Epps Award Note

Contributing Elements or Factors Important to Providing Municipal Attorney Legal Service to a Community for a Long Period of Time!

By: Jim Nugent, City Attorney, Missoula, Montana

Editor's Note: At our Niagara Conference, IMLA celebrated the accomplishments of many outstanding municipal attorneys, including three practitioners who received the James H. Epps, III Award for Longevity of Service to a Community. The Epps Award honorees included Robert Shields, City Attorney of Woodburn Oregon, Gary Hunter, General Counsel of the Ohio Municipal Attorney' Association, and Jim Nugent, who has served as legal counsel to the City of Missoula, Montana for more than 42 years. As requested of Epps winners, Jim provided the following thoughts about longevity in serving as a locality's municipal lawyer:

The City of Missoula, Missoula County is located in western Montana, which is the fourth largest state by land area in the United States. The City of Missoula has a population of approximately 70,000 people in an immediate urban area of approximately 100,000, and is the second largest city in the State of Montana. (Billings is the state's largest city, with a population of approximately 105,000). Missoula is home to the University of Montana, and especially within city limits has a very active, generally progressive citizenry that is involved in many successful community endeavors and projects; voters generally approve the issuance of bonds for important special purposes requested by various local taxing jurisdictions.

Montana has a relatively new State Constitution adopted in June 1972 with several unique provisions that facilitate improving the quality of life, equality of opportunity and protections against discrimination while securing the liberties and rights of its citizens. Examples include provisions pertaining to (1) inalienable rights of persons, such as a clean and healthful environment; (2) individual dignity of its citizens; (3) constitutional protection from laws impairing freedom of speech or expression; (4) right of reasonable opportunity for citizen participation prior to final decision making by any governmental agency; (5) right to know, including the general right to observe the deliberations of all public bodies; (6) a general right of individual privacy; (7) a requirement that every vote of each member of the legislature on each substantive question must be recorded and made public; (8) a commitment to recognizing the distinct and unique cultural heritage of American Indians and the preservation of their cultural integrity in educational goals; and (9) perhaps most importantly to Montana local governments-- city and county--a constitutional mandate that the powers of all Montana local governments "shall be liberally construed," thereby eliminating in Montana the historic general Dillon Rule of statutory interpretation that provided that any local government power must be explicitly stated in state law or inherent in the statutory language of state law.

The above elements illustrate the general constitutional legal environment that influences the legislative, administrative and civil operations of Montana local governments.

Our office has been involved in numerous municipal government achievements and endeavors that have improved the quality of life, safety and security for the Missoula community. Our office also prosecutes Montana state law misdemeanors as well as municipal ordinance violations.

In June 1975, I was employed as a misdemeanor criminal prosecutor for the City of Missoula. I was appointed City Attorney in June of 1977. I primarily perform civil, administrative and legislative legal work as city attorney, including appearances in all courts in which the city is a party litigant, as well as at several state administrative agency proceedings, numerous appearances at the state legislature, construction arbitrations, and many collective bargaining contracts. Also, for several decades, I have quite actively participated in statewide municipal government related organizations such as the Montana League of Cities and Towns, Montana City Attorneys Association, and the Montana Municipal Interlocal Authority (MMIA), a municipal self-insurance pool for liability, workers compensation, property and employee health and dental programs that was originally created three decades ago by Montana municipalities when private insurers quit providing liability insurance for municipalities in Montana as well as nationwide.

The City of Missoula Municipal Court, where our office staff attorneys prosecute, have for years had more court case filings than any other lower court in the State of Montana. Important criminal offenses prosecuted by our office include partner family member assaults, DUI's, thefts, criminal mischief, violations of Orders of Protection, sexual assaults, indecent exposures, assaults, reckless driving, vehicle collisions, and so on. (The monetary cut off between a felony and a misdemeanor for non-traffic criminal offenses is generally $1,500.00 in the state).

Legal services are provided by our office to approximately 25 Missoula municipal related departments/divisions/entities plus several municipal boards/commissions/ committees, a Missoula Housing Authority and Mountain Line transit services. Our current staff consists of 17: eight attorneys and nine administrative support staff members. We strive to serve the public as a team effort, providing customer service on a daily basis.

There are likely a multitude of factors, elements or reasons that lead to successfully providing public service as a municipal attorney for a lengthy period of time. Quite a significant list of potential elements or factors come to mind from my experience that may contribute to longevity of service as municipal city attorney. With obviously no order of priority, examples include, but are not limited to:

1) Initially, it is important to have a personal desire and passion to serve the public as well as the public interest to the best of one's abilities, so that municipal government succeeds in bettering people's lives.
(2) Municipal teamwork is always important. In order to succeed as a team, it is important to seek out and draw upon resources within the municipal organization.

It is also important to provide thorough, competent legal advice and services to city staffs and elected officials to assist them in best performing their respective duties and responsibilities and in achieving their legal goals and objectives.

(3) It is important to be motivated by and possess a desire to improve the quality of life for citizens of, and visitors to, the community through municipal attorney public service.

(4) It is important to listen to concerns that are being expressed by city elected officials, city employees and the public concerning goals, objectives and issues.

(5) It is important to assist crime victims and work closely with organizations that assist crime victims.

(6) It is important to strive to provide thorough, competent, correct, timely customer service to elected officials, city employees and the public to the extent reasonably, legally possible.

(7) It is also is important, when possible, to work with and assist other Montana municipalities to succeed. I believe that statewide municipal government success fosters local government success. Examples include, but are not limited to: writing amicus briefs for supreme court proceedings relevant to municipal issues; seeking state legislative enactments; and generally brainstorming municipal government issues.

(8) In order to earn their appreciation, confidence and respect, it is important to be available and willing to guide municipal employees and elected officials when they seek assistance to act within legal parameters in their municipal government operations.

(9) When providing legal guidance, it is important to cite legal authority, basis or grounds, so others know there is a legal source for the advice provided.

(10) It is important to represent municipal employees and elected officials thoroughly, competently and, most importantly, accurately.

(11) It also is important for a municipal attorney to inform municipal employees and elected officials when a proposal or suggestion is not legal and/or to advise about the legal downside of a topic being considered--and explain the legal basis for those concerns.

(12) It is important to consider municipal public service as a team effort, both within your office staff, as well as, importantly, among the entire city organization, elected officials and all other municipal employees seeking to best serve the public interest and improve the quality of life of the community.

(13) It is important to be neutral, impartial and objective in researching and providing legal advice to elected officials as well as to public employees. Being neutral requires that the municipal attorney not take sides, such as not being an advocate for city staff proposals when city staffs are taking projects and/or regulatory measures/proposals before the city council governing body for consideration. This is especially true when, later, the municipal attorney may have to defend or otherwise represent the decision of the city council and/or mayor in any litigation that might arise from the agenda item.

(14) It is important that a municipal attorney not take sides or get politically involved in discussions/debates amongst the elected officials, and avoid political involvement in internal government operations and administration. A prudent municipal attorney should not take political sides on issues between city council members and/or between city council members and the mayor.

(15) It is important for a municipal attorney to have an exemplary personal work ethic, exhibiting diligence, thoroughness and competence.

(16) It is important that municipal attorneys not use their positions to seek personal publicity or limelight.

(17) Municipal attorneys should allow the elected officials and/or key staff who are working an agenda item to be the person in the limelight for community issues. Municipal lawyers best work in the background, especially with respect to political or controversial issues. This makes it is less likely that they might have taken sides prior to a final decision being made. On a related note, municipal attorneys must also avoid public discussion of any specific details related to pending litigation.

(18) With respect to decision making by elected officials, it is important that a municipal attorney remain neutral, impartial and objective and not attempt to manipulate legal advice toward a personally preferred outcome.

(19) A municipal attorney has responsibilities and duties to the public, as well. These include ensuring that municipal government meetings and decisions are legally conducted and transparent, as well as assuring that the public is provided with a reasonable opportunity for participation prior to a final decision being made.

(20) Once a final decision is made by the municipal governing body, the municipal attorney must be prepared to defend that decision.

It is challenging to identify what aspects of a person's work performance and/or work ethic might contribute most to success at work; especially in regards to longevity of public service to a community. In my own case, it has been a desire and passion to be involved in having our municipal government, as well as those of other Montana municipalities, be a success in serving their communities and improving the quality of life of those in the community. I am proud of the many achievements and accomplishments of the City of Missoula during my employment with the City. Most of all I have loved my job and the community I live and work in. ML



Jim Nugent is a graduate of the University of Montana Law School and holds a degree in finance from the University of Montana Business School. He has served in the Missoula City Attorney's Office for 42 years, starting as a criminal prosecutor and becoming city attorney in 1977. He has been a Montana Municipal Interlocal Authority Board of Director for 31 years, twice president of the Montana League of Cities and Towns and several times President of the Montana City Attorney's Association. Jim is currently President of the Montana City Attorney's Association and received the Montana State Bar George Bousliman Professionalism award in 2011. He has been married to his wife Janice for more than 46 years, and has five children: Jim, Anna, Erin, Mike and John and one grandson, James.