

UPTOWN

Cities are vital even to those who aren't part of them

This article was written by Cindi Ross Scoppe, associate editor of *The State*, who attended MASC's Hometown Legislative Action Day in February.

The farm I grew up on was only 10 miles outside the nearest city, but it might just as well have been 100 miles away. We were pretty self-sufficient, so "going to town" was a big deal, something we did maybe once a week, often for little more than to buy groceries. But whenever someone asked me where I lived, it never crossed my mind to say anything other than "Burlington."

You'll still get that type of response from most non-city residents today, whether they live in one of the dwindling number of isolated communities that dot the landscape or one of the growing number of bedroom communities that encircle our cities and towns.

Our cities are our identities. We feel like we own them, are a part of them, even when we don't technically live in them. They're where many of us work, shop, go out to dinner, enjoy cultural activities. They often provide our water and sewer service, sometimes our electricity. They're where we do our banking and go to the emergency room and interact with government at all levels. In this post-agricultural society, they are the economic and social centers of our communities.

As such, they have responsibilities that reach far beyond their borders: They provide police protection and street lights and garbage collection not

just for their residents, but for everybody who works in and visits them.

Charleston Mayor Joe Riley summed up the city mindset nicely when he recounted earlier this week how he runs into people from Goose Creek, Orangeburg, Columbia and elsewhere who are strolling through his city's Waterfont Park. They rave over what a delightful jewel it is; they thank him for creating it, "and I say, 'We do it for you.'

"Cities and towns," Mr. Riley told municipal leaders from across the state, "provide essential elements of our

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Candidates must use new Campaign Disclosure Form

The South Carolina State Ethics Commission updated the Candidate Campaign Disclosure Form in November 2004. All candidates must use the new form when filing for public office. If old forms are used, the Commission will return the form and request that the new form be used. The deadline will not change; any forms received after the deadline will be subject to the \$100 per day late fee. To download the new Candidate Campaign Disclosure Form, visit www.state.sc.us/ethics and click on the "New Forms" link. The new forms have a revised date of 11/04 printed on the bottom of each page.

March 2005

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Contingent/temporary employees: Important points to consider

by Mike Malone, Malone & Thompson L.L.C.

Who is an employer? In the context of employment law (and in tax law, employee benefits law and workers' compensation), this is a critical question. Because of the multitude of nontraditional work relationships (e.g., contingent worker, temp, contract employee, leased employee and independent contractor), determining "employer status" can be confusing. If a mistake is made, it can be quite costly. Unfortunately, there is no uniform test or standard in the law to determine whether an individual is considered an employee and whether an entity is considered the individual's employer.

Contingent workers

"Contingent worker" generally refers to workers outside an employer's normal "core" workforce. Examples include workers who are hired through and paid by temporary employment agencies, workers of contract firms who are placed at the client's work site for an extended period of time and "leased workers" who perform work for a "client company" but receive compensation and benefits through the staffing agency. In many cases, these contingent workers work for two entities: the staffing company and the company for which they are actually performing services. Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), prohibits discrimination against "employees" on the basis of race, color, religion, national origin and gender. Current or former contingent workers may make charges of Title VII violations against the staffing firm, the client company or both entities.

To be liable under Title VII, the client company must qualify as the worker's employer, which is generally based on the degree of control the client company exercises over the worker. If the compa-

ny/municipality establishes the worker's duties and hours, provides the necessary materials and equipment for the job and supervises the worker's performance, it is quite possible the courts will rule the company/municipality is the employer, even though it does not directly pay the worker's wages or provide fringe benefits. [See *Magnuson v. Peak Technical Services Inc.*, 808 F.Supp. 500 (E.D. Va. 1992) *aff'd* 40 F.3d 1244 (4th Cir. 1994); *Williams v. Grimes Aerospace Company*, 988 F.Supp. 925 (D.S.C. 1997)].

Special policies for contingent workers

At a minimum, all employers should issue anti-discrimination/anti-harassment policies to all contingent workers. There is no single, perfect anti-discrimination/anti-harassment policy but, to be effective, it should include two essential components: a statement that the employer does not make personnel decisions based on protected characteristics and a statement that **all** offensive conduct in the workplace **must** be reported **immediately** to senior management/the personnel department or the person/entity in which administrative authority is legally vested.

Under South Carolina's relatively new "At Will Employment" statute (SC Code § 41-1-110), employers must take special steps to ensure employee handbooks/personnel policy manuals — and "stand-alone" personnel policies — do not constitute contracts of employment. Employee handbooks/personnel policy manuals issued after June 30, 2004 are not considered a contract of employment if they contain a conspicuous disclaimer that is underlined and in all capital letters on page 1. The employee must sign the disclaimer. For "stand-alone" policies (e.g., singular policies not

a part of personnel policies), the policy must include a similar disclaimer as described above. The law does not require employees to sign the stand-alone policy's disclaimer; however, it is good policy to require employees to acknowledge in writing they have received the stand-alone policy.

Employers should require **all** contingent workers to sign a short document with a conspicuous disclaimer page including a signature blank and acknowledging the following:

- these individuals have the special status of "temporary workers";
- the employee handbook/personnel policy manual issued to all employees other than "temporary workers" does not apply to "temporary workers";
- all "temporary workers" are employed/engaged on an "at will" basis, which means their relationship with the city may be terminated at any time, with or without notice or cause;
- "temporary workers" are not eligible to participate in the city's benefit program;
- "temporary workers" are not eligible for a leave-of-absence status;
- the city does not make personnel/staffing decisions based on race, color, religion, national origin, gender, disability, age or veteran status; and
- "temporary workers" are required to immediately report all instances of offensive conduct to the city administrator/city manager, personnel department or the person/entity in which the city's administrative authority is legally vested.

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Fair Labor Standards Act: Are public safety officers exempt from overtime?

by Linda Edwards of Gignilliat, Savitz & Bettis LLP

A section of the new Fair Labor Standards Act (FLSA) regulations addressing public safety officers has raised questions regarding whether these employees are exempt from overtime [29 C.F.R. § 541.3(b)(1)]. The Act lists job titles of public safety employees who are not exempt from overtime and further explains these positions do not qualify for exempt status because their “primary duty” does not meet the requirements of the various “white collar” exemptions [§ 541.3(b)(2)-(4)]. In light of this language, some employee groups have taken the position that no firefighter or law enforcement officer, other than the chief, is exempt from overtime provisions.

This interpretation may be too restrictive. The comments accompanying the regulations explain the Department of Labor does not intend to depart from established case law. Federal courts have found high-level police and fire officials exempt as executive or administrative employees if they meet the requirements of the executive or administrative exemption **and** if their primary duty is performing managerial tasks. Managerial tasks for public safety officers include evaluating personnel performance, imposing penalties for violations of rules, making

recommendations for hiring and discipline, maintaining payroll and personnel records, coordinating and implementing training programs, handling community complaints and investigations, preparing budgets and controlling expenses, deciding how and where to allocate resources, and directing operations at crime, fire and accident scenes.

Handling these duties on an occasional basis is not sufficient to meet the “primary duty” test. A good rule of thumb is an employee who spends more than 50 percent of their time performing the types of tasks listed above is probably exempt. However, the percentage of time spent performing these duties does not determine an employee’s exemption status.

In small departments, the chief is probably the only exempt employee. In larger departments, those employees who report directly to the chief may also be exempt, depending upon the command structure. In most cases, the highest-ranking person on a shift is quite likely exempt.

As always, check with a wage/hour specialist or an attorney before assigning exempt status to an employee, particularly if he or she has been previously classified as non-exempt.



Classifieds

■ The City of Spartanburg is accepting applications for an economic development director. Send resumé with salary expectations to the City of Spartanburg, Human Resources Department, PO Box 1749, Spartanburg, SC 29304 or e-mail hr1@cityofspartanburg.org.

■ The City of Union is accepting applications for a utilities director. Send resumé to the City of Union, Attn: City Clerk/Personnel Director, PO Box 987, 101 Sharpe Avenue, Union, SC 29379.

■ The City of Charleston is accepting applications for director of Housing and Community Development. Send resumé to the City of Charleston, Human Resources, 701 East Bay Street, MSC 1220, Charleston, SC 29403 or e-mail HR@ci.charleston.sc.us.

■ The City of Charleston is accepting applications for director of Planning and Neighborhoods. Send resumé to the City of Charleston, Human Resources, 701 East Bay Street, MSC 1220, Charleston, SC 29403 or e-mail HR@ci.charleston.sc.us.

■ The City of Rock Hill is accepting applications for a rehabilitation specialist for its housing programs. Send resumé to Human Resources Department, PO Box 11706, Rock Hill, SC 29731 or call 803.329.5570.

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By having employees sign this type of document, the employer is taking important steps to mitigate its risk. This type of document precludes contingent workers from being able to assert a successful breach of contract claim, directs contingent workers to

immediately report offensive conduct so that it can be addressed and remedied, and preserves some of the defenses that may be available to the employer in the event a contingent worker attempts to assert a workplace harassment claim.

The contents of this article are intended for general information purposes only. Please consult your organization’s source for employment law guidance, such as your municipal attorney, before adopting any personnel-related policies.

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civilization. And they need to be healthy and grow.”

That message — that cities drive South Carolina’s economy and can only do so as long as they’re growing — is the centerpiece of a new initiative the SC Municipal Association rolled out Tuesday. It grew out of city leaders’ realization that one reason legislators are increasingly hostile toward local governments in general and city governments in particular is that they don’t understand the role cities play in the life of our state. If lawmakers understand that role, officials reasonably figure, they might be less likely to restrict the ability of locally elected officials to make the best choices for their cities.

To be healthy, cities must be able to grow as population around them grows and demands more of their services, to diversify their tax bases and spend tax money as their leaders see fit and to make decisions about everything from zoning to providing fire service without legislative interference.

The first two criteria are closely related and often misunderstood by

people who view city leaders as power-hungry politicians who just want to get their hands on more taxpayers’ wallets. It costs money for cities to provide services to non-residents who benefit from those services. But the Legislature is constantly restricting their ability to raise money with anything except the property tax; some laws even require cities to use what few alternative revenue sources they have to pay for optional services, while vital services go wanting. The restrictions mean city residents have to pay the cost of providing services to all those non-residents.

And because our state has some of the most restrictive annexation laws in the nation, there’s precious little cities can do to bring their neighbors into the city, where they pay their fair share. What should be a commonsense approach — “If people decide to live next to a city, and the city serves them directly or indirectly, they should be part of the city,” as Mr. Riley put it — is anathema to lawmakers, who tend

to represent more of the freeloaders than city residents.

The third criterion for a healthy city — one whose elected leaders can call the shots — is simple common sense. Folks in Spartanburg want, and need, different services than folks in Salley; it makes no sense to impose a one-size-fits-all solution on big cities and small towns, on tourist destinations and just plain hometowns. But that’s the only kind of “solution” the state constitution allows our Legislature to impose.

Nor is it particularly democratic for the Legislature to hand down edicts to local citizens. Local government, Gov. Mark Sanford told the municipal leaders, is “where people have the highest level of say in their own lives.” Local government, Mayor Riley told them, is where people “can get us; they can look us in the eye; they can hold our hand; they can speak at our meetings.”

Our cities are vital to the health of our state and to our democracy. It’s time for our legislators to appreciate that.

Sharing tax-exempt gasoline is a “no-no”

Municipal governments are able to purchase gasoline in bulk to provide fuel for public safety vehicles, sanitation trucks and other municipal service vehicles. If used for the “exclusive use” of the purchasing municipality, the gasoline is exempt from the 18.4 cents per gallon federal gas tax.

“Exclusive use” means a municipality cannot share gasoline it has purchased with another exempt political subdivision unless it pays the

federal gas tax. The Internal Revenue Service is looking for violators of IRS Code Section 4041 as agents begin auditing municipal governments that have purchased exempt gasoline. Municipal governments must keep records proving the gasoline is used for its “exclusive use.”

Some cities share exempt gasoline with other exempt cities and bill them for the cost of the gasoline. According to the IRS, this violates the “exclusive use” requirement. Each exempt entity

must purchase and account for exempt gasoline separately. The fines and penalties for sharing exempt gasoline can be substantial.

“Bottom line, don’t share,” said Howard Duvall, MASC executive director.

Remember, if you are purchasing gas for your municipal vehicles from the corner gas station, you may file a claim for a refund for the federal tax of 18.4 cents per gallon purchased on IRS Form 4136.

Focus on Technology

Spam: Nobody wants it

Every Monday morning, the business license official painstakingly deletes each piece of junk e-mail from her inbox, only to find the very next morning that more have arrived — sometimes hundreds on any given day. Annoyed, the business license official arrives in the system administrator's office to request help. She declares, "I don't want to see another advertisement for medication or e-mail messages from people I've never heard of ... again. Just fix the problem!"

What is your town's system administrator to do?

The electronic equivalent of junk mail, "spam" is flooding e-mail inboxes at an alarming rate. Spam clogs the Internet with several copies of the same message in an attempt to force the message on people who would not otherwise choose to receive it. Most spam is commercial advertising, often for dubious products, get-rich-quick schemes or quasi-legal services. E-mail spam lists are often created by scanning Internet postings, stealing Internet mailing lists or searching the Web for addresses.

Spam directly affects employees' productivity. More and more time is taken to sort through e-mail messages to find those that are relevant. The messages can also slow down a user's Internet service or network because of the volume of mail. These messages may contain attachments that hide computer viruses, which can infect and disable computer systems.

Although software is an option to help organizations filter spam and keep it from appearing in employees' mailboxes, it is not a total fix. The software cannot always tell a legitimate e-mail from spam, so someone must review the filtered messages. This means hiring a new employee to manage the software or adding the

software management responsibilities — which can be time-consuming — to an existing employee.

"Spam-filtering software is not always the best option," explained Britt Poole, IT director for the Town of Lexington and president of the Municipal Technology Association of South Carolina. "In addition to requiring increased staff time, the software needs to be managed. People who send spam are similar to those sending viruses — once you begin filtering their e-mails, they will start looking for a way to get around the filters. When they find it, you need to reconfigure or update your software."

For more information on controlling spam and helping staff manage other IT issues, request that your system administrator or IT director attend the Municipal Technology Association of SC (MTASC) meeting Thursday, April 14 at the Lexington Municipal Complex. Other topics to be covered at the meeting include "Freedom of Information Act and Technology" and "Network Security."

MTASC, a new affiliate of MASC, promotes the effective use of information technology by municipalities. The affiliate offers education and training on how to provide better services and achieve greater efficiencies using the latest technological innovations for municipal government.

More than 50 reporters attended municipal government training



In January, the Municipal Association of South Carolina collaborated with the SC Press Association to train more than 50 reporters from across the state on the basics of municipal government. Topics included forms and powers of government, budgeting, conducting meetings and covering City Hall. "The Municipal Association would like to see municipal officials work with their local reporters to educate the public about the benefits of cities and how strong cities make a strong South Carolina," said Howard Duvall, MASC executive director.

Achievement Awards program recognizes local government excellence

Each year, MASC honors outstanding local government projects in South Carolina. In 2004, 30 municipalities entered the Municipal Achievement Awards program. The seven winners (Wagener, Travelers Rest, Mullins, Greer, Meggett, Aiken and Sumter) were featured in previous issues of *Uptown*. Following are descriptions of other 2004 entries. Descriptions will continue in future issues of *Uptown*.

Anderson

To address the problem of blighted neighborhoods, the City of Anderson took an approach that combined enforcement with incentives. Stringent nuisance abatement regulations expanded the definition of a “nuisance” to include grass or undergrowth more than 18 inches tall, growth that can harbor vermin, old appliances, rubbish, abandoned vehicles, etc. The new regulations also reduced the notification and compliance period from 120 days to 14 days.

City Council adopted the International Property Maintenance Code, which provides for housing codes standards and systematic code enforcement that goes beyond the Nuisance Abatement Code. Next, Council adopted regulations governing “ugly” trash. Rental property with frequent tenant relocation often results in “ugly” trash being left on the street. Landlords notify the City 48 hours prior to removing the “ugly” trash from a residence, and the City provides a trash container or trailer for the unwanted materials left behind by renters.

The final piece was the Junk Car Incentive Program. Once a vehicle has been identified as abandoned, inoperable or unlicensed, an owner can participate in the program by showing proof of ownership. The City pays the owner \$25, takes the car using the City wrecker to a salvage vendor

and receives about \$70, netting the City \$45. Through February 2004, 40 percent of Anderson’s abandoned vehicles had been removed or brought into compliance.

Contact: Linda McConnell,
864.231.2200

Clemson

Downtown parking is scarce, especially in college towns. The City of Clemson viewed building a parking deck an essential infrastructure project to ensure private investment continued in the downtown area. The project also sent a strong message that the community cared about its downtown, and business investors can feel comfortable in making a long-term investment in the downtown area.

The parking deck also provides special event parking for the Downtown Trick or Treat, Christmas parade, Picnic in the Park, athletic events and other events that encourage increased customers for downtown retail and restaurant establishments. Hourly parking fees and monthly reserved parking fees fund the deck’s operational costs. The deck’s electronic parking meters take more than the usual silver coins; they also take “Shop Clemson” tokens. The tokens are available to area merchants at a discounted rate to encourage their customers to use the parking deck.

The City is already seeing the benefits of the parking deck. Recently,

a private investor submitted plans to construct a five-story mixed-use building adjacent to the parking deck. This 50,000-square-foot private investment marks the largest single investment in downtown Clemson’s history.

Contact: Chip Boyles, 864.653.2081

Conway

Like many communities during the mid-1980s, downtown Conway began to decline. In response to this trend, Conway developed a plan to combat the decline of its downtown. A major part of this plan was creating the River Walk and Riverfront Park to enhance the natural beauty of historic Conway. The River Walk and Riverfront Park showcase the beautiful hardwood trees by the peaceful Waccamaw River while providing a serene public space. Floating docks provide access to the river. The park became a reality as a result of community partnerships and dedicated employees, businesses and citizens. The City saved thousands of dollars by capitalizing on existing employees, who helped plant shrubbery, install electrical wiring and apply asphalt. By attracting tourists and positive economic development to downtown, the River Walk and Riverfront Park area is now the center of activity for the Waccamaw Riverfront District.

Contact: Joni Jordan, 843.248.1760

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Darlington

The City completed an ambitious three-year project that transformed one of Darlington's most historic houses, the Julius A. Dargan House, into the City's administrative offices. The restoration project was a true communitywide effort. The City received donations from many area businesses, sororities, civic organizations and schools. The donations ranged from building materials and artwork to floral arrangements and volunteering of time. The project was particularly significant, as the City has a Certified Local Government (CLG) designation from the National Park Service, which requires the City to have a historic preservation zoning ordinance that protects historic properties, a local architectural design and review board and an inventory of historic properties. The transformation of the Dargan House allowed members of the community to realize the City truly practices what it preaches.

Contact: Michelle Law, 843.398.4000, extension 108

Eastover

First impressions can be critical to the vitality of a town. Taking this lesson to heart, Eastover installed almost 40 pedestrian-scale light poles in its downtown district. These lights create a safe environment for leisurely walks to local businesses. Overhead wood utility poles have been replaced with new underground wiring. Outdated utility meters have been relocated or replaced. As part of its streetscape efforts, the Town installed two brick welcome signs to greet residents and visitors. The streetscape project has placed such a new face, image and level of enthusiasm within the town that outsiders are starting to take notice. As proof, several large retail businesses have located in the town.

Contact: Mayor Christopher Campbell, 803.353.2281

Florence

Elementary-age children comprise one of the most at-risk age groups for death and injury due to fire and other emergencies. To bring fire and life-

safety messages to this age group, Florence officials decided to use clowns, puppets, music and magic. In April 2003, The Firehouse Gang was born. Fire department volunteers, dressed as clowns, have performed at area elementary schools and made appearances at several community functions, including the annual Christmas tree lighting, the fire department's smoke detector giveaways and a local hospital's annual Safe Kids Day program. The clowns have also participated in Carnival Day at Camp Can Do, an annual event for burned children sponsored by the Medical University of South Carolina's Children's Burn Unit and the SC Firefighters Association. Children who see the lively show are active participants, often asking the clowns questions after the show. With the help of The Firehouse Gang, Florence hopes to decrease its number of emergencies through solid awareness of fire and life safety.

Contact: Tom Shearin, 843.665.3113

Put your municipality on the map with the 2005 Municipal Achievement Awards

Do you have a unique and innovative program to share with other SC municipalities? If so, get the show on the road! Plan to enter the 2005 Municipal Achievement Awards program and let others know about the exciting things happening in your municipality. The road to victory will lead to a parade of recognition starting at MASC's 2005 Annual Meeting at Hilton Head Island.



Winning entries are featured in a video shown at the Annual Meeting,

in the Achievement Awards brochure, in *Uptown*, during Hometown Network broadcasts and on the MASC Web site.

MASC mailed entry brochures March 1. The information is also available on the MASC Web site at www.masc.sc under the "Featured Links" section of the home page. Proposals must be submitted by April 8. Judging will take place May 2.



Educational Opportunities

SC Utility Billing Association

■ **March 16-18**, will hold its Annual Meeting at the Bay Watch Resort in North Myrtle Beach. Topics include "Hiring and Firing," "Cutoff Procedures," "Cross Connection and Backflow" and "Values in the Workplace."

SC Municipal Clerks and Treasurers Institute

■ **March 23-25**, will hold its Spring Session at the Clarion Townhouse Hotel in Columbia. Topics include "Employment Law Overview," "Freedom of Information Act and Technology" and "Basic Accounting."

Hometown Connection

■ **March 29**, municipal officials from Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, Orangeburg and Richland counties visit with their state legislators. Officials should meet at MASC's office at 1411 Gervais Street in Columbia at 10:30 a.m.

SC Association of Municipal Power Systems

■ **April 13**, will hold its Annual Legislative Dinner at Seawell's in Columbia.

Municipal Technology Association of SC

■ **April 14**, will hold a meeting at the Lexington Municipal Complex. Topics include "Freedom of Information Act and Technology," "Disaster Recovery" and "Network Security."

Municipal Managers

■ **April 15**, will hold a Quarterly Meeting at Seawell's in Columbia.

SC Association of Municipal Power Systems

■ **April 20-21**, will hold its Lineman Safety Training and Competition at the Pine Island Club at Lake Murray.

SC Municipal Finance Officers, Clerks and Treasurers Association

■ **April 21**, will hold its Spring Meeting at Seawell's in Columbia. Topics include "Fines and Fees Auditing," "Workers' Compensation," "GASB," "Bond Issues" and "State Revolving Fund."

Hometown Connection

■ **April 26**, municipal officials from Abbeville, Chesterfield, Clarendon, Darlington, Edgefield, Greenwood, Kershaw, Laurens, Lee, Marlboro, McCormick, Newberry, Saluda, Sumter and Union counties visit with their state legislators. Officials should meet at MASC's office at 1411 Gervais Street in Columbia at 10:30 a.m.

For more information about these meetings or other MASC meetings not listed, please call 803.799.9574, or visit our Web site at www.masc.sc.



1411 Gervais Street ■ P.O. Box 12109
Columbia, South Carolina 29211
Tel: 803.799.9574 ■ Fax: 803.933.1299
www.masc.sc

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President: **Mayor Tom Peeples, Hilton Head Island**
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