

The IMLA Municipal Attorney List – Why We Fight, Part I

by Don Knight

Many of you may recognize *Why We Fight* as a series of seven World War II propaganda films, directed mostly by Frank Capra. Or, perhaps, you saw the 2005 documentary by the same name. This column isn't about the use of the military but, rather, why so many talented attorneys choose to represent local governments. I recently posed the following question to the IMLA/MCC list: *What do you get out of representing a local government that you wouldn't get from representing private clients?* The responses were outstanding. This is the sort of thing you need to laminate and keep at your desk for emergency use, when you're wondering why in the world you decided to become a municipal attorney.

Chicken Soup for the Municipal Attorney

Roger Nowadzky, City Attorney of Marshalltown, Iowa, related that he had experienced a "reverse career pyramid," starting government work with the federal government, and then progressing to state government, the League of Iowa Municipalities, the largest city in Iowa, to a medium-sized Iowa city, Marshalltown. Roger continues:

> But the crowning glory is that I have been allowed, for the last several years while still serving as City Attorney of Marshalltown, to represent another community in our county, St. Anthony, which is one of the smallest cities in our state – a town of 102 people. When I would attend a city council meeting for this community, my billing amounted to everyone in town paying me the equivalent of a McDonald's Happy Meal. They had a steak (or maybe a burger) in me, and I in them. But serving that small town has given me the greatest satisfaction. I have discovered that Thomas Jefferson was right: "The government closest to the people, is the best." I think he was saying municipal government is the most accountable and the most reflective of the people's wishes, as well. I particularly appreciate it when the municipal government is nonpartisan – there is no Democratic or Republican way to fill a pothole. By the way, I haven't sent a bill for legal services to this small town in five years. The satisfaction – of somehow making a difference – is why I am a city attorney. "That is why I fight."

Lynn Nunns, an Assistant City Attorney for Carrollton, Texas, provided us with a list of her reasons why she likes being a municipal lawyer:

> 1. I like politics, but don't want to be a politician. By being a municipal government lawyer, I can see how things work and the policy behind them, without having to be out front selling the policy as my own.
> 2. I like the challenge of being a lawyer. Simply working for a municipality in another position wouldn't be interesting to me.
> 3. I like the stories. It is amazing the trouble that people get themselves into! (And how creative they are at getting themselves out of it!)
> 4. Overall, I like the citizens. I like hearing their sides of the story. I can't always help them, but I often can sympathize. Municipalities are the units of government closest to the citizens, and we should give them their (tax dollars) money's worth.
> 5. I believe in accountability, and with the media always around, those of us who work for city government are accountable to our citizens for our actions.
> 6. I like working with people who share my beliefs about the public and our co-workers.
> 7. I hate scrounging up clients to bill, and keeping track of billable hours.

Lynn's list prompted Julie Glass, Assistant City Attorney for Shreveport, Louisiana, to comment:

> Playing off of Lynn's No. 1 ("I like politics, but don't want to be a politician"), I've always said being an Assistant City Attorney is like standing on the field on the 50-yard-line of the political game. Usually, you aren't the one that gets tackled, although occasionally the players may run over you in their zeal.

John "Kelly" Addy, Deputy City Attorney, City of Billings, Montana, has experience at several levels of government, as well as private practice, and he's a big fan of local government:

> I came to municipal law after four years as an Army lawyer, 20 years as a private practitioner, and, in that last 20 years, eight years as a state legislator. While I was in the legislature, I found myself championing local government because my city did a great job of providing the services people used every day: police, fire, streets, water and sewer, and parks, and I saw that they did it with resources that required them to be diligent and accountable. Other levels of government talk about services,

but cities either provide them or they don't, no matter what the bumper sticker of the day is.

In municipal practice, I don't have to spend a huge chunk of my time running an office, ordering paper clips, finding a location, or billing clients – I spend my time practicing law, which is what I went to law school to learn to do and what I love to do. In municipal practice, I have found the best corps of fellow employees that I have known anywhere, focused on providing a service and making life safer and better than it was yesterday, not as good as it will be tomorrow. No self-promotion, just service.

Finally, I have the best clients in the world. They are goal-oriented; they are not driven by liberal or conservative ideology; and they will ask me for a legal opinion and understand that my advice is intended to protect and promote the interests the residents of our community and themselves. They are professionals who do not have an axe to grind, only a job to do, a calling to serve.

So why didn't I figure this out sooner? You don't get any do-overs, but I think I spent all that other time gaining experience and insights that have uniquely prepared me for the challenges that come across my desk today, and constantly remind me that this is a great place. Life is good, and if I do my job, it's going to get better, for me and my neighbors. I'm a lucky duck, and I'm grateful for it.

Alan C. Wayland, City Attorney for New Braunfels, Texas, says "every day I feel like I have the opportunity and ability to make the community where I live a better place. I think this is the essence of why anyone wants to be a public servant." Alexandra Sosnkowski, who works for Hood River, Oregon, writes, "I like getting to work with people – City staff. We work together for the common good and stand up for each other. You don't get that in private practice the same way." Andy Quittner, Assistant City Attorney for San Marcos, Texas, relates a typical day in the life of a city attorney:

> [W]here else would you, in the period of a single day, get to opine on police union negotiations, complex utility agreements, animal regulations, try and figure out what a TxDOT engineer really means in a minute order, and discuss the finer points of double jeopardy (as applied to municipal/county court complaints) – and the day hasn't ended yet!! It's enough to make your head swim – but you gotta love it!!

But Wait, There's More!

I received more wonderful contributions than will fit in one column, so stay tuned for more inspiring words in the next *Municipal Attorney* Listserv column.



to the risks that various options present, and provides municipalities with a roadmap for avoiding liability, if not litigation.

Adam Kingsley practices law in Chicgo, Illinois. He represents municipalities and concentrates in dispute resolution and litigation. As an attorney with the City of Chicago, Adam successfully defended the Chicago Police Department's hiring and promotion practices and is familiar with the issues presented in Ricci v. DeStefano. ML

Price of Competition

continued from page 27

14. Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470, 502-03 (1987).
15. *See, e.g.*, Texas Power & Light Co. v. City of Garland, 431 S.W.2d 511 (Tex. 1968); City of Tukwila v. City of Seattle, 414 P.2d 597 (Wash. 1966).
16. Southern Calif. Gas Co. v. City of Santa Ana, 336 F.3d 885, 896 (9th Cir. 2003).
17. AFSCME, Local 2957 v. City of Benton, 513 F.3d 874, 882 (8th Cir. 2008).
18. *Id.*
19. Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 412 (1983).
20. Chicago Bd. of Realtors, Inc. v. City of Chicago, 819 F.2d 732 (7th Cir. 1987).
21. Baltimore Teachers Union v. Mayor and City of Council of Baltimore, 6 F.3d 1012, 1017 (4th Cir. 1993).
22. United States v. County of Muskegon, 298 F.3d 569, 585 (6th Cir. 2002).
23. *See, e.g.*, Contributors to Penn. Hosp. v. City of Philadelphia, 245 U.S. 20 (1917) (eminent domain power cannot be surrendered by contract); Pub. Serv. Co. of Colo. v. City of Loveland, 245 P. 493 (Colo. 1926) (city officials lacked the authority to execute a disclaimer upon behalf of themselves or future city councils that would deprive them of the exercise of their eminent domain power); and Bd. of County Com'rs of Calvert County v. East Prince Frederick Corp., 559 A.2d 822 (Md. App. 1989) (County's policy requiring reserved sewage and water capacity to be used within two years or payment of minimum user fees did not offend the doctrine, as the County lacked the power to create sewer rights in perpetuity and effectively prevent the enactment of future laws to fit changed circumstances).
24. *See, e.g.*, Wheat Ridge Urban Renewal Auth. v. Cornerstone Group XXII, LLC, 176 P.3d 737, 742-44 (Colo. 2007) (agreement to exercise eminent domain enforceable).
25. 478 P.2d 585 (Nev. 1970).
26. Morrison Homes Corp. v. City of Pleasanton, 130 Cal. Rptr. 196, 202 (Cal. Ct. App. 1976).
27. Hudson v. City of Bossier City, 930 So.2d 881 (La. 2006).
28. City of Clinton v. Cedar Rapids & Mo. River R.R., 24 Iowa 455, 475 (Iowa 1868) (Dillon's Rule states that municipal corporations have only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable).
29. The Seventh Circuit has made the interesting point that if a contract allows a party to pursue a claim for breach of contract, there is actually no impairment of the contract. Horwitz-Matthews, Inc. v. City of Chicago, 78 F.3d 1248, 1250-51 (7th Cir. 1996). Under this rule, one could argue that the Hampton provision renders any Contracts Clause claim moot, because Verizon would retain the ability to sue for breach of contract under the same standards that would apply to a Contracts Clause claim.
30. *See* City of Covington v. Covington Lodge No. 1, Fraternal Order of Police, 622 S.W.2d 221 (Ky. 1981). ML

Inside Canada

continued from page 28

plaintiff fell" at the time he broke his ankle. Nonetheless, the court held that the plaintiff failed to prove that the City was grossly negligent in the manner in which it handled the ploughing and/or sanding of the sidewalks. "All municipalities, especially large cities [,] have a monumental task to keep the public safe during all sorts of winter conditions," and the conditions at the time the plaintiff fell were a "unique situation."

The court dismissed the action, concluding with a request that the City not demand costs, as this "would only make the plaintiff's bad situation worse." ML

Ordinances

continued from page 29

4. Westport, CT, Retail Checkout Bags Ordinance (Sept. 5, 2008).
5. *Id.*
6. *Id.*
7. Maui County, HI., Ordinance Pertaining to Plastic Bag Reduction (July 14, 2008).
8. Austin, TX., Resolution No. 20070419-026 (Apr. 19, 2007).
9. *After a Year, Local Retailers Report Less Plastic Bag Usage*, Austin Business Journal, Nov. 18, 2008, at http://austin.bizjournals.com/austin/stories/2008/11/17/daily23.html.
10. Adam Lisberg, *Mayor Bloomberg Paints Grim Economic Picture for New York City 2009 Budget*, New York Daily News, Jan. 30, 2009, at http://www.nydailynews.com/ny_local/2009/01/30/2009-01-30_mayor_bloomberg_paints_grim_economic_pic.html.
11. Anne Thompson, *Paper or Plastic – What's the Greener Choice?* MSNBC.com, May 7, 2007, at http://www.msnbc.msn.com/id/18538484.
12. Joe Eskenazi, *The City's Politicos Made the Enviros Happy by Banning Plastic Bags, But Left Us With More Pollution and Cost*, SFWeekly.com, Jan. 07, 2009, at http://www.sfweekly.com/content/printVersion/1297386. See also, http://sfenvironment.org/downloads/library/2008_litter_audit.pdf.
13. Press Release, IKEA, *The Results are in ... over 92% of IKEA Customers Bagged the Plastic Bag!* (April 2, 2008) (on file with author).
14. Kathy Mulady, *$1280,625 to Fight 20-cent Bag Fee*, Seattle Post-Intellingencer, Sept. 11, 2008, at http://seattlepi.nwsource.com/local/378828_bags12.html. ML

Listserve

continued from page 28

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Don Knight is an Assistant City Attorney for the City of Dallas. He advises and represents city officials on a variety of legal matters, including telecommunications, cable, electric and gas utility regulation, technology acquisitions and electric service agreements. Since 2001, Mr. Knight has served as the Chair of the Texas Coalition of Cities For Utilities Issues (TCFUI), which represents over 100 Texas cities of all sizes. ML