

Team ListServe

by John "Kelly" Addy

You would think that if you began to represent a municipality after four years as an Army JAG, and 25 years in private practice, the transition would feel like driving over a little speed bump on a long street. Think again.

I had served as the general counsel for a halfway house and a mental health center. I had served four terms in the legislature, and represented individuals, insurance companies, and a teachers' union. It was like being a freshman, yet again. How to get my bearings? Where to look for the law? What really happens when you do 'this'?

Municipal law is a horse of a different color. Akin to so many other fields, based on centuries of legal learning, it is still a unique layer of the law. It has its own context, and its own true north.

Particularly in small population states like Montana, municipal lawyers needs to look beyond their jurisdiction for a similar cases involving like issues. Then we have to 'think it backwards' into a unique constitutional and statutory framework to divine what trial and appellate court judges might do with a given issue, here and now.

Looking for guidance, I haunted the offices of other attorneys in City Hall and across North 27th Street at the Yellowstone County Courthouse. Finally, someone told me to contact University of North Carolina professor Judith Wegner, who told me: "You have your own listServ," and to contact these folks.

Life isn't any simpler, but it has become more navigable since that day. New and confounding issues still pop up without warning. I still don't know where to start on many projects, and I don't have a clue where the minefield is. That hasn't changed.

But now I have 500 team members on the listServs IMLA has inspired, to help me work through whatever confronts my city, and so does everyone else on the team. Here, at last, are the people who can help you cut to the chase with the novel issue you inherited at 10:00 this morning, before that 6:30 council meeting tonight.

There are many listServs, each with its own focus and its own mission in life. I list a few:

The Municipal Attorney ListServ, sponsored by IMLA and Municipal Code Corp. Here you find straight-up discussions of municipal law issues. What are other cities doing about the Occupy Movement? What can citizen petition workers do to gather signatures inside city hall? How do you show your city council the value of the services your office provides to your city? As I write, for instance, members are conferring on The Big Board today about Smoking Bans, Vacation Policies, Peyote as a Religious Practice, and how to process Drug Money Seizures.

The Code Enforcement ListServ. IMLA Fellow **Karen Beyke** of the University of Tennessee's Municipal Technical Advisory Service leads this working group. Her monthly teleconferences and posts discuss code and land use issues confronting cities today. Recent topics include local regulation of billboards, what to do about vacant houses, and how city stormwater requirements are making planners completely rethink sidewalks, curbs and gutters. We get a glimpse of the future at these sessions and Karen keeps the conversation lively and to the point.

CityAttorneyTech. Dallas, Texas, Executive Assistant City Attorney **Pete Haskel** (who also writes for *Municipal Lawyer*) started this list four years ago. Members recently received its 10,000th post. How can iPads make you a better lawyer? What apps make your Droid more powerful? How problematic is Google's new privacy policy, really? Why should you print your document to proofread it? The technology available to us—and those who litigate with cities—re-invents itself every hour of every day, and Pete works us hard to keep me abreast of what is out there and how it could affect my community.

The Water Cooler. We have some personal issues that no one can understand like another municipal attorney. **Bill Kearns**, the General Counsel for the New Jersey State League of Municipalities, started this list to teach us all the Three Cs—Courtesy, Civility, and Collegiality. We share our hearts with people facing the total sea changes in life and death, new beginnings, a dread diagnosis. If I visit this city in October, where should I stay, what should I pack, where do I eat, and what should I be sure to do? This week, home-cooked meals were offered to a city attorney's daughter headed for college 1,000 miles from home. It does take a village, sometimes: a village that truly understands and cares.

Sign up for the IMLA/MCC ListServ by going to http://www.municode.com. Select the *ListServs* link to get the page on *Mailing Lists.* Click on *Municipal Attorneys* to bring up the subscription page. Complete the query and hit *Subscribe*.

To sign onto the Code Enforcement Listserv, all someone has to do is visit http://lists.imla.org/mailman/listinfo/codeenforcement and provide the requested information. Karen will process your request.

To join CityAttorneyTech, send an e-mail to CityAttorneyTech-subscribe@yahoogroups.com from the e-mail account you want to use for the Group, including your name, title, and a description of your involvement in local government technology issues.

Join the Water Cooler list, with an e-mail to MunicAttyWaterCooler@yahoogroups.com identifying yourself and the local government you represent. YahooGroups will respond, and you simply follow the prompts.

IMLA listServs are here and there and everywhere. Your colleagues there offer something found nowhere else: personal,

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due process, and consequently, Bowlby was not required to go through the appeal process set out in the zoning ordinance in order to state a cognizable procedural due process claim. Addressing the "ripeness" requirement, the court noted that "the *Williamson County* final-decision requirement makes more sense when the taking alleged is a regulatory taking." Bowlby's injury was suffered at the time the Board revoked her permits, and, notwithstanding that the permits could be reinstated in the future, her permits were definitively taken away. A "procedural due process claim that is brought concurrently with a takings claim, such as Bowlby's, should be analyzed not under the principles of *Williamson County*, but according to "general ripeness principles'." Bowlby had not stated a due process claim that was "ancillary" to her takings claim, but rather, one that was separately cognizable, being a property interest in the permits to operate her business, not just in the business itself. Thus, she had an injury separate from any potential taking, as well as a final decision by the Board. Even if a court were to decide that the defendants did not violate the Takings Clause by causing Bowlby to lose her business, they still violated her right to procedural due process. *Bowlby v. City of Aberdeen*, No. 11-60279, 2012 U.S. App. LEXIS 9717 (5th Cir. May 14, 2012). ML

ListServ

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seasoned advice from friends who have faced the same monsters, and lived to tell about it.

We are from the government and we are here to help – with Courtesy, Civility, and Collegiality.

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Construction Compensation

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ronmental assessment be carried out.
20. *SOS v. Toronto (City)*, [2006] O.J. No. 671 (S.C.J.–Div. Ct.), at para. 51. Note also that there was an earlier decision which had resulted in the reconstitution of the Divisional Court panel. See *SOS v. Toronto (City)*, [2005] O.J. No. 4738.
21. Study, Kelman, L., and Soberman, R.M, *"Getting It Right," Lessons from the St. Clair Streetcar for the Implementation of Transit City* (January 7, 2010), available at http://www3.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2010/Jan_20_2010/Reports/Transit_City_Impleme.pdf.
22. The Province was sued on the basis that it had negligently failed to ensure that construction was not disruptive. The Province indicated, at the outset, that it would move to dismiss the action against it on the basis that it owed no duty of care to the plaintiff. The claim against the Province was subsequently discontinued by consent.
23. The abuse of authority claims were based on alleged "sinister" policies of "blockbusting," as well as a "war on cars," all of which were stated to be an abuse of authority for the purposes of the claim.
24. *Curactive Organic Skin Care Ltd. v. Toronto (City) et al.*, 2011 ONSC 2041. See also, *Casa Luna Furniture v. Ottawa (City)*, [2009] O.J. No. 874 (S.C.J.), an earlier case from Ottawa with a similar result.
25. *Expropriations Act*, R.S.O. 1990, c. E. 26, s. 1(1).
26. *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28, s. 36.
27. *Curactive Organic Skin Care Ltd. v. Toronto (City) et al.*, 2011 ONSC 2041, at para 28.
28. *Ibid.* at para. 36.
29. *Ibid.* at paras. 6-7.
30. The court noted that the appellant had failed to plead any material facts to substantiate its allegations of "sinister" and secret policies, in spite of numerous requests.
31. *Antrim Truck Centre Ltd. v. Ontario (MOT)*, [2009] O.M.B.D. No. 1; aff'd, 2010 ONSC 156 (Div. Ct.); rev'd, 2011 ONCA 419; leave to appeal granted [2011] S.C.C.A 378.
32. *Antrim*, 2011 ONCA 419, at para. 79.
33. *Ibid.* at para. 144.
34. *Carpet Clear Out Corp. v. Wellington North*, [2011] O.M. B.D. No. 763.
35. *St. Pierre v. Ontario (MOTC)*, [1987] 1 S.C.R. 906.
36. *Ibid.* at para. 13. ML

Code Enforcement

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group. The hope is that, when that person sees what the association is trying to accomplish and the impact that property violations have, they may make the decision, on their own, to correct their own property violations. We have seen this approach succeed, as well.

The neighborhood associations also perform cleanup activities, as a group, to encourage all property owners in their area to keep their properties looking good. There has been great success in involving citizens with these kinds of associations. The one drawback is that these associations can get a bit grumpy if a particular violation exists longer than they think it should. Although our code enforcement officers are fairly successful in dealing with violations, these groups tend to focus on what still exists and what has come into existence since their last meeting. However, the overall benefit of these citizen groups outweighs the grief we sometimes get over particular violations.

My city council typically thinks of innovations only in terms of enacting a new ordinance. It seems to me that sometimes, new ordinances won't accomplish as much as we expect. Taking steps that are outside the normal response or way of handling a particular issue may be much more beneficial—innovation should include a level of "outside-the-box" thinking. Accordingly, I applaud any municipality using innovative approaches in code enforcement, and for living by the "try, try again" credo. ML