

# UPTOWN

## Strengthening support for annexation

Imagine you live in a neighborhood with well-kept homes and beautiful yards. Down the street is a group of lots owned by absentee landowners who have let the property decline into overgrown lots with dilapidated buildings. Why can't city officials do something about this situation?

It is because the property is not in their jurisdiction. Although the property is completely surrounded by the city, weak annexation laws have allowed the property to remain in an unincorporated area.

For more than 60 years, MASC has pushed for better annexation laws to prevent situations — such as the above example — from occurring. Having reasonable annexation methods is simply good public policy. Allowing

a city to grow to its natural boundaries allows for proper infrastructure planning and provides the funding for necessary infrastructure upgrades to meet the community's needs.

In his Annual Meeting keynote speech, David Rusk emphasized why South Carolina should continue to push for better annexation laws. He said cities that annex “virtually guarantee that their cities will be successful.” Annexing makes a city stronger, as it unites resources that provide additional benefits to citizens.

“The city is the economic engine that drives regional development,” explained MASC Executive Director Howard Duvall. “It isn't fair for some to reap the benefits of development but bear none of its costs.”

During the upcoming legislative session, MASC will pursue a two-prong approach to passing more reasonable annexation laws: establishing a 60 percent petition method and enabling enclave annexation.

The 60 percent petition method would replace the 75 percent method currently on the books. The 75 percent method allows a city to annex an area by ordinance if 75 percent of the freeholders who own at least 75 percent of the assessed value of the real property in the area sign a petition asking to be annexed. Seventy-five percent is an unreasonably high number.

“Look at last year's general election,” Duvall pointed out. “Only three House members who had opposition won

**ANNEXATION continued on page 2**

### Mark your calendar

MASC will hold its legislative conference February 18 at the Adam's Mark Hotel in Columbia. Municipal officials will discuss the top legislative issues facing municipalities, then pack the lobby and gallery during the morning visit to the Statehouse. Municipal officials will have an opportunity to discuss the top issues with their senators and representatives while at the Statehouse and at the evening Legislative Reception.

MASC will mail registration information and post the information on the MASC Web site ([www.masc.sc](http://www.masc.sc)) December 30. The deadline for hotel accommodations is January 27, with the meeting registration deadline February 3.

For more information, contact Nancy Walborn at 803.933.1205 or [nwalborn@masc.sc](mailto:nwalborn@masc.sc).

### Inside This Issue

Municipal grants to nonprofit organizations  
page 3

Sold! Online auctions bring the buyers to you  
page 4

NPDES Phase II — Public education and outreach  
page 7

## Annexation continued from cover

with at least 75 percent of the vote. It is simply a rarely achieved level of citizen approval.”

MASC is not pursuing annexation by a simple majority (50 percent plus one) as required in elections. The 60 percent MASC is seeking represents a super majority vote. “A super majority of the property owners will still have to approve the annexation before the area can become an official part of the city,” said Duvall.

### News Briefs



■ The City of Spartanburg received national accreditation from the Commission on Fire Accreditation International in August. Spartanburg is one of three cities in the state and one of 84 in the country to receive the designation.

■ In September, Hilton Head Island's Human Resources Department was awarded the 2003 Small Agency Award for Excellence from the International Personnel Management Association for Human Resources.

■ The National Trust for Historic Preservation Heritage Tourism Program is seeking four local cosponsor applicants for its Share Your Heritage 2004 workshop series. The workshops bring community representatives together to address key cultural heritage tourism challenges. Application deadline is November 21. For more information, visit [www.nasaa-arts.org](http://www.nasaa-arts.org), call 303.623.1504 or e-mail [amy\\_webb@nthp.org](mailto:amy_webb@nthp.org).

NEWS BRIEFS continued on page 4

MASC will also push for enclave annexation to allow land surrounded by a city to become part of the incorporated area. “The reason behind enclave annexation is efficiency of government and less confusion as to whom the service provider is,” Duvall said.

“Enclave areas pose a tremendous risk and challenge to the residents who live in these unincorporated properties,” said Ed Driggers, Greer city administrator. “Of greatest concern are the unnecessary public safety risks that exist. Response time for police and fire is compromised when other responding agencies must pass through already established areas of the city to get to an unincorporated enclave.”

MASC is spending the legislative “offseason” laying the groundwork for the upcoming legislative session. Duvall met with the Midlands Business Leadership Group in September to increase members’ awareness of annexation benefits.

John Lumpkin of Edens and Avant and chair of the Midlands Business Leadership Group explained why Duvall was invited to speak on this topic. “It is important for local business leaders to understand the direct correlation between annexation and the economic strength of the region,” Lumpkin said.

By educating business leaders on the benefits of annexation and getting them involved, MASC is building the support needed to tackle the issue in the upcoming legislative session.

MASC encourages all municipal officials to do their part by educating their hometown business leaders and legislators about the importance of passing better annexation laws.

“We need a call to action from all cities and towns on this issue. It’s important that we work as a team to receive the best annexation procedures,” Duvall said.

## You’ve just annexed property: Who needs to know?

Property owners and other city departments may be the only ones on your contact list. After a city’s annexation is complete, municipal officials must forward the information to appropriate county and state agencies. State law (Code section 5-3-90) requires filing of notice with the Secretary of State, the Department of Transportation and the Department of Public Safety.

The municipality should also notify the county administration, sheriff, clerk of court, county assessor, county auditor, county treasurer, county engineer and chief magistrate so that county records (including tax records) and county services can be adjusted.

To ensure that new voters are accounted for, the municipality

should also notify the county board of voter registration, and county and municipal election commissions.

Other interested government agencies include 911 and emergency services, SLED, the SCDOT district engineer and affected school districts and special purpose districts.

The municipality should also notify all affected utilities or service providers, such as telecommunications companies, cable companies, and gas and electric utilities. This will help ensure the information needed by these companies to pay franchise fees is up to date.

Of course, advise all municipal departments and the municipal court.

Don’t forget to share the news!

# Municipal grants to nonprofit organizations

Charitable and civic organizations frequently request financial grants or donations from municipal councils. These requests may be presented in terms of the municipality helping the nonprofit group fund some particular project or meet their budgetary needs.

Is it proper for a municipality to honor such requests and make outright donations of public funds?

Analysis of South Carolina law strongly indicates that a municipality's unrestricted or outright donation of public funds to a nonprofit organization would be improper. This analysis involves the issues of (1) whether a grant from public funds serves a "public purpose" and governmental purpose (rather than a private purpose) and (2) whether some other method of compensation (other than an unrestricted donation) is the proper means of achieving the purpose.

*The predominant rule is that appropriations of public funds must be for a public purpose. The benefit to the public must be primary or direct and not merely incidental. This rule of public purpose and primary benefit to the public applies even if the funds have been derived from sources other than taxation. All funds of a municipality should be considered and treated as "public funds" regardless of the source of the funds.*

It is also the general rule that public officers in charge of public funds (such as municipal councilmembers) occupy the status of trustees or agents with respect to such funds. Public officers who intentionally or carelessly misappropriate public funds or who authorize or make illegal payment of public funds may be personally liable for such misappropriation or illegal payment. South Carolina follows these general rules.

In 1975, the State Supreme Court set out a general definition of "public purpose" by stating that a "public purpose" has for its objective "the promotion of the public health, safety, morals, general welfare, security, prosperity, and content-

ment of all the inhabitants or residents, or at least a substantial part thereof." The court emphasized the need for a direct public benefit, rather than for a remote or indirect public benefit.

In later cases, the court has stated that "all legislative action must serve a public rather than a private purpose" and that there must be "a reasonable relationship between the public purpose to be achieved and the means chosen to effectuate that purpose ..."

The court has used a four-part test to determine whether the public purpose doctrine was violated:

- (1) What is the intended ultimate goal or benefit to the public?
- (2) Are public parties or private parties the primary beneficiaries?
- (3) Is the benefit to the public speculative?
- (4) What is the probability that the public interest will be ultimately served and to what degree?

Decisions concerning whether requested financial grants are for a true public purpose should involve a similar analysis.

State Attorney General Opinions, which have considered issues of government expenditures for nonprofits, have expressed a preference for contracts for specified services, rather than for outright grants. These opinions have also stressed "the importance of maintaining adequate controls to ensure a public purpose."

In view of this legal background, municipalities should re-evaluate the "public purpose/public benefit" basis for expenditures to any outside organizations. Future grants should **not** be made just because past grants were made. This evaluation should include a recognition of the controlling general legal principles discussed above:

- (1) grants without restrictions (unrestricted grants) should be avoided;
- (2) the four-part analysis used in the cases discussed above should be used to consider whether there is

the required public interest and benefit, whether the expenditure merely or predominately benefits the membership of the private organization, and whether the means reasonably fulfill the desired public purpose;

- (3) performance-based contracts for specific services should be considered as the appropriate vehicle for any funding; and
- (4) controls should be put in place for any expenditures (such as specifications, conditions and contingencies).

A municipal council's expenditure of public monies requires a "watchdog" approach. This is required even when money is requested by nonprofit groups to help "the public."

This topic and others will be presented at the South Carolina Municipal Attorneys Association Annual Meeting, scheduled for December 5 at the Adam's Mark Hotel in Columbia.

Other topics include:

- Anatomy of a Billboard Lawsuit
- HIPAA
- Personnel Policies after *Connor v. Forest Acres*
- Puppies and Policy Makers in Section 1983 Actions
- Council Prayer and the First Amendment
- Nuisance Abatement
- Homeland Security Analysis for Water Towers, Water Tanks and Sewer Plants
- Joint Representation of a Municipality and its Employees

The meeting will also include segments on ethics issues for municipalities and municipal attorneys. For registration information, visit the calendar section of MASC's Web site at [www.masc.sc](http://www.masc.sc), or contact Michelle Willm at 803.933.1259 or e-mail [mwillm@masc.sc](mailto:mwillm@masc.sc).

## Sold! Online auctions bring the buyers to you

**F**ire trucks, police cars, computers, holiday decorations and more — every municipality has surplus items to sell, but a limited number of selling avenues. MASC has discovered an innovative way to help South Carolina municipalities dispose of surplus equipment: Internet auctions through GovDeals ([www.govdeals.com](http://www.govdeals.com)).

GovDeals is an Internet auction service for government surplus, abandoned and confiscated properties that allows municipalities to buy or sell surplus goods online. It requires no special software, although Internet access is necessary. GovDeals offers a search feature so buyers can search for items of interest. The site also uses e-mail, regular mail and faxes to actively advertise items to buyers nationwide that have expressed an interest in a particular type of item.

GovDeals works to meet the seller's needs by offering flexibility. For a specified length of time, municipalities can restrict who sees their item online. For example, a municipality may have a fire truck for sale and want to accept bids only from other municipalities in

### How it works

1. Council approves the seller's agreement with GovDeals.
2. GovDeals trains municipal staff on how to post digital photos (up to six photos per item are allowed) and written descriptions.
3. Municipal staff uploads photos and descriptions to the GovDeals Web site.
4. The surplus item sells, the buyer makes pick up/shipping arrangements for the item, and the municipality receives payment from the buyer.
5. GovDeals bills the municipality 7.5 percent of the final sales price.

South Carolina instead of from the general public. Municipalities can also choose to list their item for more or less than the typical 14-day listing or to require a "reserve" or minimum bid on the item.

Robert Bowen, vice president of business development for GovDeals, offered an example of how local governments have compared GovDeals with other services.

"We were given five vehicles by Pinellas County, Fla., which gave comparable vehicles to their traditional auctioneer," Bowen said. "The vehicles had odometer readings within 200 miles of each other and were obviously the same make, model and year. GovDeals generated 120.5 percent **more** money for Pinellas County than the auctioneer company."

Another attractive feature is the "no transportation clause."

"GovDeals eliminates the transportation and handling of surplus equipment as well as the costs associated with transporting them to off-site auction locations," Bowen explained.

*Municipalities interested in selling or buying items with GovDeals can call Robert Bowen at 800.613.0156 extension 149.*

*GovDeals provides online auction services for clients in nine states, with buyers nationwide and in 26 other countries.*

## News Briefs

continued from page 2

■ Technical assistance for community policing organizations is available through the Community Policing Consortium, a partnership of five of the nation's leading law enforcement organizations. The Consortium offers a wide spectrum of technical assistance and information resources to law enforcement and citizens. To submit an online request for technical assistance, visit [www.communitypolicing.org/training/](http://www.communitypolicing.org/training/).

■ The National Environmental Training Center for Small Communities (NETCSC) has published a security vulnerability self-assessment guide specific to small community wastewater systems. *Protecting Your Community's Assets: A Guide for Small Wastewater Systems* is available for free by calling 800.624.8301 and requesting product number TRBKMG03, or visit [www.netc.wvu.edu](http://www.netc.wvu.edu) to download a copy.

■ Lisa Wallace, clerk/treasurer for the Town of Summerville, has earned the Certified Municipal Clerk (CMC) designation by meeting the educational, experience and service requirements of the International Institute of Municipal Clerks.

# 2003 Achievement Award Winner

## Population Category 5,001-10,000: Town of Cheraw

The Town of Cheraw exemplifies what can be accomplished when an entire community works together

Cheraw has wanted to honor its famous native son, “Dizzy” Gillespie, since his death in 1993. Like many well-meaning projects, the plans never became a reality because of the lack of funding and community support.

In 2000, PBS ran a documentary mentioning Gillespie and how his hometown wanted to erect a memorial statue for the renowned jazz artist. The national recognition renewed interest in the project, and financial support started to come in. A state representative helped acquire a special state appropriation for the project.

A memorial steering committee was formed and consisted of the Town’s parks, recreation and cultural services director, town officials, Gillespie family members and other interested citizens. The committee’s goal was to involve the public and not use any local government funding for the memorial that would honor its famous son and draw visitors to the town. In addition to the statue of Gillespie, the committee wanted to develop the Gillespie home site into a historic park and to create a college scholarship to help area students with their music education goals.

The committee increased public awareness by sending press releases to local, state and national media and encouraged the community to help fund the project. In addition to grants, school children collected money in penny jars, businesses pledged donations, and a local doctor purchased the Gillespie home site and donated it to the project. Entertainers across the country donated money.



Above: The life-size bronze sculpture features Dizzy Gillespie’s trademark bent trumpet and bulging cheeks.



Right: Stainless steel sculptures and jazz theme-inspired benches were created by local students.

Finally, the dream became a reality. Designed by a nationally acclaimed sculptor, the Town unveiled a life-size bronze sculpture featuring Gillespie’s trademark bent trumpet and bulging cheeks. The statue stands across from City Hall, while several blocks away, stainless steel sculptures and jazz theme-inspired benches, designed and created by local students, adorn a historic park to commemorate the famous musician’s life.

For more information about this project, contact Bill Taylor, city administrator, at 843.537.8400.

*MASC recognizes and encourages innovations and excellence in local government through its Achievement Awards. Started in 1987, the program provides local government officials and employees the opportunity to receive deserved recognition for superior and innovative efforts in local government. The program also provides a forum for sharing the best public service ideas in South Carolina. For more information, visit MASC’s Web site at [www.masc.sc](http://www.masc.sc) or call Christie Zeller at 803.933.1215.*

# Eight graduate from Clerks and Treasurers Institute

In September, eight people graduated from the Municipal Clerks and Treasurers Institute (MCTI), a three-year program designed to provide municipal clerks and treasurers with the skills critical to their profession. Fall 2003 graduates are: Faye Allbritton of Seabrook Island, Dell Bagwell of Blacksburg, Rosalba Barnes of Kiawah Island, Claudette Cochran of Saluda, Linda Swartz of Salem, Cheryl Townsend of North, Patricia Wallis of Kiawah Island and Becky Price.

To receive their certificates, graduates attended more than 100 class hours on such topics as financial management, overview of government, public administration, conducting meetings and the role of the municipal clerk. MCTI is sponsored by MASC.

During the fall institute, Daen Campbell, clerk/treasurer for the Town of Calhoun Falls, received a three-year scholarship to attend MCTI. The scholarship is sponsored by the Municipal Finance Officers, Clerks and Treasurers Association (MFOCTA) and is underwritten by SCANA Corporation.

Completion of MCTI satisfies the education requirements for certification from the International



Eight people graduated from MCTI in September, listed in alphabetical order: Faye Allbritton of Seabrook Island, Dell Bagwell of Blacksburg, Rosalba Barnes of Kiawah Island, Claudette Cochran of Saluda, Linda Swartz of Salem, Cheryl Townsend of North, Patricia Wallis of Kiawah Island and Becky Price. (Not all graduates are pictured.)

Institute of Municipal Clerks (IIMC) and the Association of Public Treasurers of the United States and Canada. MCTI is cosponsored by MASC, MFOCTA and the Center for Governmental Services at the University of South Carolina's Institute of Public Services and Policy Research.



Anna Berger of USC's Institute of Public Services and Policy Research, right, presents Daen Campbell of Calhoun Falls with a scholarship to attend MCTI.



## FAQs

**Q. Must a small municipality hire or appoint a town clerk/treasurer if the council is able to handle the town's business without a clerk?**

A. Yes, a town must have a clerk. Section 5-7-220 of the South Carolina Code of Law provides, "The council under the council and mayor council forms of government or city manager under the council-manager form shall (emphasis added) appoint an officer of the municipality who shall have

the title of municipal clerk. The municipal clerk shall give notice of council meetings to its members and the public, keep the minutes of its proceedings and perform such duties as are assigned by council."

**Q. Are there specific guidelines for audits of finances of small municipalities? Is this done by town ordinance? Where can I find printed guidelines?**

A. All municipalities must provide for an annual audit (SC Code Section 5-7-240). The audit must meet the requirements of GASB 34, which are set by the Governmental Accounting Standards Board.

The annual independent audit must examine all financial records and transactions of the municipality and any agency funded in whole by the municipality.

**Q. Must the town clerk/treasurer be bonded? If two signatures are required on the town checking account, must both be bonded?**

A. There is no requirement that any municipal employee be bonded. It is a good practice to require bonds of employees in sensitive positions. If bonds are required by the municipality, all signatories of checks and others who have exposure to financial transactions should be bonded.

# NPDES Phase II

## Public education and outreach

**D**id you know that NPDES (National Pollutant Discharge Elimination System) Phase II requires small MS4 (municipal separate storm sewer systems) stormwater management programs to implement a public education program? Although this federal requirement only affects 52 municipalities in South Carolina, MASC feels others will be added to the list in the near future.

An informed and knowledgeable community is crucial to the success of a stormwater management program. It helps ensure greater support for the program as the public gains a greater understanding of the reasons why it is important. It also helps ensure greater compliance with the program as the public becomes aware of the personal responsibilities expected of them. Public support can also be particularly beneficial when attempting to institute new funding initiatives or when seeking volunteers to help implement the program.

Cities should consider entering into partnerships with other governmental entities, as it is generally more cost effective to use an existing program or to develop a regional or statewide educational program. Also consider seeking assistance from nongovernmental organizations (e.g., environmental and civic organizations) because many already have educational materials and perform outreach activities.

You may choose to use educational information provided by the state, the EPA or environmental public interest groups instead of developing new materials. Materials and activities should be relevant to local situations and issues and should incorporate a variety of strategies to ensure maximum coverage. Some examples might include:

- Brochures for the general public and specific audiences
- Alternative information sources, such as Web sites, bumper stickers, refrigerator magnets and bus stop posters
- Volunteer citizen educators to staff a public education task force
- Event participation with educational displays at community festivals
- Educational programs for school-age children

Directing materials or outreach programs toward specific groups likely to have a significant impact is also recommended. For example, information could be provided to restaurants on the effects of grease clogging storm drains and to auto garages on the effects of dumping used oil into storm drains.

The South Carolina Association of Stormwater Managers will provide more information about the NPDES Phase II requirements at its Quarterly Meeting scheduled for November 21 at the S.C. State Museum in Columbia. Meeting participants will view a video provided by the American Public Works Association (APWA) that includes case studies and testimonials from experts in stormwater funding and plan development. The video will present case studies showcasing the successful creation of a stormwater utility; funding options for operation, maintenance and capital projects; adopting a stormwater utility fee; interagency agreements and successful intergovernmental cooperation; and examples of public education and outreach programs.

*For more information, contact Gary Cannon at 803.933.1203 or e-mail [gcannon@masc.sc](mailto:gcannon@masc.sc).*



## Classifieds

■ Newberry County is seeking a public works director. The desired applicant will have a degree in civil or environmental engineering with three to five years' experience. Send resumé to Newberry County Administrator's Office, Human Relations/Risk Management Director, P.O. Box 156, Newberry, SC 29108.

■ Newberry County Council is seeking a county administrator. Applicants must have a bachelor's degree in public administration, business administration or related field with four years' experience at the executive level. Submit resumé to Newberry County Council, P.O. Box 156, Newberry, SC 29108.

■ The City of Myrtle Beach Construction Services Department is seeking a zoning administrator. For more information, call 843.918.1121 or visit [www.cityofmyrtlebeach.com](http://www.cityofmyrtlebeach.com). Apply online or send resumé to Human Resource Department, P.O. Box 2468, Myrtle Beach, SC 29578.

■ The City of Conway is seeking candidates for the position of building official. Applicants must possess a degree in engineering, planning, architecture or related field. Submit resumé and cover letter with salary history to Rose Marie Hussey, City of Conway, P.O. Box 1075, Conway, SC 29528.

■ The City of Goose Creek is seeking an assistant director of public works. Candidates must possess a bachelor's degree in civil engineering or related field and four years of experience. Submit resumé to City of Goose Creek, Joellyn Robbins, HR Director, P.O. Drawer 1768, Goose Creek, SC 29445 or e-mail [jrobbins@cityofgoosecreek.com](mailto:jrobbins@cityofgoosecreek.com).



## Educational Opportunities

### S.C. Municipal Personnel Association

■ **November 12-14**, will hold its Annual Meeting at the Holiday Inn Oceanfront in Hilton Head Island. Topics include "Interviewing: To Ask or Not to Ask," "Relationships in the Workplace," "Disciplinary Procedures" and "HIPAA Highlights."

### S.C. Association of Stormwater Managers

■ **November 21**, will hold its Quarterly Meeting at the S.C. State Museum in Columbia. Topics include "American Public Works Association's Stormwater Management 101" and "NPDES Phase II Permit."

### S.C. Municipal Attorneys Association

■ **December 5**, will hold its Annual Meeting at the Adam's Mark Hotel in Columbia. Topics include "Recent Court Decisions Affecting Local Government," "The Role of the Municipal Attorney" and "Council Prayer and the First Amendment."

### Hometown Connection

■ **January 27**, municipal officials from Anderson, Cherokee, Chester, Fairfield, Greenville, Lancaster, Oconee, Pickens, Spartanburg and York counties visit with their state legislators. Officials should meet at MASC's office in Columbia at 10:30 a.m.

### S.C. Municipal Finance Officers, Clerks and Treasurers Association

■ **January 28-30**, will host the International Institute of Municipal Clerks Region III Meeting at Kingston Plantation in Myrtle Beach.

### S.C. Municipal Elected Officials Institute of Government

■ **February 17**, will hold Sessions A & B at the Adam's Mark Hotel in Columbia.

### MASC

■ **February 18**, will hold its Winter Meeting at the Adam's Mark Hotel in Columbia.

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](http://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](http://www.masc.sc)

Prsrt Std  
U.S. Postage  
**PAID**  
Municipal  
Association of  
South Carolina

President: Councilmember Lillian B. Flemming  
Executive Director: Howard E. Duvall Jr.  
Editor: Mary M. Brantner, APR  
Associate Editor: Christie Zeller