

# Ten Tips:

## Using Your Municipal Attorney More Effectively

By: Claire Silverman, Legal Counsel

**W**hat role does the municipal attorney play in your city or village? Is the attorney contacted on a regular basis and kept apprised of what's going on in the community, or is the municipal attorney only contacted when there's a crisis? The municipal attorney can play a valuable role in helping a municipality carry out its responsibilities and accomplish its objectives in a lawful manner. This legal comment explains what the municipal attorney does and offers some tips for using the municipal attorney more effectively.

### WHAT DOES THE MUNICIPAL ATTORNEY DO?

Wisconsin law does not specify the responsibilities of the municipal attorney in any great detail. In fact, although the attorney is an enumerated officer in the statutory chapter governing cities,<sup>1</sup> the chapter governing villages does not mention an attorney at all. The statute setting forth the responsibilities of the city attorney states that the attorney shall "conduct all the law business in which the city is interested,"<sup>2</sup> and sets forth a few specific duties.

With so little statutory guidance there are, understandably, wide variations in the way in which communities use their municipal attorney. Although the job of the municipal attorney varies depending on the size of the municipality and the complexity of the issues it faces and the services it provides, here are some things that municipal attorneys or special counsel (e.g., labor counsel or bond counsel) typically do for municipalities:

- ◆ Give legal advice and opinions to the governing body, and other boards, commissions and departments.

- ◆ Draft resolutions, ordinances, deeds, contracts and other legal documents that the municipality is a party to.
- ◆ Represent the municipality's interests in legal proceedings.
- ◆ Examine the tax and assessment rolls and other tax proceedings and advise the proper municipal officers in regard thereto.<sup>3</sup>
- ◆ Attend governing body meetings and meetings of other boards and commissions, when requested.
- ◆ Review governing body agendas to identify potential legal problems.
- ◆ Develop forms, policies and procedures to standardize government operations and ensure that the municipality is proceeding lawfully.
- ◆ Ensure that bodies acting in a quasi-judicial capacity do so in a meaningful way that ensures due process and develops an adequate evidentiary record.
- ◆ Represent the municipality in labor negotiations.

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1. Sec. 62.09(1), Stats.  
2. Sec. 62.09(12), Stats.  
3. Sec. 62.09(12)(e), Stats.

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- ◆ Advise the municipality regarding financial matters.
- ◆ Assist in matters relating to land acquisition and development.
- ◆ Prosecute cases involving ordinance violations.
- ◆ Assist in ordinance codification.

**TIPS FOR USING YOUR ATTORNEY  
 MORE EFFECTIVELY.**

The following list is not intended to be exhaustive but, rather, is a starting point for using your municipal attorney effectively.

**1. Remember that you and the municipal attorney are on the same team.**

The municipal attorney should not be viewed as an obstructionist. It is the municipal attorney’s job to protect the municipality by identifying potential legal problems and to assist the municipality so that it exercises its powers in a lawful manner. If you have specific goals, clearly communicate those goals to the attorney. It may be that the goal itself is unlawful. In that case, it is better to know that in advance in order to protect the municipality from liability. However, most often the end goal is legitimate and there are a variety of ways to achieve the desired result. The means of achieving the goal are less important than reaching the desired result, but using the wrong means can have significant legal consequences. Consult with the municipal attorney and allow the attorney to identify the various legal ways to achieve the desired result and the benefits and pitfalls of taking a particular route. Be open to the attorney’s suggestions.

**2. Remember who the client is.**

Municipal officials should bear in mind that the municipal attorney’s client is the municipality, acting through its governing body, and not the individual officers or employees. Because the municipality is the client and it is often unclear who can speak or act on behalf of the municipality, it can be helpful for both the attorney and municipal officials if the governing body develops clear guidelines regarding who can contact the municipal attorney and under what circumstances it is appropriate to do so. Individual officers and employees must understand that they themselves are not the attorney’s client and that the municipal attorney may not be able to keep everything told to the attorney confidential. Moreover, officials and employees should not attempt or expect to persuade the municipal attorney to act in a manner that is inconsistent with the attorney’s obligation to the client, the municipality.

**3. Involve your municipal attorney early.**

When a municipality does not have in-house counsel, local officials are sometimes reluctant to call the municipal attorney because it costs money. Although the cost of legal services is a valid concern and it’s unnecessary to call the municipal attorney for every little thing, the best advice is don’t be penny-wise and pound-foolish. There are many times when an early request for legal assistance can save money and unnecessary headaches down the road.

Consult the municipal attorney whenever the municipality or its officers and employees are the subject of or receive legal documents such as complaints or subpoenas. Legal advice is also warranted whenever municipalities must follow specific statutory procedures in order to exercise certain powers — e.g., annexation of property, creating tax increment finance districts, imposing special assessments and impact fees, raz-

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Don't ask your attorney to do a quick review of complex documents or just "look things over." If a review is to be meaningful, it is necessary to allow the attorney to take the time and measures necessary to do the job. The municipal attorney can commit malpractice by doing an inadequate job. Therefore, it is only fair to give the attorney some express indication if the attorney's review is intended to be limited in its scope.

**8. Be candid with your municipal attorney.**

Disclose all the pertinent facts and don't be selective. Although being selective in what you tell the municipal attorney may get you the answer you want, it may have significant consequences for the municipality later. With careful thought and planning, a good attorney can deal with bad facts. However, it is very difficult for an attorney to deal with damaging facts when the attorney is blindsided later in the process. In all likelihood, damaging or unfavorable facts will eventually be revealed, so be candid with your municipal attorney and make sure the attorney is aware of all relevant facts so he or she can figure out how they weigh in the equation and deal with them accordingly.

**9. Understand that your municipal attorney cannot always give a concrete answer.**

Contrary to popular opinion, attorneys do not like to waffle. Attorneys like to be able to advise their clients with certainty but quite often the law does not provide a clear-cut answer to a legal question.

Although your municipal attorney should be able to analyze the law in a given area and make an educated prediction regarding the likely outcome, there are times when the attorney will not feel comfortable making a prediction because it is too close for the attorney to call. In those situations, it is reasonable for the attorney to explain the relevant law and why the question is too close to call. The attorney should also explain the consequences given several different outcomes.

**10. Remember that lawyers are legal advisors, not policy makers.**

The municipal attorney is a legal advisor and it is the attorney's job to help the municipality see what the options are and what the benefits and disadvantages might be of proceeding in a given way. The municipal attorney should not be pulled into politics and should be allowed to maintain independence and objectivity so that the attorney can give the correct legal answer rather than the desired legal answer. Once the legislative body has decided which way to proceed, the municipal attorney can then implement the plan and make sure the municipality carries out its powers lawfully.

**CONCLUSION**

The municipal attorney is a valuable part of any municipal team and, when used effectively, can do a lot to help the municipality carry out its responsibilities and lawfully achieve its goals while at the same time protecting the municipality and its officers and employees from significant liability.

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Some valuable ideas were provided by the following articles: "The Municipal Attorney: A Vital Part of Your Local Government," Frederick C. Sussman, *Municipal Maryland* (October 1995); "Pay Now or Pay Later: Working With Your City Attorney," Chris Smith, Staff Attorney, League of Minnesota Cities; and "How to Be A Good Consumer of Legal Services," Eunice Gibson, former Madison City Attorney.

ing of buildings, zoning and platting matters, revocation of licenses. It's also wise to consult the attorney when failure to take adequate steps to protect the municipality can result in significant expense for the municipality. For example, in matters relating to development, failure to secure the necessary protections can leave a municipality responsible for making substantial and expensive improvements, completing unfinished work or redoing shoddy work.

Finally, it's also a good idea to seek legal advice whenever the municipality will be bound by contracts or other negotiations. With regard to significant contracts or negotiations, it's important to involve the attorney early, before all the details have been worked out. Once a deal is ready to be concluded, it gains a momentum of its own and it is very difficult for an attorney who is brought in towards the end of the deal to have meaningful input. Furthermore, when an attorney is brought in late and then spots a number of legal issues and potential problems, it is much more expensive to address the problems and remedy them. Moreover, if the potential problems are not addressed and later become actual problems or lead to litigation, legal assistance becomes truly expensive.

**4. Prepare before speaking or meeting with your municipal attorney.**

Just as a good lawyer should prepare to meet with a client, a client can and should spend time preparing to meet with an attorney. Doing your homework before meeting with the attorney will give the municipality the best value for the money it spends on legal services. The attorney often comes into a situation knowing very little about it. Take time, before meeting with the attorney, to identify and document the pertinent facts, and to identify what you think the important issues and concerns are. Understand what the municipality's objectives are and be prepared to explain them to the attorney.

**5. Be very clear regarding expectations.**

Have a clear idea regarding the importance of the matter and convey those expectations to the attorney. Think about the role you expect the municipal attorney to play. Should the attorney write a formal opinion letter laying out the relevant facts and explaining the various options? Should the attorney draft certain legal documents? Is the matter a minor one where the attorney is being used primarily as a sounding board? Make sure the attorney understands the priority of the matter — low, intermediate or high — and that you explain what the municipality's time frame is regarding the matter and when the answer or work product is needed.

**6. Plan ahead for legal services.**

Give the attorney adequate time to research issues and answer questions. Don't demand an immediate response from the municipal attorney at a meeting. Municipal law is not a compact, well-defined body of law. Rather, municipal law includes a vast number of areas such as annexation, contracts, employment law, powers of governmental bodies, platting, zoning, open meeting and public record laws, public utilities (just to mention a few). Provisions relating to municipal law are complex and are sprinkled throughout the statutes, both federal and state, and in administrative regulations. On top of that, there is often case law where the courts have interpreted these provisions. The municipal attorney should not be expected to have all the various provisions memorized or to shoot from the hip.

**7. Provide the attorney with the necessary resources to do the job requested or clearly limit the scope of the job.**

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