

2005-01-06

Attachment B

The Ethics of Council-Staff Teamwork

December 2004

QUESTION

*I am a newly elected city council member, and I ran on a platform of "taking care of the basics" in our city. Being action oriented, I requested a meeting with our public works director immediately after I took office to discuss some concerns my neighborhood has had about the condition of our streets. I think this is a situation that needs addressing **now**.*

During the meeting, I noticed she was very uncomfortable. Furthermore, I got frustrated because she refused to commit to any plan of action to address my concerns. I lost my temper when she suggested my concerns should be discussed with her boss, the city manager. The public works director has worked for the city for more than 10 years and should be able to respond to my concerns competently. Frankly this is the kind of nonresponsiveness that I ran against in my campaign. What gives?

ANSWER

First, congratulations on your election and your willingness to spend time engaged in public service for your community. Public service is complex and has some traps for the unwary, as you discovered in your meeting with the public works director. There are probably several things triggering her discomfort.

How Decisions Regarding Street Repairs/Improvements Are Made

As a city council member, you are now part of a multi-member governing body that collectively makes policy decisions for the city. Those policy directives are typically communicated to the city manager, who then provides appropriate direction to staff to follow up.

For example, regarding the street issue, the city may already have a capital improvement program. This program probably has a schedule or agreed-upon standards and/or an engineering evaluation of the condition of city streets. These objective criteria guide staff on how to prioritize repairs for those streets most in need. These criteria likely have already been approved by the council as a whole and are subject to a budget also adopted by the council.

The public works director's discomfort may have resulted from a concern that you were suggesting that the city deviate from its already adopted policies and budgetary priorities. It may be that you don't agree with the city's present approach or priorities, but those concerns need to be addressed to and by the council collectively. You can imagine the chaos that would result if each council member could individually direct the activities of city departments.

This is not to say that staff does not appreciate hearing from council members about conditions of which the city should be aware. The key is to communicate this in a way that does not direct or appear to direct staff to act.

The City Manager's Role

This distinction between providing information to staff and providing direction is key in cities with a city manager form of government. In such cities, the council provides direction to the city manager, who then relays that direction to staff. The general role of the city manager is to promote partnerships among council, staff and the public in developing public policy and building a sense of community.

The reason that the public works director suggested that you talk with the city manager is that, by law, this is the way the council-manager form of government has been set up. Because the manager recruits, hires and supervises the city's staff and carries out the council's policies, it is appropriate for the manager to direct staff.¹ In fact, most staff members are trained to do exactly what the public works director did - suggest you contact the city manager. This enables the manager to hold staff accountable on the council's behalf for implementing the council's policies and directives. The entire council, in turn, holds the manager accountable for staff's overall performance.

This "chain of command" feature of the council-manager form of government is typically embodied in the city's charter or ordinances. Elected officials who have disregarded this feature have found themselves in legal hot water. For example, a mayor in the San Francisco Bay Area was convicted in 2002 of violating this aspect of the city charter by asking that city employees do favors for him that advanced his personal investment objectives.

The issue also came up in litigation involving a Southern California city and a land use matter. Homeowners argued that

the city's actions with respect to a nonconforming use were legally flawed because a council member had passed along a constituent's concerns about the structure to the city's planning director.² Ultimately the city prevailed on the argument that the council member's communication was an inquiry and not a directive, but it was an arduous process. The court also implied that the result might have been different had the council member's communication been a directive to staff.

This is not to say that lawsuits or criminal prosecutions will follow all communications with staff. However, these two cases do underscore that the particular division of labor envisioned by the council-manager form of government is one that has the force of law and needs to be respected for the city to operate smoothly. The bottom line is that, if your city has a council-manager form of government, it appears your conversation broke the law.

Conflict of Interest Issues

Another possible reason for the public works director's discomfort may relate to the fact that the street improvements were in your neighborhood. Under the state's conflict of interest rules, you need to be especially careful about becoming involved in city issues that affect your neighborhood if you own or have a long-term lease on property in the vicinity.

The conflict of interest rules preclude you from being involved in governmental actions that affect your economic interests. Under these rules, you have an economic interest in real property in which you, your spouse, your dependent children or anyone acting on your behalf has invested \$2,000 or more, and also in certain leasehold interests. The analysis can be complex and involve determinations of whether your property will receive improved street services (as opposed to merely repaired streets). A conversation with your agency counsel can help you understand the law's application to your specific circumstances.

Remember, too, that the law only sets minimum standards for ethical behavior in public service, and public perception plays an important role in public service ethics. Whether or not you legally need to disqualify yourself from becoming involved in these discussions, think how it will look to the community in general if one of your first priorities as an elected official appears to be one that involves some kind of personal benefit in terms of improved streets in your neighborhood.

This can be an ethical dilemma in and of itself if one of your campaign pledges involved a promise to get the streets fixed for your neighbors. On one hand, you told people you would take steps to address a problem (promise-keeping is an ethical value); on the other, you now have a responsibility to act in the community's best interests as a whole.

One approach to balancing these conflicting ethical values is to learn how decisions concerning street repairs and improvements are made in your city. It may also be that other areas of the city have the same needs as your neighborhood. Talking with the city manager about whether this issue can be put on the agenda for discussion by the council or whether the city can sponsor a community workshop to hear residents' concerns are two options to move forward on your goal of following up on campaign commitments. This also provides your fellow council members an opportunity to participate in the conversation.

<p>Communicating With Staff: What's OK and What's Not?</p> <p>In cities with a city manager form of government, the typical ordinance provides that elected official inquiries and information exchanges with staff are OK, but "directives" are not. Typically this means that an elected official can share information with staff members and seek facts from them but cannot tell them to do anything. The lines can become blurry, however, when an elected official is inquiring about a problem situation, because there usually is a strong and natural correlation between an elected official's being aware of a problem and wanting that problem addressed.</p> <p>As an ethical matter, it's best not to try to walk too closely to the line; for example, making it clear in the tone and phrasing of your "inquiry" that you would appreciate/expect some form of action, while carefully avoiding anything that literally would be a "directive" or a request for action. Basically such an approach violates the spirit of the rule against council members issuing directives to staff. Violating the spirit of any rule is rarely, if ever, ethical. If what you want is action on a problem, talk with the city manager.</p>
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Treatment of Staff

Staff can be a valuable source of expertise and background on these issues, which is why it is unfortunate you lost your temper with the public works director. Experienced and loyal staff are a precious resource for any organization, and the public sector is no exception. As you can tell from the above analysis, the public works director was trying to do her job and keep you from stepping over legal boundaries by referring you to the city manager.

As a general matter, keep in mind that asking staff for special favors - even those that do not benefit you personally - puts staff in an awkward situation. Staff generally are dedicated to their jobs and want to work with the elected officials to improve their communities. Forcing them to choose between doing something an elected official wants them to do and

established city practices, protocols and policy erodes that trust. Add the fact that staff may worry that their livelihoods are on the line no matter which approach they take, and the damage to the relationship goes even deeper.

Why should you care? There are two sets of reasons. In terms of ethics, respect is another key ethical value. There are ways of communicating the depth of one's concern and frustration without giving in to the anger that may accompany that frustration. Sure, you have the power as an elected official to scold staff about something, but ethics is not about what we can do - it's about what we ought to do. This is why most cities have protocols or other requirements that any criticisms of staff members be made only in private to the city manager.

The second set of reasons to care about staff's loyalty is more pragmatic. Your success as an elected official depends on the assistance of capable staff who know your community. Savvy leaders cultivate their relationships with those in a position to help them achieve their goals. You want to motivate staff to apply their expertise, energy and creativity to the problem you want to solve. As management guru Ken Blanchard counsels, "The key to successful leadership today is influence, not authority."

As a steward of the city's resources, you have a responsibility to concern yourself with the long-term implications of city practices in general. On the staff relationship issue, veteran recruiter John Shannon (now with CPS Executive Search) says he has observed the difficulties public agencies have in attracting top-notch individuals if the word is out that the working environment is abusive, unstable or unfair. (And be assured that with e-mail, word travels fast if members of a profession feel that one of their own has been mistreated.) In fact, when organizations have had this problem for awhile, they become subject to a sort of downward spiral of mediocrity that becomes difficult to overcome. This is not the direction in which you want to take your city.

Finally, encouraging talented individuals to make a career in public service is an even more long-term and global issue. The question of where the next generation of city professionals will come from is significant enough that the city managers' organization has a committee dedicated to grappling with it.

What to Do?

Cartoonist Lynn Johnston described an apology as the "superglue of life" because it can repair almost anything. Do what the public works director suggested and talk with the city manager about what happened and explore options. Then ask to meet with the public works director to apologize for losing your temper. Experienced staff appreciate that elected officials may not be accustomed to being part of a collective decision-making body. They also understand that you are just becoming acquainted with how city council members can advance both their policy goals and constituents' concerns. Being a person who acknowledges this can get you off on the right foot with the city's staff in your new position.

The City Manager's Ethical Obligations

This month's column discusses the ethics of elected officials dealing with staff. What about the city manager's ethical obligations to serve elected officials?

City managers who are members of the International City-County Managers Association (ICMA) subscribe to a lengthy code of ethics that includes a number of tenets on this topic:

- **Tenet 5.** Submit policy proposals to elected officials, provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals, and uphold and implement local government policies adopted by elected officials.
- **Tenet 6.** Recognize that elected representatives of the people are entitled to credit for the establishment of local government policies; responsibility for policy execution rests with the [ICMA] members.
- **Tenet 7.** Refrain from all political activities that undermine public confidence in professional administrators. Refrain from participation in the election of members of the employing legislative body.

ICMA promotes ethical conduct through its code of ethics, publications on ethics issues and training programs for local government professionals. For more information about ICMA's ethics program, issues and advice, or enforcement of the ICMA Code of Ethics, visit the Ethics Program section of www.icma.org.

This column is a joint effort of the members of the Institute for Local Self Government's advisory panel on ethics. The questions in this column thus far have been suggested by the ethics advisory panel members to stimulate discussion and

thinking on ethical issues faced by local officials. For more information about ILSG, visit www.ilsg.org. To suggest a future topic, e-mail ilsg@cacities.org.

¹ See, for example, section 5 of the typical ordinance establishing a council-manager form of government offered on the International City-County Management Association's website: www.icma.org (providing that "Except for the purpose of inquiry, the council and its members shall deal with the administration solely through the city manager and neither the council nor any member thereof shall give orders to any subordinates of the city manager, either publicly or privately.")

² *Levy v. City of Santa Monica* , 114 Cal. App. 4th 1252, 8 Cal. Rptr. 3d 507 (2d Dist., 2004).

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Best Practices for Promoting Good Relationships Between Your City Council and Staff

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by Best, Best and Krieger

A good relationship between city council members and staff is fundamental to a well-run city. A city's success invariably turns on whether the city council and staff can communicate in an effective and respectful way. Perhaps even more important, this relationship has a significant impact on the city's ability to keep quality staff.

Although city council members may believe that distancing themselves from the city's daily affairs might alienate the staff, deferential distance allows staff to do what they are trained to do - run the city's administrative affairs. Respect for their role within the city also encourages staff members to implement the policies council members feel passionately about.

The following best practices offer examples and analyses of such predicaments. These examples are for purposes of illustration only and are not intended to represent any actual situations.

1. Create incentives for staff to give the council its best assessment on issues.

Example: A community group asks the city to place more stop signs in its neighborhood. Staff has advised that stop signs are not an effective solution because the neighborhood's problem has more to do with lack of traffic enforcement than traffic flow. Knowing, however, that approving the stop signs will curry favor with neighborhood leaders, the council approves the stop signs.

Best Practice: A key role of the city's leaders is to make difficult decisions about what is best for the community, particularly when the city has limited resources that must be stretched to meet multiple needs. From time to time, leaders will find it necessary to yield to popular sentiment, even when it goes against sound policy considerations.

Doing so has definite downsides and risks, however. First, if this isn't really going to solve the problem, the goodwill generated from the neighborhood group is likely to be short-lived. Second, this opens the door for other neighborhood groups to make similar requests for stop signs that won't address the real problem - which arguably compounds the ill-advised expenditure of resources. Finally, from a staff relations standpoint, you risk sending the message that the council does not value staff's sound analysis or that such analysis plays only a secondary role in the council's decision-making.

This can put stress on city staff because they may worry that the council's perception of them depends on staff telling the council only what the council wants to hear.

2. Praise in public; criticize in private.

Example: The local newspaper has run a series of stories criticizing the city's diligence with respect to code enforcement efforts, using a series of blighted properties as examples. A colleague tells you that he will use his "council member comments" time at next week's meeting to accuse the city's code enforcement operation of gross incompetence.

Best Practice: Remind your colleague that you are all part of a team; any attack on one aspect of city government is an attack on the whole institution. The first task is to assess the situation. For example, is the problem incompetence or lack of funding in light of the city's needs? Counsel your colleague to work with the city manager to determine whether there is merit to the newspaper's criticism and, if so, what the solutions might be. Constructive criticism of staff work delivered in a discreet manner produces more positive and effective results than a harsh public rebuke.

If the newspaper's criticism is unfair or otherwise unwarranted, put the issue on the council meeting agenda and explain why at the meeting. By defending staff in the face of an attack, elected officials not only preserve staff's dignity but also their trust in the council.

3. Criticize the project or the process, not the person.

Example: During a city manager's presentation on a project at a city council meeting, a council member pointedly questions the city manager's judgment in bringing the project to the council. The council member also implies that he has concerns about the manager's overall ability to do the job.

Best Practice: Disassociating a particular project from the person who sponsored or created it is a difficult but necessary task. Explaining your concerns about the project or the process that led up to putting the item on the agenda helps staff understand how they can better serve the council. On the other hand, casting your concerns as a lack of faith in the staff

member's abilities is likely to make staff feel defensive and lower their morale, which in turn decreases productivity. This is likely to be counterproductive in terms of the service that council receives from staff. It also creates a risk-averse atmosphere at city hall that dampens staff's enthusiasm for bringing innovative ideas forward to the council.

Implying that someone's job may be in jeopardy is not only unethical but also creates the risk of a larger staff exodus if they sense their boss's days are numbered.

A New Resource for City Officials

A good relationship between city council members and the city attorney is essential to ensure that the city's interests are protected and its goals are reached. Council and Counsel: A Guide for Building a Productive Employment Relationship is new League publication that presents essential basic information about the employment relationship between the city attorney and city council. It offers practical suggestions on structuring the employment relationship to help achieve mutual objectives and expectations. Council and Counsel is available for purchase through CityBooks at (916) 658-8257 or online www.cacities.org/store.

4. Avoid scapegoating staff.

Example: Staff has presented a budget update in which they have had to make some unpopular spending cuts in order to balance the budget. These cuts will undeniably increase the time it takes to serve constituents. Anticipating a negative community reaction and wanting to distance herself from these cuts, a council member publicly condemns the city staff for deciding to take these steps in order to balance the budget.

Best Practice: City staff are the experts on the day-to-day operation of the city. They also receive ongoing training to learn how to improve their administrative functions. Publicly criticizing staff for making difficult but necessary decisions is simply unfair because it penalizes staff for doing the job the council asked them to do. Undermining staff's abilities in public only serves to create public distrust toward all of city government.

5. Create mechanisms that protect staff from being drawn into intra-council conflicts.

Example: Only two days before a city council meeting, a council member asks staff to prepare a report regarding an item that is on the consent calendar for the next council meeting. At the meeting, the council member surprisingly takes the item off the consent calendar and proposes a discussion on the matter. The other council members, who haven't had sufficient time to review the new report, don't have enough information to form an opinion on the matter, causing them public embarrassment. Staff is reprimanded for not providing the information to all of the council members.

Best Practice: All council members have a stake in a level playing field and need access to staff resources to pursue their policy and political objectives. Making sure that everyone has the same information ensures that all council members can knowledgeably discuss the matters before them. It also prevents discord between city staff and council members, who feel ambushed when an issue is raised about which they lack sufficient information. In fact, one Southern California city manager has incorporated this type of policy into a memo circulated to all new city officials (see "South Gate Triumphs Over Adversity: A First-Person Account," Western City, July 2003, available online at www.ilsg.org in the Public Confidence section under "Staff Relations.")

In Conclusion

Most staff members care very deeply about the communities in which they work and their jobs. This is a resource worth nurturing, and adhering to the practices presented here can help.

Do you have an idea about staff relations best practices? The Institute for Local Self Government welcomes your suggestions. Send your ideas to ilsg@cacities.org.

This article is excerpted from materials prepared by the municipal law firm Best, Best and Krieger in support of the Institute for Local Self Government's Public Confidence and Ethics Project. Best, Best and Krieger has offices in Irvine, Indian Wells, Ontario, Riverside, Sacramento, San Diego and Walnut Creek, and represents a wide variety of public agency clients.

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