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Extern! Extern! Read All About Them!

Law schools want to place them, law students seek the opportunity, and local government law offices can benefit.



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PRACTICE TIPS

By: PATRICK BAKER, *City Attorney, Charlotte, North Carolina and* KIM REHBERG, *City Attorney, Durham, North Carolina*

Councilmembers Gone Wild! Tips on Dealing with Challenging Councilmembers

Tip #1 | There can be only one City Attorney: dealing with lawyers not on the City payroll.

Welcome legal input from any attorney—elected or otherwise—who is willing to share their opinion.

Encourage councilmembers to forward outside legal opinions to to the City Attorney's Office (CAO) for analysis and follow-up.

Do not simply accept or concur with an outside legal opinion for political expediency.

DO follow up (highlighting your experience and CAO resources that have been relied upon to produce your legal opinion).

Tip #2 | There is only one client: the City.

The City Attorney (CA) owes legal and ethcal obligations to the City rather than any individual councilmember.

Confidential information shared with the CA cannot be kept from other councilmembers. Council direction ultimately comes from will of the majority on Council.

When the Council is divided on a matter of policy, the CA's duty is to provide fair and balanced legal advice to all sides.

Councilmembers should respect the legal advice of the CA and not expect the CA to advocate for their particular policy position.

Tip #3 | Inserting the City Attorney into policy debates is not good for anybody.

Do NOT fall for Council attempts to get you to render legal advice that supports a particular policy objective.

Do NOT succumb to Council maneuvers to elicit a creative legal interpretation that more favorably supports a particular policy objective.

If you engage Councilmembers seeking to do either of the above, you will compromise the ultimate decision and authority of the City Council.

Do NOT voluntarily insert yourself into a policy debate by giving biased or slanted legal advice.

If you do ANY of the above, you will compromise the legitimacy and objectivity of YOUR legal advice and the work of the CAO, which is the worst damage of all.

Tip #4 | Councilmembers should consult the City Attorney at the earliest opportunity.

The sooner the CAO is consulted on a matter, the sooner attorneys can begin to understand the goals and objectives of the client AND begin to research and map out a legal strategy to accomplish the stated goals.

Conversely, the legal research that will be conducted may lead to the conclusion that the goals or objectives cannot be legally accomplished.

Bottom line: It is far better to know your legal options sooner rather than later.

Tip #5 | The Council meeting is NOT the time for your Council to start asking for legal advice.

Seeking the CAO's advice on sensitive or critical issues for the first time in open meeting will likely not result in the best outcomes.

Tip #6 | Convey to your Council that the City Attorney needs adequate time to research issues and answer questions.

Many elected officials are lay people and may be largely unfamiliar with the tenets of municipal law (and municipal administration, for that matter).

Take the time to share with them that seemingly "simple" and "easy" questions can turn out to be quite complex and multi-faceted.

Learn to "dance"—Help your elected officials understand the process of the CA "questioning the questioner" to draw out important background facts that will ensure a more accurate and complete answer is given by the CAO.

Emphasize that we don't want to delay, but research conducted in haste isn't in anyone's best interest, either. Sometimes it takes time to do sophisticated research and get the advice right.

Tip #7 | Be a great partner. Let the Client know that letting their partner (the) in on all important facts will yield better results.

The more information CAO receives, the more likely they are to provide an accurate, timely, and thorough response.

Do YOUR part—always be good for the accurate, timely, and thorough response.

Tip #8 | Help Councilmembers understand that concrete answers sometimes aren't possible when the law is not clear cut.

Sometimes as City Attorneys we're shooting at a moving target in trying to render advice.

Laws are interpreted and reinterpreted by trial and appellate courts all the time.

Some state legislatures are quite active in changing the landscape for local governments.

Sometimes we're wading into unknown territory. COVID (remote meetings, federal funds passthrough), gCARES Act, ARPA; non-discrimination ordinances, etc.

Tip #9 | Legal risk tolerance is ultimately within the purview of the Council.

When the legal authority to support a particular policy directive is unclear, the CA will conduct a legal risk analysis in order to provide the Council with the CA's best educated guess as to whether the policy could successfully withstand a legal challenge.

The CA should have a relationship with councilmembers in which the CA is free to share with them the relevant information they need to know rather than just what they want to hear.

Legal risk tolerance is a subjective balancing act between a desired policy objective and the potential negative impact of a successful legal challenge against the policy.

The CA's duty is to provide the necessary and relevant legal advice. The Council majority ultimately determines whether or not to proceed in light of the identified risk.

Tip #10 | Just because the Council doesn't like your advice doesn't make it bad advice.

We can't always be the bearers of good news.

Don't tell them what they want to hear.Tell them what they NEED to hear.

Our ethical obligation as attorneys sometimes necessitates that we provide counsel or advice that the client does not want to hear.

When competing policy decisions or objectives hinge on your legal advice…

Always follow the law.

Provide your best reasoned legal advice based on an objective reading of the law.

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