IMLA

Municipal Lawyer

THE JOURNAL OF LOCAL GOVERNMENT LAW

Disruptive Public Meetings and the First Amendment



MAY JUNE 2022
VOL.63 NO.03

OFFICERS
PRESIDENT
Barbara A. Adams
General Counsel
Illinois Local Government
Lawyers Association

PRESIDENT ELECT
Lori Grigg Bluhm
City Attorney
Troy, Michigan

IMMEDIATE PAST PRESIDENT
Tyrone E. Cooper
City Attorney
Beaumont, Texas

TREASURER
Rose Humway-Warmuth
City Solicitor
Wheeling, West Virginia

GENERAL COUNSEL AND EXECUTIVE DIRECTOR
Amanda Karras
IMLA, Rockville, Maryland

BOARD OF DIRECTORS
Christopher Balch
City Attorney
Brookhaven, Georgia

Shauna Billingsley
City Attorney
Franklin, Tennessee

Alan Bojorquez
City Attorney
Bastrop, Texas

Beth Anne Childs
Town Attorney
Bristow, Oklahoma

Diana Cortes
City Solicitor
Philadelphia, Pennsylvania

Bradford Cunningham
Municipal Attorney
Lexington, South Carolina

Jeffrey Dana
City Solicitor
Providence, Rhode Island

Arthur Gutekunst
Sr. Assistant Corporation Counsel
White Plains, New York

Nina R. Hickson
City Attorney
Atlanta, Georgia

Lori Lein
General Counsel
Alabama League of Municipalities

Wynetta Massey
City Attorney
Colorado Springs, Colorado

Bryan Scott
City Attorney
Las Vegas, Nevada

Todd Sheeran
City Attorney
Bluffdale, Utah

Jennie Granahan Tarr
Chief Assistant County Attorney
Hillsborough County Hospital Authority

Nancy Thompson
City Counselor
Columbia, Missouri

Randall Van Vleck
Town Attorney
Kirtland, New Mexico

Wendy Walberg
City Solicitor
Toronto, Ontario

Byron Werry
City Solicitor
Regina, Saskatchewan

Susana Alcala Wood
City Attorney
Sacramento, California

CONTENTS

MAY / JUNE 2022

DISRUPTIVE PUBLIC MEETINGS AND THE FIRST AMENDMENT

By: Tom Carr, County Counsel, Washington County, Oregon and Tonya Haas Davidson, City Attorney, City of Greenwood Village, Colorado

The First Amendment clearly protects the right of constituents to speak at public meetings, and on virtually any subject during "open comment" segments. But there are limits, particularly during subject-specific public hearings. Counsel need to distinguish between legitimate guardrails and viewpoint discrimination.

PAGE 6

GPS CHIPPING YOUR EMPLOYEES AND OTHER FOURTH AMENDMENT PITFALLS

By: Amanda Stanley, City Attorney, City of Topeka, Kansas

While local governments have a valid interest in ensuring that public employees conscientiously perform their duties, oversight that strays into the worker's reasonable expectation of privacy will result in constitutional challenges.

PAGE 10

SUCCESS ON APPEAL IN SECTION 1983 CASES

By: Timothy Coates and Ted Xanders, Greines, Martin, Stein & Richland LLP, Los Angeles, California

Section 1983 actions alleging violations by local government actors continue apace, resulting in prolonged litigation. Our authors present strategies and considerations that can help achieve victory on appeal.

PAGE 14

DEPARTMENTS

18 LISTSERV

How Long to a Cashless Society?

By: Brad Cunningham, Municipal Attorney, Lexington, South Carolina and IMLA Board member

A reluctant farewell to the greenback.

20 AMICUS CORNER

***Masterpiece Cakeshop* 2.0 - Antidiscrimination Laws Under Challenge Again**

By: Amanda Karras, IMLA Executive Director and General Counsel

May a website designer refuse to serve same-sex weddings?

24 YOUNG LAWYERS

Ten Things Every Young Lawyer Should Know

By: Patrick Baker, City Attorney, Charlotte, North Carolina

Building a foundation for success in future years.

26 INSIDE CANADA

Overreaching Councillors, Roadway Obstacles, Undisclosed House Defects, and More

By: Monica Ciriello, Ontario 2015

Recent cases of interest.

STAFF

EXECUTIVE EDITOR
Amanda Karras

EDITOR
Erich R. Eiselt

ART DIRECTION AND PRODUCTION
Trujillo Design

MARKETING
Caroline Storer

Views appearing in *Municipal Lawyer* are those of the authors. Publication of articles in this magazine does not reflect a direct or implied endorsement of an author's views. © Copyright 2022 by the International Municipal Lawyers Association (IMLA). All rights reserved. IMLA is a non-profit professional association of municipal lawyers from across the United States and Canada. It offers its members continuing legal education courses, research services, litigation assistance on amicus briefs and an information- sharing network in the field of municipal law. *Municipal Lawyer* is IMLA's membership magazine, published bi-monthly. For membership information contact: IMLA, 51 Monroe Street, Suite 404, Rockville, Maryland 20850, phone: (202) 466-5424, or e-mail: info@imla.org. Contributions of articles are welcome. *Municipal Lawyer* reserves the right to refuse or edit manuscripts submitted for publication.

EDITOR'S NOTE



BY: ERICH EISELT
IMLA Assistant General Counsel
and Director of Affirmative Litigation

The Times They Are a Changin'

Bob Dylan's iconic lyric blanketed the airwaves 58 years ago, documenting what was already evident: change was afoot across America. The Vietnam War, the Civil Rights Act, Students for a Democratic Society, The Feminine Mystique—ferment and transformation were everywhere. But six decades ago the membership of our predecessor organization, the National Institute of Municipal Law Officers, did not yet reflect that evolution. Photos of NIMLO meetings in prior years depict gatherings overwhelmingly populated by one race and one gender.

Those days have been long gone at IMLA. Our membership continues to reflect an ever more diverse coalition—lawyers of widely differing backgrounds and values, aligned in a common mission to serve local government. That ongoing evolution seemed evident at our recent Mid-Year Seminar, particularly in a generational sense. On the very days that Ketanji Brown Jackson was smashing barriers in a building three miles from our Seminar, we increasingly saw a new cohort of professionals taking the podium, exhibiting competence, capacity--and youth. It is a tribute to their mentors, many of whom were in attendance, and portends good things for their communities and for IMLA.

Our *Young Lawyers* pages in this issue of *Municipal Lawyer* reflect a bit of advice from one such mentor. Patrick Baker, Charlotte City Attorney and former IMLA President, recounts valuable lessons learned and proffers some maxims to drive success even as environments change. Other *ML* content is grounded in more familiar legal matters where change is continually in play: Tom Carr, Washington County (Oregon) Counsel and Tanya Haas Davidson, Greenwood Village (Colorado) City Attorney, report in our cover feature on the state of discourse in public meetings. Amanda Stanley, Topeka City Attorney, provides a feature reviewing the increasing efforts to track government employees. And Amanda Karras, IMLA Executive Director and General Counsel, examines yet another Supreme Court debate over refusal to serve same sex couples, in *Amicus*.

We provide a third feature adapted from a paper presented at the Mid-Year—an incisive discussion of the tactics needed to win Section 1983 appeals, offered by Tim Coates and Ted Xanders of Greines, Martin, Stein & Richland LLP—a team now well-known to IMLA members. And Monica Ciriello continues to deliver a wide-ranging look at current legal matters across the provinces in *Inside Canada*.

Finally, our *ListServ* piece contributed by Brad Cunningham, Lexington (South Carolina) Municipal Attorney and IMLA Board member, comments on an entirely different form of transition, cloaked in a phenomenon almost imperceptibly overtaking us: the gradual extinction of paper currency.

IMLA appreciates the opportunity to be a part of positive change in your community, and we hope you enjoy this issue of *Municipal Lawyer*.

Best regards-

Erich Eiselt