



Everyday Ethics for Local Officials

Elected Official Direction to Staff

December 2004

QUESTION

*I am a newly elected local official, and I ran on a platform of "taking care of the basics." 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 our agency 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 an elected official, you are now part of a multi-member governing body that collectively makes policy decisions for our agency. 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 council 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.

Communicating With Staff: What's OK and What's Not?

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.

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.

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?

Those who are members of the International City-County Management 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 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.

Endnotes:

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).