



The City Attorney Relationship

GETTING THE MOST OUT OF IT

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One of Three Required Officers

- ▶ Required by I.C. §50-204
 - ▶ City Clerk
 - ▶ City Treasurer
 - ▶ City Attorney
 - ▶ Others – pursuant to formal city council action
- ▶ Each required to post fidelity bond as established by city ordinance
- ▶ Bonding covered by ICRMP

Idaho Code §50-208 – Required Officer

Duties of City Attorney

- ▶ Legal advisor of the municipal corporation
- ▶ May represent the city in all suits or proceedings in which the city is interested
- ▶ Shall perform such other duties as may be prescribed by ordinances and resolutions duly passed.
- ▶ Nothing precludes any city from employing alternative additional counsel when deemed advisable.

Status as Employee – or Not

- ▶ May be part-time or full-time employee
- ▶ Who supervises?
 - ▶ How do you supervise an attorney?
 - ▶ Is personnel policy applicable?
- ▶ How do you deal with differences of opinion with city attorney
 - ▶ Engage outside counsel?
 - ▶ Explore legal differences without help?
- ▶ Duration of service makes a difference
 - ▶ Learning by experience – elected wants to replace employee with preferred local firm

Criminal Prosecution

- ▶ May involve city attorney, his deputies, or contract counsel
- ▶ Shall prosecute those violations:
 - ▶ ~~of county~~ or city ordinances
 - ▶ state traffic infractions
 - ▶ state misdemeanors
 - ▶ committed within the municipal limits.
 - ▶ Infractions or misdemeanors charged by Idaho State Police – prosecuted by county prosecutor
- ▶ (All) shall exercise the same powers as the county prosecutor - including granting immunity to witnesses.

Divided Responsibilities

- ▶ Criminal prosecution
 - ▶ Not easy to find experienced prosecutor who isn't employed by public agency
 - ▶ May share prosecution duties with neighboring agency
 - ▶ May choose to contract with county prosecutor (contract should be with county – not individual prosecutor)
- ▶ Civil responsibilities – with a public twist
 - ▶ Unique statutory and constitutional requirements
 - ▶ Unusual subject matter
 - ▶ Keeping public policy issues in mind

Ethical Considerations

- ▶ Organization as client
- ▶ Working for the city and in the city – potential conflicts
- ▶ May be independent contractor
 - ▶ Issues with other clients of firm
 - ▶ Possible internal conflicts of representation in firm
- ▶ Organization as client – differences of opinion
 - ▶ Mayor likes attorney, council doesn't
 - ▶ Council likes attorney, mayor doesn't
 - ▶ Council is split about attorney

Specialized Needs

- ▶ Planning and zoning
 - ▶ Constitutional requirements
 - ▶ Statutory procedure
- ▶ Public personnel
 - ▶ Due process
 - ▶ Vast differences from private employment
- ▶ State statutes governing open meetings, public records and ethics
 - ▶ Conflicts of interest – disengage vs. disclose
 - ▶ Assistance available from attorney general

Best Practices

- ▶ Get the city attorney involved before, rather than after
- ▶ Review construction contracts before bidding
- ▶ Review bid specification before bid solicitation
- ▶ Preview council agenda
- ▶ Draft ordinances and resolution for the city

Planning and Zoning is Unusual

- ▶ Not everyday work for attorneys
- ▶ May want to contract separately for p-z assistance
- ▶ Heavy procedural burden – Due process is key
- ▶ Case law and complex statutes shape the process
- ▶ Appeals are unusual procedures

Need to Allow Access to City Attorney

- ▶ Public records questions
- ▶ Open meeting issues
- ▶ Police need access to legal support with constitutional knowledge in criminal matters
- ▶ Review contracts with engineers and professional service providers
- ▶ Supervisors disciplining employees need access
- ▶ Audit opinions need to be independent

Greatest Concerns

- ▶ Responsiveness
- ▶ Specialized experience or knowledge
- ▶ Responsiveness
- ▶ Prosecution responsibility
- ▶ Responsiveness
- ▶ Philosophical alignment
- ▶ Remember – talk with your attorney if there are problems
- ▶ Communication is vital