prohibitions outlined in Section 36-26-38, and thus prohibited from engaging in political activities?"

It appears, pursuant to the definitions of exempt, classified and unclassified service contained in Section 36-26-10, Code of Alabama 1975, that the confidential employees to which you refer are "unclassified" employees within the meaning of the Merit System Act.

As you are aware, Section 36-26-38 prohibits "classified" state employees from

engaging in political activities. Section 36-26-38 provides, in pertinent part:

"...No employee in the classified service shall be a member of any national, state or local committee of a political party or an officer of a partisan political club or a candidate for nomination or election to any public office or shall take any part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote ..."

This law has been modified by Section 17-1-7(3), Code of Alabama 1975, which states that "No person in the employment of the State of Alabama, whether classified or unclassified, shall be denied the right to participate in city or county political activities to the same extent as any other citizen of the State of Alabama, including endorsing candidates and contributing to campaigns of his choosing." (Emphasis added).

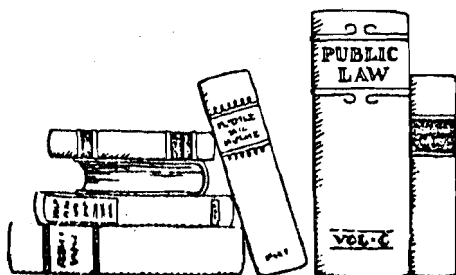
This section authorizes state employees, whether classified or unclassified, to participate in city and county political activities. Implicitly, then, the prohibition of Section 36-26-38 still applies to state employees, whether classified or unclassified, with regard to state political activities.

This interpretation is supported by Section 36-26-10(f) which states that, "Employees in the unclassified service shall be subject to the same rules and regulations of employment as apply to employees in the classified service except as to appointment and dismissal."

It should further be noted that Section 12-17-1(6) provides, in pertinent part, that, "Except as otherwise provided by law or rule, all court personnel employed by the state shall be subject to the state merit system...". Pursuant to this section, state employees may be exempted from the provisions of Section 36-26-38 if the statute creating the particular position specifies that it is without regard to the merit system except for pay purposes."

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## ATTORNEY GENERAL OPINIONS

*(Continued From Page 17)*

In conclusion, based upon the foregoing it is my opinion that unclassified employees are subject to the general prohibitions regarding political activities which are applicable to classified employees under Section 36-26-38, unless the statute creating a particular position specifically exempts that employee."

County May Work Inmates

In an opinion issued July 8, 1982 to Representative Zoghby, the Attorney General interpreted Section 14-5-5 of the Code as authorizing a county to make use of any county inmate to work on public projects or on public property "regardless of their sentence." The Attorney General reached this conclusion under the following rationale:

"The Federal courts have long held that inmates in state facilities may be assigned to prison work details so long as the details to which they are assigned to not constitute a base, inhuman or barbaric condition. The State Department of Corrections requires its inmates to perform assigned tasks which include manual farm labor. It is the opinion of the Attorney General that county inmates may be assigned similar duties."

In addition, the Attorney General stated

that the maximum wage requirements set out in Section 14-8-36 did not apply to county inmates performing work outside of work release since the payment of wages under that section was limited to inmates participating in a Section 14-8-31 approved work release program.

County Is Liable For Medical Expenses

Of Persons In Their Custody

In an opinion dated July 9, 1982, the Attorney General determined that the county, pursuant to Section 14-6-19, Code of Alabama 1975, is liable for the medical expenses of a person who is shot while being pursued by a deputy, provided that such person is unable to provide for himself. This is so even if the subject had not been confined to the county jail prior to such shooting.

County Sheriff Has Discretion To

Grant An Employee A Leave Without Pay

In an opinion issued to the County Attorney for Etowah County, the Attorney General stated that, under applicable local law and local personnel procedures, it is within the discretion of the county sheriff whether or not to grant one of his assistants a leave without pay for the purposes of running for an elected office. Further, under the particular facts involved, the Attorney General held that the County Commission could not override the sheriff's refusal of such a request. This opinion is dated July 16, 1982.



"My wife never understands my opinions."

## Hocklander recognized by judges

The American Judicature Society has bestowed its prestigious Herbert Harley Award upon retired Mobile County Circuit Judge Joseph M. Hocklander.

Hocklander was specifically honored for his efforts to promote the effective administration of justice.

The award was presented during the annual meeting of the Association of Circuit Court Judges in Huntsville, and derives its name from the fou. The society is a national organization of lawyers, judges and other citizens dedicated to improving the courts.

"Most of us are challenged to succeed in a single career and content to do so," the judicature society's executive vice president, George H. Williams, said in announcing the award. "Judge Hocklander has distinguished himself at many — lawyer, legislator, judge, educator and civic leader."

"The citizens of his native Alabama have benefitted in countless ways from this outstanding jurist," Williams continued. "His name is synonymous with all that is best in the great tradition of public service."

Most of Mobile's circuit judges are attending the Huntsville meeting.

Hocklander, who was presiding judge of the 13th Judicial Circuit for 10 years, retired Dec. 1 for health reasons after 20 years on the bench. He had previously served as a state representative and a municipal attorney.

Alabama Supreme Court Chief Justice C.C. Torbert Jr. presented the award, which is given at the state level to recognize individuals who make a significant contribution to strengthening the administration of justice.

This clip from MOBILE PRESS, July 15, 1982.

## Welcome ruling

The Alabama Supreme Court made a narrow legal ruling Friday in holding that state and local industrial development bonds cannot be used to finance the construction of retail businesses. It is a welcome decision which should end the most flagrant abuse of these tax-free bonds.

The circuit judge who first blocked financing of a McDonald's restaurant and a K-Mart store by the Industrial Development Board of Elmore County found that the various state laws enacted since 1949 establishing these tax-free bonds have specifically excluded retail businesses. The Supreme Court upheld this finding.

But the courts also provided a reminder of the supposed purpose of the tax-free bonds. The stated purpose of industrial development bonds is to "to induce and persuade ... businesses, which might not intend to do so, to locate in this state." It is a purpose that has been ignored with increasing frequency in recent years.

Instead of being used as a tool to attract business that would not otherwise locate or expand in the state, the

bonds are provided to almost any business which has enough sense to ask for them, even when a firm commitment to build the new plant or expansion has already been made. The tax-free nature of industrial development bonds allows the business to make significant savings in interest rates, not to mention the fact that the facility is exempt from property taxes during the life of the bonds.

There is little evidence to suggest the bonds actually serve to attract new industry. But there is considerable evidence that local, state and federal treasuries lose revenues from their widespread use and abuse.

Eventually, we expect Congress to take away the tax exemption — it has already put limits on issuance of the bonds because of their overuse.

But in the meantime, industrial development authorities in Alabama ought to restrict use of the bonds to those few cases where they might actually make a difference. The way they are used at present, the bonds are putting government in the banking business.

This clip from BIRMINGHAM POST HERALD, June 14, 1982.

**COURT NEWS**

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