



Everyday Ethics for Local Officials

Saying You're Sorry

April 2010

QUESTION

Question: We recently had a situation where our agency was involved in an unfortunate incident. One of my fellow elected officials and I had a vigorous debate on whether we should admit responsibility and take steps to make it up to the victim; my position that this was the ethical thing to do and my theory was that we might even reduce our agency's exposure to liability if we accepted responsibility. Do you want to weigh in on this situation?

ANSWER

This is a more complex issue than one might think. Let's unpack all the elements of the analysis.

It's Okay to Express Regret

First, there's a difference between expressing regret that something has happened and accepting responsibility. If something unfortunate has happened, it is usually the compassionate and responsible course of action to express empathy and regret ("We are so sorry this happened.")

In fact even California's Evidence Code recognizes this distinction:

The portion of statements, writing or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person and made to that person or to the family of that person shall be inadmissible as evidence of an admission of liability in a civil action.¹

Similar laws are on the books in Texas, Massachusetts, and Georgia.

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ILG gratefully acknowledges the firm of **Best Best & Krieger** for sponsoring the first three "Everyday Ethics" columns in 2010. Best Best & Krieger represents 32 California cities as city attorney. ILG appreciates Best Best & Krieger's commitment to promoting ethics in public service.

The Institute for Local Government (ILG), which is a 501(c)(3) organization, receives funding from a variety of sources. Its public service ethics program relies on support from publications sales, training fees and private donations.

¹ Cal. Evid. Code § 1160.

Beyond “I Am Sorry”

Anything beyond expressing regret and concern presents ethical issues for the conscientious local officials. Resolving those issues depends on the nature of the event or occurrence, as well as the level of information available about what really happened and the role any agency action played in what happened.

For example, it can be compassionate and show the human face of a public agency to take steps to address the immediate needs of a victim (or victims). An example is paying emergency room bills when it is fairly clear the agency is directly responsible for an injury or making arrangements to replace damaged property. In some cases, such immediate actions can actually reduce the damage being done (making clean-up arrangements after a sewer back up when there is some evidence of agency responsibility for the back up, for example).

However, it is important to keep in mind that the law recognizes that there are limited taxpayer resources and, as a result, public agencies cannot insure that every facility or activity is perfect. Accordingly, the law provides certain defenses to an agency so that the taxpayers are not liable for every unfortunate event. Of course, legal liability is not the only guideline for behaviors, but the prospect of a significant financial cost of a lawsuit presents competing considerations for those who are responsible for making sure that scarce taxpayer resources are spent responsibly.

How to Responsibly and Ethically Decide?

The issue is what *process* should be employed to analyze these issues at your agency.

For example, making such a call to accept your agency's responsibility is typically *not* within the prerogative of an individual local elected official or staff member. An individual may not—in fact likely does not-- have *all* the facts about what happened or whether indeed the agency is legally or ethically responsible for the unfortunate event. Although it is human to try to fill in gaps of information, such speculation for public officials is inconsistent with one's responsibilities to only provide accurate information to the public.

Of course, accepting responsibility to curry political advantage is at odds with the both one's responsibilities to safeguard taxpayer resources and to the truth.

Any commitments to assist victims should be made after consulting with the agency's attorney and management staff. There may be existing agency policy that gives them authority to take immediate action to both address the needs of a victim and reduce further damages if the facts suggest a fairly clear agency responsibility and benefit from immediate action. Alternatively, they may decide that the situation is such that the question of what to do needs to be considered by the elected decision-making body as a whole.

What to Say?

Attorneys interviewed for this resource seemed to agree that acknowledging an injury and expressing concern or sympathy when something bad happens does not have to be the same thing as admitting legal responsibility. ("I am very sorry you were hurt, how can our agency help?").

It can be incredibly important for the community to see the human face of its government when tragic events happen. The level and type of reaction will be dictated by the nature of the event or occurrence, but officials should evaluate the costs as well as the benefits of remaining silent when something unfortunate happens.

Conclusion

The bottom line is that saying that one is sorry that something bad happened can be a compassionate and responsible thing for a public official to do. Much of the time, that's all the public wants to hear. You can work internally to get answers to get the full story on what happened, what needs to happen to prevent similar events in the future and how the results of the inquiry can be shared with both the victim and the public as a whole.

This piece originally ran in *Western City Magazine* and is a service of the Institute for Local Government (ILG) Ethics Project, which offers resources on public service ethics for local officials. For more information, visit www.ca-ilg.org/trust.

The Risk Management Benefits, Under Some Circumstances, of "I Am Sorry"

And, there is some recognition in the risk management community (particularly as it relates to medical malpractice¹) that an early and sincere acknowledgement of responsibility can reduce the likelihood of a lawsuit. This may be particularly the case if the lawsuit is designed to get answers to unanswered questions (because the plaintiffs feel stonewalled) or to punish those who have mistreated the plaintiffs.¹

As with any strategy, individual experiences will vary. As one public agency attorney noted, some people can view an injury like a lottery ticket. They won't be influenced by a compassionate response by an agency and similarly, they won't care what the costs of defending the agency will mean to their taxpaying neighbors and friends. In other cases, personal injury attorneys will get a hold of the victim and put visions of dollar signs into their heads.

¹ See for example, <http://marketplace.publicradio.org/display/web/2009/10/12/pm-sorry-doctors/> ; <http://www.scpf.com/PDF/ImSorry.pdf> (article from site of South Carolina Medical Malpractice Patients' Compensation Fund)

¹ See "Companies Can Apologize: Corporate Apologies and Legal Liability" by Ameeta Patel and Lamar Reinsch published in 2003 in *Business Communication Quarterly*.