

Our New President

by Susan C. Rocha, IMLA President

What a wonderful Conference we had in Las Vegas! I always come back with new ideas and better informed about what is happening nationwide to cities. (And I love the Mayor of Las Vegas! What a hoot!)

I take this opportunity to tip my hat to the Program Planning Committee for all their hard work: All of you did an excellent job, and the Conference topics were timely and informative. Please extend our gratitude to the speakers you recruited for their fine work. Thank you! Kudos, also, to the IMLA staff for their hard work. Having worked for the Texas Municipal League in a previous life, I know just how much effort is involved in staging a major event—and IMLA does all of it with just seven people (AND there's the excellent *IMLA News* and the *Municipal Lawyer* magazine). We could not ask for a finer or more dedicated group of folks. Gracias!

The United States took a monumental leap forward on November 4 with the election of Barack Obama as our first African-American President. Those of us who serve at the local level have seen many such "firsts" on our own city councils over the last 20 years, like the first woman mayor, the first Hispanic city manager, and the first African-American councillor. As our elected councils increasingly reflect the demographics of the citizens they represent, they will look at the city staff to see if minorities and women are represented. According to the American Bar Association, there are over one million licensed attorneys in the United States. Of these, 73% are men, 27% are women; 90% of all attorneys are Anglo, 4.2% are African-American, 3.4% are Hispanic, and 0.9% are Asian Pacific American. (According to the Federation of Law Societies of Canada, as of 2006, approximately 35% of Canadian lawyers were women, excluding the Barreau du Québec. Information on race is not available.) Our profession still has a way to go.

As we approach our 75th anniversary as an organization in 2009, we should take time to reflect on where we have been, where we are, and where we need to be in order to continue to serve our members and to survive as an essential organization.

It is incumbent upon all of us who serve local elected officials to have our legal departments reflect the make-up of the community we serve, and it is up to us to give those attorneys a helping hand. Twenty-four years ago, the San Antonio City Attorney (an Anglo male) gave me a chance and a job, and remained, along with the First Assistant and my Section Chief (also Anglo males), as my mentor throughout my City Attorney career. In fact, that former City Attorney is now my law partner, Lowell Denton.

We all need to be a mentor to young attorneys. If IMLA is to continue to grow, we need you to encourage your staff to participate in IMLA as speakers and event attendees. The more new, younger members we can attract to our organization, the more effective we will be. We have so much to share with and teach them, and they have so many new and fresh approaches to looking at old problems. Networking is the key to solving many of our local issues. When I was an Assistant City Attorney in San Antonio, I had my own contacts in the City Attorney offices in Dallas, Austin, Houston and El Paso, and at the Texas Municipal League. These were invaluable to me as a new attorney: they helped me realize I was not alone and did not have to "reinvent the wheel" each and every time.



Chuck Thompson, the IMLA Executive Director, has been working hard to increase our membership and outreach. (For details about our new programs—including the IMLA Lite memberships, our new "stand alone" CLE events, and others—see the Annual Report published in the September/October 2008 issue of the *Municipal Lawyer*.) More needs to be done. On that note, I am appointing a Board Restructure Committee to review how our Board is constituted, and to review the Board's make-up, size, and terms of office. IMLA conducted a survey about Board membership recently, and the responses made it clear to me that our Board structure needs to be discussed if we are to meet the needs of our members in the 21st century.

I believe our organization's first priority should be to educate and promote our members, and what better way to do this than to serve on the IMLA Board? I will be asking this ten-member Committee to look at whether we should increase the Board size, institute term limits, and add representation on the Board for regions, city size, and diversity. Everything is on the table for discussion. I would like an initial report to the Board by our April 2009 Seminar in Washington, D.C. If you have any ideas, suggestions, or recommendations on this topic, please send them to Chuck Thompson at cthompson@imla.org, me at susan.rocha@rampage-sa.com, or to the Committee co-chairs, Steven Smith of Dublin, Ohio, at ssmith@szd.com or Art Pertile of Stafford, Texas at apertile@olsonolson.com. An upcoming issue of the IMLA newsletter will list the other Committee members. Whether we decide to change how our Board is structured and how members serve on the Board, or decide to leave things just as they are, I do think it is time to at least review what we have.

There is one other committee I have appointed. This one will look at the Vision of the Future of IMLA. What do we do best as an organization, and how can we improve on that service? What do our members need that we are not providing? How can we make better use of our State Chairs and Regional Vice-Presidents? This may require focus-group surveys and may take a longer time than just my term; however, this is something I believe we need to do to remain vital and of service to our members.

Whew! That is a lot (and I thought this President/Queen thing was going to be easy!) I stay awake at night worrying about the future of IMLA. As we approach our 75th anniversary as an organization in 2009, we should take time to reflect on where we have been, where we are, and where we need to be in order to continue to serve our members and to survive as an essential organization. The two committees I have appointed will begin that process.

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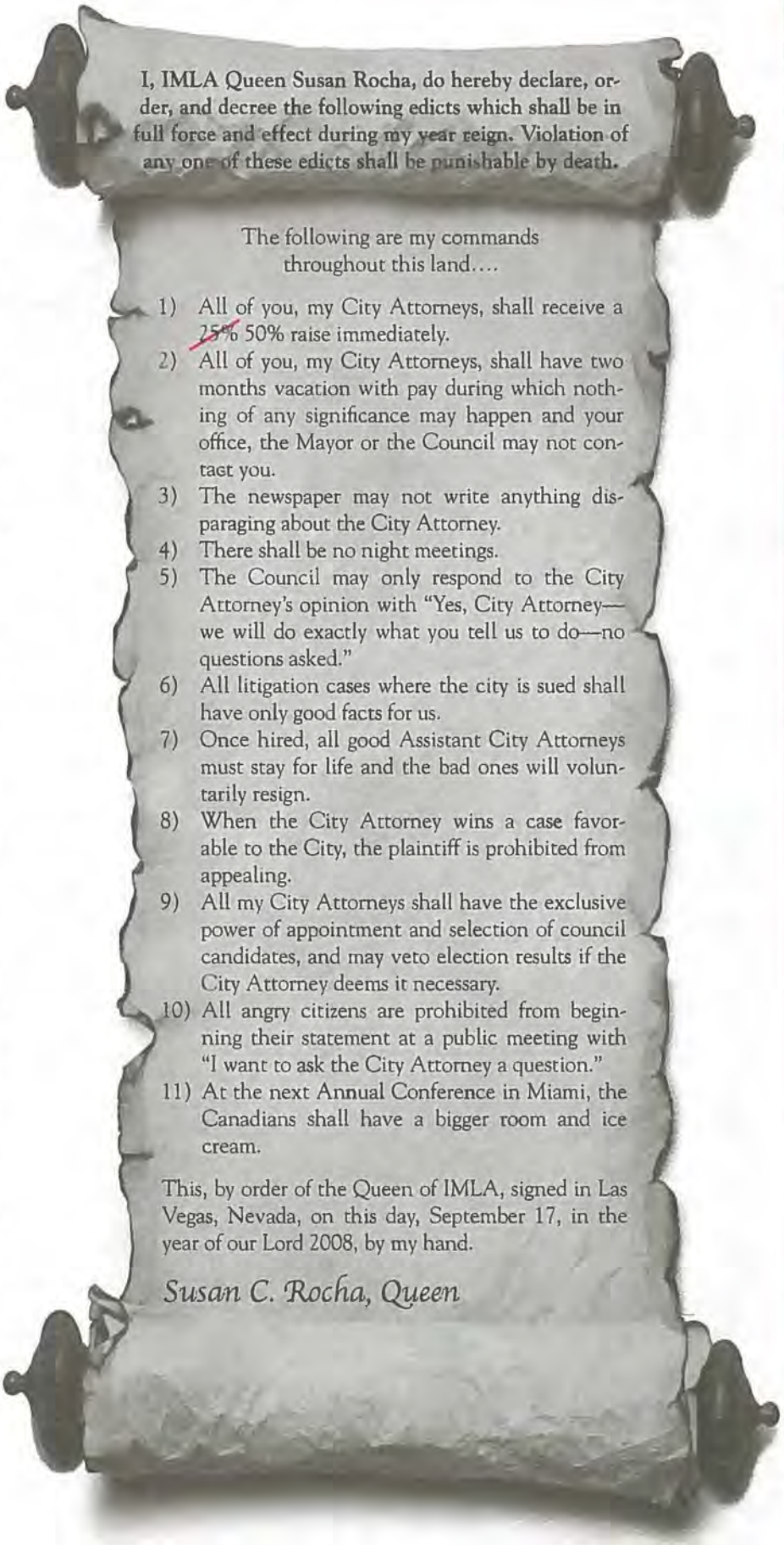

I, IMLA Queen Susan Rocha, do hereby declare, order, and decree the following edicts which shall be in full force and effect during my year reign. Violation of any one of these edicts shall be punishable by death.

The following are my commands throughout this land....

1) All of you, my City Attorneys, shall receive a ~~25%~~ 50% raise immediately.
2) All of you, my City Attorneys, shall have two months vacation with pay during which nothing of any significance may happen and your office, the Mayor or the Council may not contact you.
3) The newspaper may not write anything disparaging about the City Attorney.
4) There shall be no night meetings.
5) The Council may only respond to the City Attorney's opinion with "Yes, City Attorney—we will do exactly what you tell us to do—no questions asked."
6) All litigation cases where the city is sued shall have only good facts for us.
7) Once hired, all good Assistant City Attorneys must stay for life and the bad ones will voluntarily resign.
8) When the City Attorney wins a case favorable to the City, the plaintiff is prohibited from appealing.
9) All my City Attorneys shall have the exclusive power of appointment and selection of council candidates, and may veto election results if the City Attorney deems it necessary.
10) All angry citizens are prohibited from beginning their statement at a public meeting with "I want to ask the City Attorney a question."
11) At the next Annual Conference in Miami, the Canadians shall have a bigger room and ice cream.

This, by order of the Queen of IMLA, signed in Las Vegas, Nevada, on this day, September 17, in the year of our Lord 2008, by my hand.

Susan C. Rocha, Queen

4. Brief of the Government Finance Officers Association, National Governors Association, National League of Cities, National Conference of State Legislatures, National Association of Counties, Council of State Governments, U.S. Conference of Mayors, International Municipal Lawyers Association, and International City/County Management Association as *Amici Curiae* Supporting Petitioners, 2007 WL 2115436 (U.S.) (hereinafter, the "State and Local Amicus Brief").
5. The State and Local Amicus Brief argued that "a decision to invalidate Kentucky's tax scheme would force state treasuries to absorb billions of dollars in transition costs, a large-scale financial disruption that is manifestly unfair given the reasonableness of the States' reliance on the validity of a ubiquitous tax policy." The Brief also pointed out more specifically the serious costs of retroactive impacts involving tax refunds and prospective losses of future tax collections. *Id.* at 4.
6. Davis v. Dept. of Revenue of the Fin. and Admin. Cabinet, 197 S.W.3d 557 (Ky. Ct. App. 2006).
7. Davis v. Revenue Cabinet, Commonwealth of Ky., No. 03CI03282, 2004 WL 5358776 (Ky. Cir. Ct. Aug. 30, 2004).
8. In general, the "market participant" exception allows governments engaged in economic activity within a market to engage in discriminatory behavior as would other competitors. *See Davis*, 128 S.Ct. 1801, 1809 (2008) (citing *White v. Mass. Council of Constr. Employers, Inc.*, 460 U.S. 204, 208 (1983) "[W]hen a state or local government enters the market as a participant it is not subject to the restraints of the Commerce Clause").
9. 128 S.Ct. at 1808.
10. Justice Kennedy's dissent pointed out that "discrimination against out-of-state bonds is the whole purpose of the law in question." *Id.* at 1827. The State and Local Amicus Brief argued that the Kentucky tax exemption "treat[ed] all private businesses exactly the same; and it concern[ed] an activity—borrowing money—that is a traditional and core governmental function. It therefore [did] not discriminate against interstate commerce." State and Local Brief at 15-16. The Brief further argued that the tax costs to the States from a ruling against Kentucky would be "wholly inequitable." *Id.* at 9.
11.127 S.Ct. 1786 (2007).
12. 511 U.S. 383 (1994).
13. 127 S.Ct. at 1790.
14. *Id.* at 1789.
15.128 S.Ct. 1801, 1813 (2008).
16. *Id.* at 1808 (inside quotes and citations omitted).
17. *Id.* (inside quotes and citations omitted).
18. *A Huge Victory for Muni Bonds After Several Months of Tough News*, CALIF. MUNICIPAL BOND ADVISOR at 1 (June 2008). The "tough news" referred to by the title related to market disruptions associated with the credit crisis.
19. *Id.* The Court's decision cited, repeatedly, an *amicus* brief filed on behalf of the National Federation of Municipal Analysts (NFMA), a group that includes significant numbers of mutual fund analysts among its members.
20. 128 S.Ct. at 1810.
21. *Id.* (citations and footnotes omitted.)
22. *Id.* at 1811 (citations and footnotes omitted).
23. *Id.* at 1810-11 (citations and footnotes omitted).
24. 104 U.S. 592 (1882).
25. 128 S.Ct. 1801, 1811 (2008) (citations and footnotes omitted).
26. For example, Chief Justice Roberts concurred in the decision based only on *United Haulers*, finding no need to proceed with the alternative "market participant" analysis. *Id.* at 1821.
27. *Id.* at 1812, 1814 (citations and footnotes omitted).
28. *Id.* at 1815.
29. *Id.* at 1817 (citations and footnotes omitted).
30. *Id.* This rationale fails to take into account two additional significant market segments for tax-exempt securities issued by smaller jurisdictions. Those are (1) individual investors, whose importance has been emphasized by the Securities and Exchange Commission repeatedly over the years, and (2) the lease-purchase private placement market, involving banks and corporate investors. The lease-purchase market is a substantial, hidden market about which scant data exist. Nevertheless, large quantities of local government securities issued by smaller issuers are sold in that market on a continuous basis. Another important development appears to be in the offing: The dual rating scales of the major rating agencies have been challenged by numerous State and local governmental securities issuers. Single-rating scales, in which corporate and municipal securities are rated based upon common criteria, appear to be emerging. Such a development should lead to significant upgrades in the ratings of State and local securities, and correspondingly, should make securities of smaller issuers more readily salable in the general municipal securities market.
31. *Id.* at 1830. **ML**

CORRECTION:
In the last issue of the *Municipal Lawyer*, the name of the Joseph I. Mulligan, Jr. Distinguished Public Service Award recipient on page 2 should have read Susan Emery McGannon.

NEWS FROM IMLA *continued from page 5*

I am so proud to serve as your President/Queen! There is not a finer group of attorneys anywhere. You all are hard-working and dedicated public servants, and you unselfishly share your wealth of knowledge with your fellow colleagues every day. For this, and for all the things you do for our citizens, I thank you. **ML**

ORDINANCES *continued from page 23*

port of these Texas cities, the TCAA has made the study available for free to any city that would like to use it. TCAA hopes that the study will be of benefit to any city that faces similar court challenges.

Mick McKamie is the City Attorney for the City of Boerne, Texas. He also practices trial law and represents governmental entities as a significant portion of his practice. He is a graduate of the University of Texas, Texas Tech School of Law, and holds a Masters degree in Public Administration from Texas Tech. His e-mail is Mick@McKamieLaw.com. Wayne Olson is in private practice in the area of municipal and public law, with an emphasis in real estate development and land use law (primarily in the areas of zoning, planning, and development matters). He serves as the City Attorney for several cities in the North Texas area. Wayne graduated from Southern Methodist University with a B.B.A. degree in real estate, and holds his law degree from the University of Texas School of Law. He can be reached at Wolson@toase.com. Scott Houston is the General Counsel for the Texas City Attorneys Association (TCAA), an affiliate organization of the Texas Municipal League (TML), with a membership of over 400 attorneys. Scott is also the director of legal services for TML, and can be reached at SHouston@tml.org. **ML**