

A Local Official's Guide to
**Intergovernmental Conflict
Resolution**

Generous support for this publication was provided by



McDonough Holland & Allen PC
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About the Intergovernmental Conflict Resolution Program

Thanks to generous funding from the JAMS Foundation, the Institute for Local Government will be able to offer local officials more resources about using alternative dispute resolution techniques for avoiding and resolving disputes between public agencies in the future.

As part of that effort, we are collecting case studies involving alternative dispute resolution from around the country. Please contact the Institute at info@ca-ilg.org or 916.658.8208 with any information that will help us help local officials in this area.

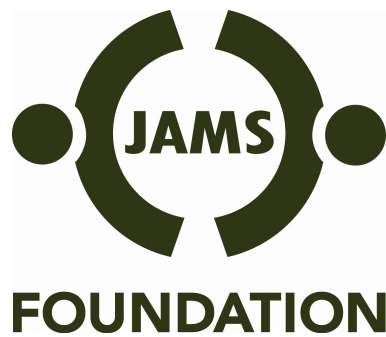


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When Local Agencies Have Divergent Perspectives

The complexities of the problems and challenges faced by local officials in cities, counties, and special districts mean that from time to time they find themselves in a dispute with one another.

It's not uncommon for local agencies to find themselves in disagreement. The following kinds of dynamics can lead to tensions and conflict:

- Land use issues, for example when one agency's action approving a development project causes another agency's costs of service to increase from the spillover effects of the new development.
- Scarce resources, for example when one agency's failure to use water efficiently means other agencies' supplies dwindle.
- Property ownership, for example when an agency wants to locate a facility within another agency's boundaries without considering its zoning regulations.

When local officials find themselves disagreeing about what's in the broader public's best interest or what the law requires, how do those disagreements get resolved? What is the best way to resolve a conflict between local officials who must continue to work together?

Inter-agency disagreements and disputes are usually worked through informally. But sometimes local officials may benefit from a neutral party in order to help avoid lawsuits. This brochure explains what processes are available to assist in such instances and how to find someone to help.

Causes and Consequences of Inter-Agency Conflict

Conflicts may result from the reality - or the perception - of conflicting interests and issues, or sometimes even because of differing perspectives on what the problem really is. There also may be conflicting ideas about what actions will best serve the public's interests. Troublesome history, personality conflicts, and political realities may also play a part in the development of a conflict.

Conflicts among public agencies that are not resolved constructively can have many negative results. Working relationships between or among local agencies may be jeopardized. The public's opinion about government can be diminished. Problems may remain unaddressed or unresolved, which in combination with litigation to address the conflict, may result in significant time and money lost.

Local officials and the public may both be losers if these disputes are allowed to continue or worsen.

When to Ask for Help

Don't wait until positions have hardened, unfortunate statements have been made, and the public has begun to take sides. When should public officials turn to a conflict resolution professional?

- When state law or some other regulation requires two (or more) local agencies to work together, and disagreements are beginning to emerge.
- When one or more of the agencies says "We've been here before and we didn't work it out very well then, so let's try something different."
- When agencies disagree on public policy, and one or more are considering using "legal technicalities" to settle a public policy dispute.
- When you find yourself saying, "They just don't understand what I've said." Or, "I wish they would tell us what they really mean."
- When differences are threatening to cause gridlock.

"A trusted and impartial person can assist public agencies in developing a common understanding of the facts and in identifying areas of agreement."

Approaches to Resolving Inter-Agency Conflict

Adding someone experienced and impartial to the mix can change the path of a developing disagreement or resolve an existing conflict between and among local agencies. A disinterested person is brought in by agreement of the disputing parties to assist them to better understand and resolve their differences. Such a person is often able to help the agencies identify common values and interests, understand and address dynamics of the conflict, improve communications, and discover new options for resolving the problem or dispute.

This person has no direct stake in the outcome. She or he must be trusted by all individuals involved, act impartially with regard to the parties, issues, and policies in contention, and handle sensitive information with discretion.

Such conflict resolution professionals use a range of approaches. These include conflict assessment, fact-finding, conciliation and mediation. The nature of the disagreement or dispute will determine which tool will be most useful.

Conflict Assessment

A conflict assessment provides the disputing agencies with an impartial view of the

conflict and, typically, recommendations for collaboratively addressing the issues in dispute. Such an assessment can help the disputing officials get a new perspective on the conflict. This sets the stage for joint and productive next steps to address the parties' differences. Mediators often conduct some sort of assessment prior to a mediation session. However a more complete and documented assessment with recommendations, made available to all involved, presents information that agencies can use to decide if and how to move forward with additional problem solving.

Fact-Finding

Often those in conflict disagree about the facts. Fact-finding seeks to provide the local agencies that disagree with impartial and independent information that is accepted by all those involved in the dispute. A trusted and impartial person can assist public agencies in developing a common understanding of the facts and in identifying areas of agreement. Narrowing the number of issues in dispute reduces the extent of the conflict. It also creates a more productive agenda for negotiation or mediation.

Case Example: Mediation Helps Cities and Counties in the Central Valley

During the mid-1990's, the City of Fresno, the County of Fresno and the City of Clovis became embroiled in disputes concerning land use, boundary changes, traffic flow and tax sharing. Some issues were in litigation; others just festered.

Local officials agreed to try mediation, with great success. Reflecting on the reasons for the mediation's effectiveness, the mediators reported that the dispute had been fueled by miscommunication and mistrust among local officials and staff which the parties were able to address in mediation. The lawsuits, which largely involved legal definitions, did not address the real disputes. The parties came to realize that working against each other would not help them reach their individual and shared visions for the region.

The first step was to address communication and trust issues and identify each agency's individual and mutual interests. They created a settlement agreement that:

- Dismissed the lawsuits;
- Provided for new cooperative working relationships to address regional planning goals; and
- Set up a mediation process to resolve future disagreements.¹

Conciliation

Conciliation is a voluntary process to open channels of communication between the conflicting agencies. A "go-between" helps to fashion informal mutual understandings that public officials may choose to recognize as formal agreements.

Conciliation does not typically bring the local agencies together in formal face-to-face facilitated negotiation and problem solving. Conciliation may be appropriate when public agencies choose not to enter into a formal mediation process but would like to open a clear communication channel.

Mediation

Mediation is a voluntary process in which an impartial mediator:

- Designs an appropriate process for the expression and resolution of differences;
- Helps disputing agencies identify their issues and interests;
- Helps officials identify the interests and values that they have in common;
- Helps establish productive communication among the agencies;
- Assists agencies to develop options for settlement; and
- Helps agencies to formulate specific, usually written, agreements.

Mediation is especially appropriate when a dispute has clearly formed; when the parties to the dispute (whose participation is required to reach settlement) can be identified; when a detailed and mutually agreed upon agreement is desired; and when the assistance of a skilled and impartial mediator is required to move problem solving forward.

¹ This case is described in *Mediating Local Intergovernmental Disputes - Reflections on the Process*, by Richard M. Cartier, 12 San Joaquin Agric. Law Review 1 (2003).



Antelope Valley Press
Editorial: Best Water Deal
Won't Flow from Courtroom

9/09/08

After nine years of legal maneuvering over rights to pump water from the Valley's underground aquifer, Antelope Valley water districts, cities, farmers, property owners and others go back to court next month for a new phase of trial - but still no conclusion is in sight.

It's time for the Valley's leaders to stop this slow, costly, cumbersome attempt to rely on a judge to solve the Valley's water problem and solve it themselves.

...

The Public Prefers Consensus-Building Approaches

The public understands that it ultimately foots the bill for inter-agency squabbles, both in lost time and opportunities and in paying for expensive litigation. To address an inter-agency conflict, any one of the above approaches, and perhaps more than one approach, might prove useful. A growing body of research and experience suggests the public prefers such collaborative and consensus building approaches to settling inter-agency disputes. Often the disputing agencies represent the same people. Even more often, those people do not distinguish between the various local agencies that represent them.

Benefits to Collaborative Approaches to Resolving Disputes

States around the country have successfully established conflict resolution programs for resolving inter-agency disputes. They have found that this approach has resulted in:

- Better relationships
- Cost savings
- Creative solutions
- Development of common ground
- Less litigation
- Public confidence in local government

“Litigation produces winners and losers, not long-term relationships and solutions.”

"Yes, But What About...?"

Local officials may have a number of concerns about these alternative approaches to addressing differences and resolving disputes.

"We were elected to make these decisions."

In the processes described above, a conflict resolution professional does not make decisions unless asked to do so. Rather, that person can assist in facilitating effective communication and in helping public officials identify solutions their agencies will then consider and agree to, if they choose. Conflict assessments, fact-finding and conciliation help agencies understand their differences and consider options and next steps. An agency can stop mediation or other processes at any time if it does not seem to be constructive.

"We can't compromise the public's interest."

These tools are not intended to produce a compromise in which both agencies have given up something of value and everyone goes away feeling unhappy. These tools give the disputing officials new understandings of the problems they confront and allow them to jointly generate new options for settlement that respond to their essential interests.

"Our staff can work with the other agency's staff and work things out."

Staff takes direction from elected officials. That's their job. Their conversations with each other are limited by the positions that have been taken by their agencies. A conflict resolution professional can help local agencies to explore alternatives while remaining true to the agency's concerns. Sometimes it might be appropriate for a conflict resolution professional to work with agency staff rather than the elected officials.

"We are committed to open government. We don't want to be a part of behind-the-scenes decision-making."

Conversations between elected officials and staff of local agencies or members of the public occur every day. Formal decisions are not made in these conversations. Rather, the participants in the conversation bring back what they have learned to their agencies as part of the material that will inform the decision.

An impartial conflict resolution professional is simply one more person in those conversations. The goal is to help the participants develop a different way of looking at the same problem. Whatever occurs must be brought back to a public meeting for full discussion by the

public and the elected officials. Appropriate information and recommendations resulting from these conflict resolution processes are presented much like a staff report on a planning application is presented to decision-makers. The fact that the process took place does not commit the participants to a particular solution.

“Sometimes you just have to file a lawsuit to get their attention.”

Yes, sometimes that’s true, but is it the kind of attention that you want? Litigation often involves two parties who will have limited contact in the future and may never have to work together again. The impact of litigation on their relationship, therefore, is less important than the outcome of the case.

However local agencies must continue to work together, so how the dispute is handled may be as important as the outcome. When an agency files litigation, it gives up its power to control the outcome of the dispute. Mediation or other third-party intervention allows local officials to control and shape the outcome and ultimately produce an understanding that is both practical and creative.

Also, a judge’s decision on specific factual and legal issues most likely will not address all the issues in the dispute. If litigation does not address all the issues, they will re-surface in a different context at a later date. Litigation produces winners and losers, not long-term relationships and solutions.

Case Example: A Dispute Over California’s Precious Resource: Groundwater

In 2000, the Soboba Band of Luiseno Indians filed a lawsuit which sought damages and injunctive relief for the continuing drainage of water from the tribe’s reservation into the San Jacinto tunnel and most likely would have resulted in adjudication of the basin to determine water rights. The lawsuit was a catalyst for the formation of a committee of two water districts, two cities, several private pumpers and members of an Indian Tribe that have been working ever since collaboratively on water issues in the San Jacinto Valley, Riverside County.

The goal of the committee was to address the annual overdraft and the need for supplemental supplies by establishing a cooperative groundwater management plan to manage the basins and to insure that groundwater was being fairly and beneficially used and that it would be available for the future. The California Department of Water Resources provided both technical assistance and facilitation to the committee. Decisions have been made by consensus and the final products work product had to be acceptable to every member. More than 15 agreements have been drafted and implemented.²

² Dale Schafer, California State University Sacramento (personal communication, September 19, 2008).

Finding and Selecting the Impartial Person

All parties to a disagreement or dispute should participate in the identification and selection of a conflict resolution professional. All parties should be involved in setting the ground rules or other understandings that will guide the process as it goes forward.

Conflict resolution professionals differ in the number and nature of their cases. They may be more or less familiar with local government and with local agency procedures and open government laws.

Some offer a full range of conflict resolution services, although many focus primarily on mediation. Fewer may have conducted full conflict assessments and reports.

The more you know about the prospective conflict resolution professional, the more likely you will choose someone who will do a good job for you.

Here are a few questions to ask:

- What experiences do you have relative to inter-governmental or other public sector-related disputes?
- How is resolving a dispute between local agencies different from resolving a private sector dispute?
- What services do you offer, and how do you determine whether conflict assessment, fact-finding, conciliation or mediation is appropriate for a particular dispute?
- How, if at all, do you recommend keeping the public informed during the process?
- What is the most important thing you do as a mediator when working to resolve a dispute?
- How do you determine your fees and expenses?

Conclusion

Considering alternatives to litigation to resolve inter-agency disputes presents local officials with a number of opportunities, including:

- Avoiding damage to relationships among local officials, particularly when those officials can best serve the public when they work together.
- Identifying solutions to problems that haven't yet been thought of or considered.
- Preserving the public's trust and confidence that officials are working hard to conserve taxpayer resources and solve issues constructively.

Trying this process doesn't commit an agency to a particular solution. It also doesn't mean foregoing litigation. Picking up a tool to see if it will help solve a problem doesn't mean the agency can't put the tool back down if the tool doesn't serve an agency well.

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*All decisions regarding the final content of this guide were made by the Institute for Local Government.
Remember to always consult a knowledgeable attorney when confronted by legal issues.*

A LOCAL OFFICIAL'S GUIDE TO INTERGOVERNMENTAL CONFLICT RESOLUTION

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ABOUT THE INSTITUTE FOR LOCAL GOVERNMENT

The Institute for Local Government is the nonprofit research affiliate of the League of California Cities and the California State Association of Counties.

Its mission is to promote well-informed, ethical, inclusive, effective and responsive local government in California through innovative (state of the art) resources, tools and programs.

The Institute's current program areas include:

- Climate Change
- Collaborative Governance Initiative
- Communities for Healthy Kids
- Intergovernmental Dispute Resolution
- Land Use and Environment
- Local Government 101
- Public Service Ethics



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SKU: 1918

Price: \$10