



ALABAMA LEAGUE OF MUNICIPALITIES

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MAYOR CHARLES H. MURPHY, ROBERTSDALE
President

February 17, 2011

Elizabeth M. Murphy, Secretary,
Securities and Exchange Commission,
100 F Street, NE., Washington, DC
20549-1090.

Re: File Number S7-45-10 SEC
Release 34-63576
Alabama League of Municipalities – Comments

Dear Chairman Schapiro and Members of the Commission,

Thank you for the opportunity to comment on the SEC's proposed rule requiring municipal advisors to register with the SEC. The Alabama League of Municipalities is a voluntary municipal association of which 443 cities and towns throughout Alabama are members. I am writing to comment on the SEC's proposal to include appointed officers serving our member municipalities in the definition of "municipal advisor." In its current form, the Commission's proposal misunderstands the basic principles of local government law and will have a negative effect on local government budgets and their operations.

In discussing the definition of "municipal employee," and in response to the question of whether appointed officials of a local government entity were intended to be included within the definition of "municipal employee," the proposal responds:

" . . .The Commission does not believe that appointed members of a governing body of a municipal entity that are not elected *ex officio* members should be excluded from the definition of a "municipal advisor." [*Footnote omitted.*]

Municipal Advisors. 76 Fed. Reg. 834 January 6, 2011.

In Alabama, municipalities depend upon the citizens of the community to help facilitate and run many governmental functions through various boards and committees. These citizens give their time, expertise and common sense to enable their municipality to plan and zone for development, to provide for recreational opportunities, to administer utility serves, to provide for industrial and economic development opportunities and to facilitate many other facets of local government.

Municipalities in Alabama have the authority to create a variety of boards and commissions including water and sewer boards, electrical boards, gas boards, recreation boards, medical boards, building authorities, industrial and economic development authorities, boards of education, library boards and airport authorities. Individuals serving on these various boards and commissions are not considered city employees, and also are not elected. Thus, the position quoted above creates the

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problem of requiring thousands of civic-minded volunteers to spend money on registration and to subject themselves to federal regulatory controls, which would expose them to heightened liability. If this rule goes into effect it will result in mass resignations from these positions thereby crippling important municipal functions. Further, it may create problems with the independent agency rule that keeps the debts of these boards and commissions off the municipal balance sheet should these boards become populated with "ex officio" members such as councilmembers and mayors.

In Alabama, individuals who currently hold these positions subject themselves to state ethics laws and common law responsibilities that include potential penalties for malfeasance. Each of these controls meet the Commission's stated intent of protecting the public by providing a significant deterrent to misconduct that another layer of protection does not enhance. The current definition of "municipal advisor" greatly expands the costs to Alabama municipalities, and the complexity of those regulations greatly deters volunteer service.

Requiring registration for volunteer board members and directors who discuss how to best invest public funds chills informed analysis and debate - exactly the opposite result the SEC should be seeking. The SEC is mistakenly failing to recognize that members of governing bodies and other local boards actually operate the municipal entities. The "municipal advisors" serve those officials. It confuses the issue to suggest that those officials—the intended beneficiaries of municipal advisor regulation—somehow are "municipal advisors" themselves. In short, the proposed regulations turn on its head the concept of "advice" and transform decision makers of entities who should be receiving advice into "advisors."

The cost to both municipalities and volunteers for various municipal boards and commissions to comply with these new regulations will be extensive and comes at the worst possible time for Alabama's municipalities. Municipalities, municipal boards or the volunteer officers themselves will be required to pay the cost for regulation under the proposed changes. In addition, the local entity will likely need to hire counsel with expertise in dealing with the SEC to be sure that these board members are properly trained and advised in the intricacies of securities law.

Again, we greatly appreciate the opportunity to comment. I ask respectfully that you consider expanding the definition of "municipal employee" to include appointed officials that volunteer on city boards and commissions and thereby exclude these appointed officials from the definition of municipal advisors.

Sincerely,



Lorelei Lein
Deputy General Counsel
Alabama League of Municipalities