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Municipal E-News

Municipal Technical Advisory Service (MTAS)

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## Issue 55: January 2014

MTAS

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## CITY SPOTLIGHT:

### LAFAYETTE

#### Macon County

Incorporated 1843

2013 Population: 4,474

Municipal Management Consultant

Gary Jaeckel

[gary.jaeckel@tennessee.edu](mailto:gary.jaeckel@tennessee.edu)

## CLASS LISTINGS & INTERACTIVE TRAINING CALENDAR

**Mark your calendar!** MTAS training events and conferences are listed here along with information on how to register for upcoming training events on your Solution Point account. [READ](#)

## RESEARCH/INFORMATION CENTER NEW MATERIALS

MTAS's Research and Information Center is always adding new materials to its collection. See what's new for this month. [READ](#)

## PAST ISSUES OF THE MUNICIPAL E-NEWSLETTER

[READ](#)

### FROM THE EXECUTIVE DIRECTOR...

"I just don't have time." Let's be honest. If you're sitting at city hall reading this you have to admit you've used this excuse many times. [READ](#)

### TACIR RECOMMENDS EXTENDING ANNEXATION MORATORIUM

During its 2013 session, the Tennessee General Assembly considered numerous pieces of legislation dealing with annexation, growth planning, and local government land use generally. [READ](#)

### MTAS WELCOMES 3 NEW HIRES

Christine Anderson is a graduate of the University of Tennessee at Martin, with a bachelor of science degree in business administration, with a concentration in office information systems. [READ](#)

### ATTORNEY GENERAL OPINES LOCAL REGULATION OF EPHEDRINE AND PSEUDOEPHEDRINE UNLAWFUL

Amid a surge of interest in recently-passed local government legislation to require a prescription for the purchase of ephedrine and pseudoephedrine products, the Tennessee Attorney General has opined that such local regulation is in violation of Tennessee law. [READ](#)

### COURT CLERK FEES IN DELINQUENT TAX LAWSUITS

Whether relying on the county trustee to collect delinquent property taxes or pursuing tax collection without the county, cities are plaintiffs in delinquent tax suits in which properties are sold under court order to satisfy tax liens. [READ](#)

### LEGISLATION INTRODUCED CLARIFYING VOLUNTEERS NOT SUBJECT TO EMPLOYER MANDATE

On December 10, legislation was introduced in the U.S. House by Representative Lou Barletta (R-PA) and the Senate by Senator Mark Warner (D-VA) clarifying that 'qualified emergency services volunteers' will not be counted as employees under the Patient Protection and Affordable Care Act (PPACA). [READ](#)

### PACKED ROOM AT DECEMBER 2013 BENCHMARKING MEETING

Representatives from cities participating in the Tennessee Municipal Benchmarking Project (TMBP) recently convened in Murfreesboro for the project's annual data cleansing and review meeting. [READ](#)

### 2013 WORKERS' COMPENSATION REFORM ACT

Effective July 2014, Tennessee's new Workers' Compensation Reform Act goes into effect. [READ](#)

### ETHICAL BEHAVIOR OF MUNICIPAL FINANCE OFFICERS

All positions in government are held to high standards of ethical behavior. However, no position is likely to be as sensitive to the consequences of ethical behavior as that of the municipal finance officer. [READ](#)

### MTAS SALARY SURVEY NEEDS YOU!

The 2013 MTAS Salary Survey will be open for data entry very soon. [READ](#)

### TREEDC PARTNERS WITH PHILIPPINE DEPARTMENT OF ENERGY

THE TENNESSEE RENEWABLE ENERGY AND ECONOMIC COUNCIL (TREEDC) delivered 80 emergency power kits for the Typhoon Yolanda-affected areas, each containing solar charging/lighting units with a portable radio. [READ](#)

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## From the Executive Director...

Jim Thomas, Executive Director  
jim.thomas@tennessee.edu



Jim Thomas

**“I JUST DON’T HAVE TIME.” Let’s be honest.** If you’re sitting at city hall reading this you have to admit you’ve used this excuse many times. I have, that’s for sure. And if you have used it, we at MTAS certainly understand. Many of us have served in city hall and most of us work with you in your city halls every day. The pace can be at least hectic if not overwhelming.

When it comes to professional development, the excuse only contributes to the problem of not paying enough attention and taking time to get the additional training and education that can so enrich our professional and personal lives and probably make them easier. I’ll go so far as to say that my service to you, the city official, becomes less and less effective if I don’t pay attention to my professional development...and take advantage of opportunities to enhance it. Staying current on the many issues facing city government today, learning how other people deal with them and using best practices to address them are essential to my professional development.

MTAS provides many opportunities for city officials to enhance their professional development. A basic service MTAS is dedicated to providing is training...on a variety of topics...in a variety of formats...in a variety of locations and at a variety of times. I emphasize the word variety because professional development doesn’t have to be directed only to the technical aspects of our everyday jobs. It can (and sometimes should) include training on some of the softer skills so important to being able to effectively perform. You have access to both through MTAS...the technical and the soft skill training. I hope you’ll go to the newly formatted MTAS website at <http://www.mtas.tennessee.edu/web2012.nsf/Web/Home> to learn more about training opportunities available to you.

Another source of great professional development opportunities are the many city government-oriented professional associations and the education and training presented when those organizations hold their periodic meetings. Just about every job function in city government has an affiliated professional organization that you and the other city personnel can belong to. If you are interested but unsure of what those organizations might be, MTAS would be happy to help you identify the one that would be the best fit for you and your job responsibilities.

Professional development...prove them wrong the next time you hear the thing about old dogs and new tricks. Make time for it and then enjoy the benefits gained from it.

**DURING ITS 2013 SESSION**, the Tennessee General Assembly considered numerous pieces of legislation dealing with annexation, growth planning, and local government land use generally. On the issue of annexation, the General Assembly imposed a one-year moratorium on city-initiated annexations by ordinance of land used primarily for residential or agricultural purposes and charged the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) with further study. (See Public Chapter No. 441). At its December meeting TACIR released its draft report wherein it recommended extending the annexation moratorium until additional legislation is passed. This recommendation will be considered by the General Assembly during its upcoming 2014 session.

The recommendation to extend the annexation moratorium was only one of many issues addressed at the commission meeting. TACIR also considered water and wastewater rates, surety bonds and other land use issues. Minutes of that meeting and related draft reports can be found here.

## TACIR Recommends Extending Annexation Moratorium

## MTAS Welcomes 3 New Hires



**Christine Anderson**

**CHRISTINE ANDERSON** is a graduate of the University of Tennessee at Martin, with a bachelor of science degree in business administration, with a concentration in office information systems. She is also a member of the Alpha Kappa Psi Professional Business Fraternity.

Christine previously worked for nine years in the legal profession with progressive responsibilities, most lately filling the role of a paralegal and office manager with a local law firm.

Prior to working in the legal field, after graduating from UT, Christine worked in human resources and in accounting in an industrial setting.

Her unique skill set and experience combine to make her well qualified for her current role as the Jackson IPS office administrative assistant. Jackson office personnel are very pleased to be working with Christine.



**Cyndy Edmonds**

**CYNDY EDMONDS** is no stranger to the Municipal Technical Advisory Service (MTAS). Having been an employee at the University of Tennessee for more than 23 years, Cyndy started her career as a production assistant in the Center for Telecommunications and Video (CTV) at the Institute for Public Service. During this season of her career, she took the opportunity to learn graphics and computer programming when CTV was branching out into the area of developing interactive CD-ROMs for agencies and other customers.

Over the past 13 years, Cyndy has been at the UT Office of Information of Technology (OIT) helping faculty members utilize technology on campus for the enhancement of classroom instruction. In addition, Cyndy has developed some excellent online courses and training for adult learners. As a trainer, she has taught faculty software applications such as Adobe Captivate, Audacity and Apple iMovie. In her new role as the online training specialist, Cyndy will work with MTAS Training Program Manager Macel Ely to determine how online learning might benefit the educational experience and professional development of Tennessee municipalities and their employees.



**Kelly Myers**

**KELLEY MYERS** joined the MTAS staff in the Knoxville office as the municipal codes coordinator. Prior to her employment with MTAS, Kelley spent 20 years as a paralegal in a private litigation law firm.

She graduated from the University of Tennessee, Knoxville with a bachelor of arts degree, having a concentration in English. She has also obtained her paralegal certification, as well as her advanced certification. She is very active in the Smoky Mountain Paralegal Association, currently serving as first vice president and president elect.

Kelley is married and has one son. High school football seems to take up all of her spare time, but she also enjoys reading and traveling whenever possible.

## Attorney General Opines Local Regulation of Ephedrine and Pseudoephedrine Unlawful

Josh Jones, MTAS Legal Consultant  
Accounting Consultant

**AMID A SURGE OF INTEREST** in recently-passed local government legislation to require a prescription for the purchase of ephedrine and pseudoephedrine products, the Tennessee Attorney General has opined that such local regulation is in violation of Tennessee law. The opinion, No. 13-99, declares that the General Assembly, via T.C.A. § 39-17-431, has preempted the entire field of ephedrine and pseudoephedrine regulation.

The doctrine of preemption states that the law of a superior body can supersede, supplant or negate the law of an inferior body where the latter is inconsistent with or an obstacle to the former. Even without direct conflict, preemption can apply, as it does here, where the state regulatory scheme is so pervasive as to occupy the entire field in a particular area. In determining whether the General Assembly occupied the entire field of ephedrine and pseudoephedrine regulation the Attorney General looked to the Meth-Free Tennessee Act of 2005 and the 2011 I Hate Meth Act, both of which suggest comprehensive state regulation and contain explicit statements of preemption.

With the publication of this opinion Tennessee cities are on notice that, absent legislative action by the General Assembly, any local ordinance attempting to regulate the sale of ephedrine or pseudoephedrine is vulnerable to challenge. While the opinion is not binding, a court considering a challenge to a local ordinance would give it great deference. Any city that has passed or is considering such an ordinance should consult their city attorney.

A copy of the opinion is available [here](#).

## Court Clerk Fees in Delinquent Tax Lawsuits

Melissa Ashburn, MTAS Legal Consultant  
Accounting Consultant

**WHETHER RELYING ON THE COUNTY TRUSTEE** to collect delinquent property taxes or pursuing tax collection without the county, cities are plaintiffs in delinquent tax suits in which properties are sold under court order to satisfy tax liens. In a recent opinion, the Tennessee Attorney General explains the fees that court clerks may claim in such lawsuits. Delinquent tax suits are typically filed in chancery court, in which the court clerk has the title "Clerk & Master." The Attorney General reviewed state law, specifically the provisions of T.C.A. §§ 8-21-401 and 67-5-2421, and opined the Clerk & Master is entitled to the following fees and commission:

1. Filing fee of \$44 for each parcel included in the suit;
2. Fee of \$100 for each parcel ordered sold by the court; and
3. Commission of 5% of all property taxes received by the clerk and paid over to the taxing authority, including penalties and interest.

The Clerk & Master is not entitled to receive 5 percent of all amounts paid into court, only 5 percent of the delinquent taxes received in the suit and paid to the city. Funds received to pay liens other than tax liens are not subject to this 5 percent fee.

The Attorney General explains: "The commission applies to the amount of property taxes actually received and paid over and not to the total sale proceeds in cases where the sale price exceeds the taxpayer's obligation to pay taxes, court costs, and attorney's fees." Tenn. Op. Att'y Gen. No. 13-96 (Nov. 27, 2013).

If the city does not bid in the amount of taxes owed at the tax sale and a parcel of property remains unsold, the clerk may only claim the \$44 filing fee and the \$100 fee for conducting the sale for that parcel. The clerk is always entitled to reimbursement for expenses incurred in the suit, such as title examination fees, survey fees and other costs.

## Legislation Introduced Clarifying Volunteers Not Subject to Employer Mandate

NVFC News Alert from the National  
Volunteer Fire Council, December 2013

**ON DECEMBER 10**, legislation was introduced in the U.S. House by Representative Lou Barletta (R-PA) and the Senate by Senator Mark Warner (D-VA) clarifying that 'qualified emergency services volunteers' will not be counted as employees under the Patient Protection and Affordable Care Act (PPACA). If enacted, the Protecting Volunteer Firefighters and Emergency Responders Act (H.R. 3685/S. 1798) would make clear that fire and EMS agencies will not be required to offer volunteer personnel health insurance, even if they receive other nominal benefits.

The Internal Revenue Service (IRS) considers volunteers who receive nominal benefits to be common law employees of the agencies that they serve. The PPACA requires large employers to provide full-time employees with health insurance coverage. Because it falls to the IRS to enforce the PPACA mandate that employers provide health insurance, many fire and EMS departments could end up facing penalties starting in 2015 if they do not offer health insurance benefits to their volunteers.

In September, the NVFC sent the IRS a letter requesting clarification in the final implementing regulations for the PPACA that volunteers will not be treated as employees under the law. Since then, Representatives Peter King (R-NY), Patrick Meehan (R-PA), Rob Wittman (R-VA), Chris Collins (R-NY), Bill Pascrell (D-NJ), Lou Barletta (R-PA), and Frank LoBiondo (R-NJ) have followed up with similar formal letters to the IRS asking for clarification on behalf of the volunteer emergency services. As of now the IRS has not indicated how it will proceed, which prompted the introduction of H.R. 3685 and S. 1798.

"It is critically important that fire and EMS agencies not be forced to offer health insurance to volunteer personnel," said NVFC Chairman Philip C. Stittleburg. "Agencies don't have the resources to provide health benefits to their volunteers and individual volunteers have no expectation of receiving such benefits from the agencies they serve. I'd like to thank all of the bill sponsors from both parties for coming together and introducing this legislation."

For more information contact Dennis Wolf, MTAS Fire Management Consultant at [dennis.wolf@tennessee.edu](mailto:dennis.wolf@tennessee.edu).

# Packed Room at December 2013 Benchmarking Meeting

By Joy West, TMBP Student Assistant

**REPRESENTATIVES FROM CITIES** participating in the Tennessee Municipal Benchmarking Project (TMBP) recently convened in Murfreesboro for the project’s annual data cleansing and review meeting. The city of Murfreesboro graciously hosted the two-day meeting – the largest in the project’s 11-year history – at the Patterson Park Community Center. There were 140 city officials present, representing 18 of the 21 participating cities from across the state. MTAS also had 13 staff members attend.

TMBP Steering Committee Chair Mitch Moore from the city of Athens, highlighted the purpose and importance of the data cleansing meeting.

“The data cleansing meeting is important in the benchmarking process to ensure the integrity of the data, and to allow a better understanding of the program by all participants,” Moore said.

City representatives met in individual service area groups to compare data, discuss measurement techniques, and to share their experiences. MTAS consultants facilitated the discussion on performance and costs data, measure definitions, and the value of calculated benchmarks. Groups also focused on identifying possible best practices using this year’s data—building upon TMBP staff efforts to better capture performance success stories in codes enforcement and other service areas. The meeting concluded each day with report-backs from the service areas, which allowed all city participants to share and learn from one another. One of the greatest benefits of the data cleansing meeting each year is that through a face-to-face meeting cities gain the opportunity to share their experiences and to discuss best practices with other specialists in the field from across the state.

Jim Smith, steering committee member for the city of Spring Hill, shared his experience at the data cleansing meeting as a new city to the project.

“The city of Spring Hill sees the benchmarking project as an integral part of analyzing trends in various departments and comparing our results with our sister cities to glean new ways to become a high performing city,” Smith said.

For more information on the Tennessee Municipal Benchmarking Project, please visit our website at: <http://www.mtas.tennessee.edu/web2012.nsf/Web/Benchmarking>.



*Honna Rogers (center), MTAS Management Consultant, leads the service area discussion for Planning & Zoning.*

# 2013 Workers’ Compensation Reform Act

Bonnie Jones, MTAS HR Consultant

**EFFECTIVE JULY 2014**, Tennessee’s new Workers’ Compensation Reform Act goes into effect. The new law is considered favorable to employers and involves a more efficient claims resolution process and lower administrative costs, and it also establishes a panel of judges that will take cases out of the crowded courts. The reform comes as a response to complaints with the current system, increased interest in private employers opting out, and perceptions of complications, red tape, and structure of workers’ compensation benefits. Some say the current process does not provide a framework to efficiently get employees back to work in a timely manner.

For employees, they will see faster treatment, more expeditious handling of disputes and claims, and hopefully a faster return to work.

The new law changes the definition of an injury and puts additional requirements on physicians’ being sure there is a reasonable degree of medical certainty - as opposed to speculation or possibility - that the injury is Workers’ Compensation qualified.

In the new legislation only one panel of physicians is required, and each provider must be willing to treat workers’ compensation patients. The new division can enforce penalties for panels that are improper and are not following rules of panel development.

Another change for employers is that cities will now be allowed to communicate with treating physicians, whereas, right now there is a signed waiver required before this can occur.

For more information about workers’ compensation reform visit [http://www.tn.gov/labor-wfd/wc\\_2013\\_ReformAct.shtml](http://www.tn.gov/labor-wfd/wc_2013_ReformAct.shtml) and or contact your MTAS HR Consultant.

## Ethical Behavior of Municipal Finance Officers

Sharee Brewer, MTAS Finance and Accounting Consultant

**ALL POSITIONS IN GOVERNMENT** are held to high standards of ethical behavior. However, no position is likely to be as sensitive to the consequences of ethical behavior as that of the municipal finance officer. This is important to realize because finance officers act as a fiduciary of the resources the citizens have entrusted to their government. The relationship between the finance officer and the citizens of the municipality is one that calls for integrity and assumes that fair dealings in good faith are found in all financial transactions.

Finance officers have a fiduciary responsibility to act in the best interest of the public they serve. Though there is no complete definition of what this responsibility entails, most agree it involves a duty to act with care and loyalty. The duty to act with care suggests the finance officers conduct themselves how a person in a like position would reasonably believe appropriate. The duty to act with loyalty requires the finance officers to act in the best interest of the municipality rather than in their own interest, even when acting in their interests is not illegal.

Potential conflicts of interest often arise in the finance function of a municipality, and should be avoided even when no actual conflict exists. It will not always be possible to avoid an apparent conflict of interest, especially in a small municipality where alternative service providers may be limited. However, the finance officer should always make a concerted effort to not just avoid an actual conflict of interest but the appearance of one as well. The best way to ensure consideration of potential conflicts of interest is to simply disclose them.

## MTAS Salary Survey Needs You!

**THE 2013 MTAS SALARY SURVEY** will be open for data entry very soon. It is that time of year to either update your city's salary data or input your city's data for the first time.

All Tennessee cities large and small are encouraged to participate in the MTAS annual salary survey. In today's economy, it is even more critical to ensure that your city is spending its compensation dollars wisely. Having current market information is the best way to know what jobs are worth and what the current trends are for budgets and salary range movement. The MTAS salary survey information is compiled solely to assist you in guiding the effective management of your wage and salary administration program.

The more cities that provide data, the more useful the database will be to all.

If you have questions, feel free to contact your MTAS HR consultants.

**Richard Stokes, Nashville office, richard.stokes@tennessee.edu 615-532-6827**  
**Bonnie Jones, Knoxville office, bonnie.jones@tennessee.edu 865-974-0411**

## TREEDC Partners with Philippine Department of Energy (DOE) in Typhoon Response

**THE TENNESSEE RENEWABLE ENERGY AND ECONOMIC COUNCIL (TREEDC)** delivered 80 emergency power kits for the Typhoon Yolanda-affected areas, each containing solar charging/lighting units with a portable radio. According to TREEDC President/Ducktown, Tennessee Mayor James Talley, the power kits can now aid in the recovery efforts in the typhoon-affected areas, and subsequently provide some off-grid households with a sustainable renewable energy resource after recovery. TREEDC International Consultant Douglas Jackson added that TREEDC member University of the Philippines-Visayas campus in Tacloban would receive some of these units, and that others may be sent to the Eastern Samar province area, as power on Leyte Island is expected to be restored much sooner than on Samar.

MTAS Management Consultant Warren Nevad said that these power kits were funded by Vis Solis, a Tennessee renewable energy-based company that is developing world class solar electric systems in Tennessee and the Philippines. Vis Solis is a Platinum Founding Member of TREEDC and is assisting with TREEDC's International exchange program in the Philippines with REAP which links educational awareness and social responsibility programs among Philippine and Tennessee cities, universities and businesses. Nevad also expressed his appreciation to REAP President Oly Serafica and Assistant Secretary Acol for expediting the delivery of these relief power kits.



Left to right: Oly Serafica, President of REAP, Raymund Acol, Dept. of Energy and Douglas Jackson, TREEDC International Consultant.

# MTAS Training Opportunities January 2014

## CONFERENCES

**TN MUNICIPAL ATTORNEYS ASSOCIATION CONFERENCE**  
February 20-21, 2014  
Brentwood

**ICMA SOUTHEAST REGIONAL SUMMITT**  
March 6-7, 2014  
Williamsburg, VA

**TENNESSEE MUNICIPAL LEAGUE 2014 LEGISLATIVE CONFERENCE**  
March 17-18, 2014  
Nashville

**TN GOVERNMENT FINANCE OFFICERS ASSOCIATION 2014 SPRING INSTITUTE**  
March 21, 2014  
Jackson

**TN CITY MANAGEMENT ASSOCIATION 2014 SPRING CONFERENCE**  
April 23-25, 2014  
Murfreesboro

**TRANSFORMING LOCAL GOVERNMENT 2014**  
April 23-25, 2014  
Denver, CO

### CMF0 - The Government Environment

1/22/2014	8:00 AM	Memphis	University of Tennessee (TBD)
1/22/2014	8:00 AM	Jackson	University of Tennessee Research & Education
1/22/2014	8:00 AM	Nashville	Univ of Tenn - CIS Training Room
1/22/2014	9:00 AM	Knoxville	Univ of Tenn - MTAS Conference Room
1/22/2014	9:00 AM	Kingsport	Kingsport Center for Higher Education
1/22/2014	9:00 AM	Chattanooga	Univ of Tenn - Chattanooga

### EOA01 Foundations & Structures of Tennessee Municipal Government

1/10/2014	7:00 PM	Monteagle	Monteagle City Hall
1/17/2014	4:30 PM	Waynesboro	Monteagle City Hall

### EOA02 Charter, Codes & Open Records

1/11/2014	8:00 AM	Monteagle	Monteagle City Hall
1/18/2014	10:00 AM	Waynesboro	Waynesboro City Hall Courtroom

### EOA03 Finance for Elected Officials

1/11/2014	10:00 AM	Monteagle	Monteagle City Hall
1/17/2014	7:00 PM	Waynesboro	Waynesboro City Hall Courtroom

### EOA04 Council at Work

1/11/2014	12:30 PM	Monteagle	Monteagle City Hall
1/18/2014	8:00 AM	Waynesboro	Waynesboro City Hall Courtroom

### EOA05 Ethics & Open Meetings

1/10/2014	4:30 PM	Monteagle	Monteagle City Hall
1/18/2014	12:30 PM	Waynesboro	Waynesboro City Hall Courtroom

### MMA01 Municipal Manager Overview

1/8/2014	8:30 AM	Collegedale	Collegedale City Hall
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### MMA02 Communication Skills & Behavioral Styles

1/22/2014	8:30 AM	Collegedale	Collegedale City Hall
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### MMA07 Risk Management & Safe Workplace Environment

1/15/2014	8:30 AM	Sevierville	Sevierville Civic Center
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### MMA09 Communicating, Coaching & Counseling

1/15/2014	8:30 AM	Cleveland	Cleveland Police Department
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### MMA10 Delegation Skills

1/29/2014	8:30 AM	Cleveland	Cleveland Police Department
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### MMA12 Developing Teamwork

1/17/2014	8:30 AM	Greeneville	Greeneville Central Fire Station
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### MMA15 Employee Performance Evaluations

1/8/2014	8:30 AM	Franklin	Williamson County Ag Expo Park
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