I M L A Annual Conference

Institute for Local Government Lawyers

The Cold Sweats – You've Just Been Appointed City or County Attorney

W. I. Thornton, Jr.
Institute of Government
Chapel Hill, NC

Outline

This paper is intended for lawyers who have been recently appointed chief counsel for a unit of local government. The lawyer's title may be City Attorney, County Attorney, Corporation Counsel or something similar. The paper's purpose is to assist local government attorneys who are new to municipal law, without regard to the lawyer's experience in other areas of law. This paper may also be useful to staff attorneys for units of local government.

I. Starting Out. Often, a lawyer will have a short period of time in which to consider an offer to become a local government lawyer. [See Attachment A, a checklist for use when considering such an offer]. Or, after accepting the position, there may be time, before taking office, during which the newly appointed local government lawyer can find out more about the new job. Here are some things to do and questions to ask when starting out.

1. Find out how your position fits into the structure of your city or county government.

   a) Is your position a full-time position or part-time? Will you be permitted to maintain a law practice on the side?

   b) Do you advise the governing board directly? The mayor? The Chairman?

c) Are you expected to attend board meetings? If so, what role do you play at those meetings?

d) To whom do you answer, i.e., who is your "boss"? Who is your "client"? They may not be the same.

2. Determine the relationship of the City Attorney/County Attorney to other parts of the Administration.

   a) Where is the perceived line between giving legal advice and intruding into the management area?

   b)What has been the relationship between the City/County Attorney and the City/County Manager? [Hint: Ask the City or County Manager].

3. Find out about the folks who will be working with you. Will you have a "staff"? Is there an existing staff? Are there openings on the staff? Who has the ability to hire and fire the people who will be working in your office? Is a union involved?

4. Find out the process to which the budget for your office will be subjected.

   a) What does the local government budget staff expect?

   b) What have been the sources of governing board inquiry or debate concerning your office during recent budget deliberations?

   c) Are there regularly budgeted funds to cover the expenses of outside counsel when outside counsel are needed?

   d) What is the state of equipment within your office? How do you go about getting new equipment or upgrading old equipment? Your leverage may never be stronger.

5. Arrange an early briefing from your liability insurance people.

a) What risks are covered? Automobile? General liability insurance (slip and fall cases, etc.)? Workers comp? Law enforcement? Coverage for "1983" cases? Any retainage or deductibles applicable? Is/are there umbrella policies?

b) Is the unit of local government a member of a risk sharing pool? If so, how does the pool work?

c) What has been the experience of the office in dealing with insurance company counsel? Is there feed back on safety issues? Suggestions on management issues? Are there regular reports from the insurance company to the city/county and, if so, to whom do the reports go?

d) What are the three hottest cases being handled by insurance company counsel? What local government departments are involved? Is there good communications between the departments and insurance counsel?

e) What's left, i.e. what will you be expected to handle, if anything, in liability cases? [See earlier comment about budgets – will there be money to cover outside counsel when/if needed?]

6. Find out the three hottest issues confronting your governing board. Are there people in the community upon whom you can rely for help in identifying community issues (without regard to the perceived legal questions that may or may not be involved in those issues)?

7. Find out about your City/County's press policy.

a) Is there a press policy?

b) Is there a staff person with responsibility for press relations to assist you?

c) What has been the relationship between your office and the press?

II. <u>Hitting the books</u>. Local government lawyers quickly become embroiled in legal questions that are or may become the focus of media and public attention. The quicker the local government lawyer

becomes familiar with certain laws or regulations, the better. Here are some to check early.

1. Public Records. Does your state have statutes governing public access to local government records? Does your local government also have applicable ordinances or resolutions?

2. Open meetings laws. Are there state statutes governing public access to local government meetings. Local ordinances that apply? What is the scope, i.e., do they apply to all/some boards, commissions or committees of the local government? Do they apply to meetings of the local government administrative staff?

3. Codes of ethics. Is there a state or local code of ethics that applies to members of the governing board? Other officials? Employees? You? Do financial disclosure requirements apply to your governing board? On what matters are board members permitted to abstain? On what matters are they required to abstain?

4. Rules of parliamentary procedure. What procedural rules apply to your governing board? Has the board simply adopted Robert's Rules? Do they have their own? Is there an up-to-date copy of the rules? What role are you expected to play, i.e. are you expected to be the parliamentarian?

5. Public Hearings. On what matters of business are public hearings required before the governing board? What rules apply?

6. Charter/ Local acts. Most cities have Charters. Many counties and other local governments have local acts of the legislature that are applicable. It may not be necessary to read all of these acts, but finding out early how to locate them and getting a feel for the areas covered will be helpful.

III. Check your Ethics. Few things can be more discomforting for a new local government lawyer than to run afoul of the Bar's rules of ethics. There are some rules that bear careful examination because they may have a different impact on the government lawyer than on lawyers in the private sector. Here are a few. Reference is to the ABA model

rules – the applicable parallel state rule for your state, if any, should be consulted.

1. Rule 1.11 concerning successive government and private representation.

2. Rule 1.13. This rule, concerning organizational clients, is usually applicable to local governments. It may help to resolve the question, "Who is my client?"

3. Rule 1.6. Confidentiality of information. How do you resolve the obligation to maintain confidentiality in the face of applicable open meetings or public records laws?

4. Rule 3.6. Trial Publicity. You're operating in the fish bowl now. Might as well know the ground rules.

5. Rule 4.1. Truthfulness in statements to others. A useful rule when dealing with lawyers who appear at public hearings and make questionable statements.

6. Rule 4.2. Communications with person represented by counsel. The usual rule that lawyers don't talk to other lawyer's clients, doesn't always apply in the public sector.

7. Rules 8.3 and 8.4 concerning misconduct. What it is and when/how to report it.

IV. <u>The Short Term</u>: So you've survived your first few weeks. Now what do you do? Here are some things to consider while getting ready for the long haul.

1. Make a commitment to learning. Most local government attorneys come to their jobs with little substantive knowledge of local government law. You'll need that knowledge. Your state league, county association and IMLA are excellent sources for courses and publications about local government issues.

2. Establish a network of experienced local government attorneys and/or law professors upon whom you can call for advice. You can often save yourself time and grief with a phone call.

3. Take CLE courses that cover areas of local government law. There may be a public law section of your state Bar Association that can help.

4. Become active in your State League's attorneys group. The people at IMLA can get you steered to them.

5. Use your IMLA services: Muni-fax; the Municipal Attorney magazine; the Model Ordinance Service; the IMLA website; research requests and - continue coming to IMLA seminars and conferences.

6. Check on your clients: Governing Board, departments, and the appointed boards and commissions you will be representing.

   a) Is there a good communications flow? Interview people. Ask questions.

   b) Do your clients think you're office is doing a good job for them?

7. Get a handle on your office.

   a) How much time will you need to be an administrator and, how much time will be left for the lawyering you'll need to do?

   b) If office administration will be an important part of your duties, then add some management courses to your CLE.

8. Do you have the equipment you'll need to do your job? [See earlier reference to budgets].

V. The Long Haul – a few random thoughts on survival.

1. Set the tone with your governing board for how you plan to do business.

a) Take the high ground if you can – render advice that is intellectually honest and objective.

b) Keep politics out of the office and the office out of politics [may not be feasible if you're elected or are appointed by a politically active strong mayor].

2. Educate your governing board. Establish a sound working relationship with your board by setting up workshops for new board members and for old ones who need a refresher. The time between elections and when new board members take office is an excellent time to offer a short school for the new members. Cover the following:

a) Conflict of interest laws (gifts and favors; bidding laws; zoning laws; codes of ethics; use of confidential information, use of city/county property for personal use – anything that can get them into early trouble);

b) Rules of board procedure, especially i) traps for the inexperienced board member and ii) the mechanics of getting a resolution or ordinance introduced and passed;

c) Open meetings and public records laws [see earlier reference]. Having one's correspondence (and maybe emails) open to public inspection is a novel and often unwelcome concept for new board members to grasp.

d) Laws governing the privacy of city/county personnel records. Talk about what they can't see.

e) Your ethical position: Can you assure a council member of confidentiality as to other council members? What areas will you not discuss with an individual council member [but may discuss with the Council as a whole, ex. litigation]? What areas will you not discuss at all [ex. personnel]?

3. Don’t surprise your board.

   a) Keep your governing board up to date on i) pending litigation, ii) significant legal developments affecting your City or County [court cases, new laws etc,] and, iii) work they have assigned to you (opinion requests, ordinance or resolution drafting, etc.).

   b) Recognize the dangers of verbal opinions and the recollections of convenience that you may encounter from those who receive them. Put opinions in writing and, if possible, send them to all governing board members.

   c) Invoke the 180 degree rule for horseback opinions, i.e., reserve the right to issue a completely different opinion whenever you’re asked to give an opinion from horseback. [An interesting challenge at council meetings.]

4. Dealing with outside law firms.

   a) First, recognize that you’ll probably need outside firms. Examples: bond firms [where you need an independent tax opinion] and conflict of interest situations [where you and your office can’t serve as counsel].

   b) The big issues, and the ones that are liable to generate public scrutiny and discussion, will be the selection process for outside firms and the cost.

   c) The City Attorney/County Attorney should be the lead player in selection process. If the governing board must make the formal decision, then the City/County Attorney should make a recommendation.

   d) Consider an RFQ process [Request for Qualifications] for hiring outside law firms. It works like this:

      i) First, make sure to brief the governing board on what you plan to do and get their approval if needed. Then,

ii) Describe the engagement and solicit responses from interested law firms to questions that are designed to elicit information about the firm, its experience in the area and its qualifications to do the work.

iii) Defer discussion of fees until later in process.

iv) Screen responses and select a small group of firms for interviews. Ask for fee information at this stage. Invite management personnel to participate in the interview stage.

v) Use the same interview format with each firm. Evaluate firms on the same criteria. Check lists are useful.

vi) Ask for commitments from each firm that they will not lobby your governing board – at least until after you have made your recommendation to the governing board. Tell the governing board that you are going to do this.

vii) Make written recommendations to the governing board. Consider selecting more than one firm with authority delegated to you to select from among approved firms according to the demands of each case.

viii) Note: The RFQ process can be used for hiring outside counsel in different areas, e.g., bond counsel, risk management/liability; affordable housing, etc.

ix) Explore "partnering" opportunities with outside firms to build up staff experience, contain costs and maintain communications.

e) Make sure someone is monitoring the cost of outside counsel and that you are kept informed about those costs. [Note: Many liability insurance companies use non-lawyers to monitor costs and it seems to work quite well.].

5. Dealing with the press.

a) If you have an organizational press policy, try to follow it.

b) Know reporters' deadlines. Help them by returning phone calls before their deadline, if you can, even if you're going to say nothing.

c) Appreciate the value of silence.

d) Avoid letters to the editor unless it's really, really necessary.

e) Avoid commenting on the propriety of a board member's actions [but, speak to the board member and, if necessary, to the board if there is a problem].

f) Remember the General Rule: Nothing is " off the record".

6. Working within your Government

a) Don't cross the line into management, unless invited, and don't invite crossings in your direction.

b) Time: Keep track of it, put a value on it and let people know how much of the public's money they are spending by using your time. Remember High School economics – the cheaper the good, the higher the demand.

c) Training: Establish good training programs for City/County Departments on the law and procedure applicable to each department's area of responsibility. It can save time and avoid litigation. Third party training for staff may also be available through area universities or community colleges.

7. Make the office hum.

a) Good opinion and research files save time and promote accuracy and consistency of opinions. Save those IMLA papers, papers from other CLE courses and articles of interest BUT MAKE SURE THEY'RE INDEXED. There are computer programs that will facilitate this indexing and make your opinion and research files accessible and useful.

b) Develop good form banks. It saves time and effort. But, remember that forms should fit the transaction and not the other way around. Forms should be updated periodically and revision dates should be noted on the forms.

IV. Finally, always use good people practice. The following Ten Rules of Good People Practice have been handed down, in a light hearted way, from one Institute session to the next. Do you have an amendment to suggest?

TEN RULES OF GOOD PEOPLE PRACTICE

1. Avoid people with more than two bumper stickers on their car.
2. Avoid people who write mostly in the passive voice.
3. Avoid people who are always late for meetings.
4. Avoid people who never say “Yes”, “ No” or “I don’t know”.
5. Avoid people who use the following words or phrases a lot: “Dialogue”, “Scenario”, “Proactive”, “Prioritize”, “Interface”, “Facilitate”, “Paradigm”, “Empower” and “Share with you”.
6. If they fairly describe you, disregard rules 1 – 5.
7. Seek out smart people.
8. Seek out people whose writing can be understood by an eighth grader.
9. Seek out people who understand the value of silence.
10. When all else fails, seek out nice people.

GOOD LUCK!