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Why You Can't Rely on Your Attorney. . .

To Keep You Out of Ethics Trouble

by Kevin Duggan, ICMA-CM

It's not unusual when a public official accused of misconduct defends his or her actions by saying that they sought and obtained a green light from the organization's attorney.

While that defense might be helpful in justifying the official's actions and decisions, in many cases it will be inadequate to convince others the actions were appropriate and ethical.

Focusing too heavily on what is legal and your attorney's opinion can cause serious problems for local government managers who wish to be viewed in a positive ethical light.



SOURCES OF PROBLEMS

- **Legal does not mean ethical.** The ethical bar for those in the public arena is much higher than "what is legal." There are many types of conduct that don't actually violate the law but are deemed unacceptable conduct from an ethical perspective.
- **Your attorney may not fully appreciate your ethical obligations.** Each profession has its own ethical obligations and expectations. While your attorney, hopefully, fully understands his or her professional obligations, they may not understand your obligations, especially under the ICMA Code of Ethics.
- **Your attorney may be inclined to tell you what you want to hear.** A positive and mutually supportive relationship between the attorney and staff is good. But it can also influence the type of advice offered. An attorney may be motivated to find a rationale to support what the manager would like to do. This could cause the attorney to stretch to provide legal advice supportive of the manager's proposed actions. In particular, if counsel doesn't determine a specific legal barrier to the conduct, he or she could underestimate and understate the other potential pitfalls associated with the proposed action.
- **You can be part of the problem if you succumb to "selective listening."** Your attorney may offer you a variety of thoughts on the ethical dilemma you raise. It can be tempting to focus on the observations and opinions that best match what you want to hear.

HOW TO ADDRESS THESE CHALLENGES

- **Give your attorney permission to tell you something you may not want to hear.** Make it clear that you always want their frank opinion regardless of whether or not it is favorable to your proposed action. You need to rely on their unvarnished opinion. Make it clear to your attorney that you want the best legal advice as well as an assessment of other potential impacts that could result from your actions.
- **Make your attorney aware of all your ethical obligations.** Make it clear to your attorney that you view your obligations to extend beyond the "floor" of the action being legal. Informing attorneys of the requirements of the ICMA Code of Ethics and other criteria can help them understand the broader context of your obligations.

- **Listen carefully and ask probing questions.** Again, avoid selective listening. Listen to and carefully probe all that your attorney has to offer, even those opinions and observations you would rather not hear. If his or her rationale is not clear or compelling, dig deeper. Confirm that your attorney feels so comfortable with the approach that he or she is willing to put it in writing or explain it publicly.
- **Get a second opinion.** Getting an opinion from an impartial source can provide a valuable perspective. This type of “nothing to lose or gain” advice can help supplement your assessment and the opinion of your attorney.

YOUR ULTIMATE RESPONSIBILITY

The advice of your organization’s attorney can be a critical component in your ethical decision making. It is not, however, always the final answer. Just because something is legal, does not make it ethical.

Ultimately, you are responsible for your conduct. As a public official, stating that someone else said it was okay, even if that someone else is an attorney, is not good enough.

Actions that may be sufficient to keep you out of jail may still damage your reputation and potentially result in you losing your job, and even more importantly, your professional reputation.

While I had the good fortune in my public management career to work with excellent city attorneys who not only were well-informed regarding laws, regulations, and policies governing my work, they also had a similar sense of what was the right thing to do in regard to ethical questions.

We shared a similar set of values on this topic. They were my partners in helping keep our organizational ethical missteps to a minimum. No two individuals, however, will always view complex and grey-area challenges in the same fashion.

Regardless of how good a working relationship you may have with your legal counsel, never forget that there is only one person ultimately responsible for your ethical decision making—you.



Kevin Duggan, ICMA-CM
ICMA West Coast Regional Director
Mountain View, California
kduggan@icma.org

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