

LAFCo Legal Practices

Best Practices for Contracts and
Operational Legal Issues

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LEGAL PRACTICES SUMMARY

- Common Legal Documents LAFCo's Need to Develop and Use
 - Agreements to Pay LAFCo Fees
 - Consulting Services Agreements
 - Contracts for Use of County Services
 - Employment Contracts for EO's
 - Covenant to Consent to Annex At a Later Date
 - Personnel Policies
- Contracts that LAFCo EO's Need to Understand
 - Rental\Lease Agreements
 - Insurance Policies
- Other Common Operational Legal Issues



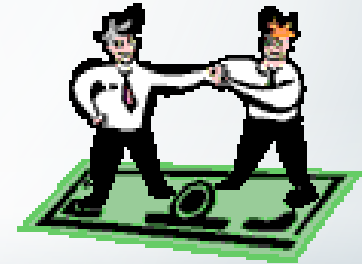
Agreements to Pay

- SINGLE MOST IMPORTANT LAFCO CONTRACT
- Based on Express authority of 56383
- Must be clear about Deposits, Additional Charges and Billing
- Obligation Not Conditional Upon Result
- Indemnity Provision is Critical
- Attorney's Fee Provision
- Authority to Sign the Agreement



Consulting Services Agreements

- Used for environmental and technical services
- Better to Have Own Form to Use Rather than that of Provider
- Critical to be Clear on Scope of Services
- Payment Terms
- Duties of LAFCo vs. Consultant
- Extra Work Clause
- Work Schedule and Delay Damages
- Warranties of Adequacy of Studies
- Risk Management
- Enforcement Provisions



Contracts for County Services

- Most LAFCo's depend upon on some County Services
- Formal Contract is essential for protection and to avoid conflicts or unpleasant surprises
- Clarity on services to be provided and what will be charged is critical
- Provision re Auditor responsibility to collect LAFCo revenue
- If Insurance is to be provided, broad coverage is important



EO Employment Contract

- EO's usually have individualized employment agreements
- Key provision relates to termination
 - Must protect Commission freedom to terminate
- Often contains a contract buy-out provision
- Salary and benefit provisions
- Arbitration provisions for are enforceable if fair
- Contract and Salary Decisions
Must Occur in Open Session



Covenant to Consent to Annexation

- Used with contracts for extension of services under 56133 to facilitate future annexation
- Must be recorded covenant to bind future owners
- Must be signed by all owners and notarized
- Framed as a consent to annexation rather than agreement not to protest
- LAFCo can ignore protests in breach of covenant
- Legally Untested--May or May not bind Tenants or control voting

Personnel Policies



- Personnel Policies are needed in virtually every LAFCo—even dependent LAFCo's
- Not wise to just use County policies—too complex for small agencies
- Employment Issues require special expertise—advisable to hire HR firm to write policies
- Not required to set up civil service system—keep it as simple as law allows

A graphic of a white sign with a black border and a shadow, featuring the words "FOR RENT" in bold, black, sans-serif capital letters. The sign is slightly tilted to the right.

Office Rental and Lease Agreements

- Many LAFCo's rent offices—both from private and public landlords
- Written rental agreements can be complicated
- You should have agreement reviewed by legal counsel
- Term and renewal rights are important
- Watch out for provision requiring reimbursement of utility and common area charges
- Understand rights to use common area and parking and internet accessibility
- Make sure you have ADA compliant access and facilities

Insurance Policies



- Many LAFCo's must obtain their own insurance on the private market
- Insurance Policies are extremely complex—few agents or attorneys understand them
- Generally need
 - Comprehensive general liability insurance (CGL),
 - Employment practices coverage
 - Worker's compensation insurance
 - Officer's and directors insurance if available
- Best to work with established public agency insurance provider such as SDRMA
- Generally won't cover suits challenging LAFCo Decisions

Other Common Legal Issues re Operations

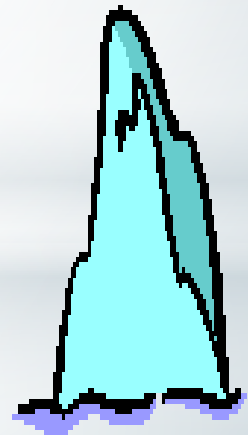
- Labor and employment issues are amongst the most common legal issues and most difficult to handle
 - Consult *immediately* with your attorney whenever an employee issue arises before you take action
- Disputes with consultants over contract and performance
- Disputes with applicants over billing
- Others?



FINAL WORD OF ADVICE

Whether you realize it or not, you swim in a sea of legal rules, rights and obligations. Your legal counsel is your pilot through that sea.

Make sure that your counsel is informed of issues before you act so that counsel can guide you away from the reef you may not see.





ANY QUESTIONS?

