



HIRING, WORKING WITH, AND EVALUATING A TOWNSHIP ATTORNEY

While township officers must frequently make tough decisions on how to stretch limited funds, one of the often-overlooked areas of budgeting is legal fees. Towns often have to work through issues such as drafting and enforcing ordinances, drafting findings-of-fact, annexation issues, right-of-way disputes, open meeting law questions, conflicts of interests, or special assessments and will often work on these issues by themselves. However, if the town had an attorney, it can be of great assistance to ensure the efficient and legal remedy of these issues. While the MAT legal staff is available to provide general information on the duties, authority, and obligations of townships and township officers, MAT legal staff cannot serve as the attorney for any township. MAT is simply not staffed to serve as the town attorney for its 1,700-plus members, which prevents MAT legal staff from providing the level of detail and review many situations require. Therefore, all townships must consider establishing a relationship with an attorney who can serve as the township's attorney.

Regardless of whether the relationship takes the form of an on-going relationship or an "on-call" nature, knowing where the township can turn for legal help is necessary. While working with an attorney may increase a township's operating expenses, the value of having work performed correctly, or having professional judgment far exceeds the cost. Supervisors will find peace of mind in having difficult work performed by a professional and benefit from an attorney's experience. Board members will protect their own time by having legal work performed by an attorney. They will also find value in having an attorney manage conflicts, rather than supervisors subjected to the conflicts themselves.

Some townships incorrectly believe that it is cheaper to risk a lawsuit than to retain an attorney because they think insurance will cover the legal expenses. This point of view fails to consider four things. First, not all claims are covered claims, leaving the town without insurance coverage or defense. Second, some types of claims require township contributions to costs and damages, so the town may spend more to support their case than they would have to retain an attorney in the first place. Third, increased claims result in increased premiums or loss or limitation of coverage. Insurance providers, including the MATIT insurance trust, are responsible for all their members and are obligated to maintain solvent insurance programs. Insurers will not be taken advantage of. Fourth, not all losses can be compensated for by money, so insurance may be inadequate to protect the town. Land-use decisions, for example, are often challenged by landowners. While a town may receive coverage for defense costs to enforce its land-use ordinance, insurance cannot compensate

for the loss of control and change of character to the community if a court rejects the town's land-use decision. Towns should budget for and use a town attorney to ensure they are an effective local government.

I. FINDING AND HIRING AN ATTORNEY

Locating an attorney is not a problem. Even in the smallest community, it usually has at least one attorney. However, determining the right attorney, which can be of assistance to the township, may be more difficult. Much like with doctors, a local attorney who is a general practitioner may be able to assist the town with some issues, but they will be ineffective for other matters. While the township may like the notion of supporting a local attorney, that attorney may be unaware of special requirements that specifically affect local government. Local attorneys in rural Minnesota are most often well-versed in family law, criminal law, property law, drafting wills and trust, general business services, and other issues commonly faced by the people who live in that area. However, municipal law is a less-common area of practice. If a local attorney has the time to research the issue, the attorney may serve the township well. Frequently, however, the town would be better served by finding an experienced municipal attorney who dedicates their practice to local government issues. Likewise, because municipal law covers a broad spectrum of legal topics ranging from finances to zoning, and from employment law to criminal law, even the most experienced municipal attorney cannot be an expert in everything and may need to defer to a specialist in a particular area.

The search for a township attorney could start by simply looking in the local telephone directory and making random phone calls until an attorney agrees to represent the township. Another option would be for a town officer to call MAT and ask for attorneys' names in our legal directory. They either have experience with working with townships or expressed some willingness to serve township clients. Finally, a town could develop what is known as a request-for-proposal (RFP) to solicit attorneys to submit an offer to the township to serve as their legal counsel. Regardless of which approach the town decides to use, the following factors should help determine whether the attorney is the right one to hire.

A. Experience and Legal Skills

There are many questions a town should ask an attorney when looking to hire them to solve the issue. For instance, a town could ask if the attorney has ever represented a municipal client? Although having served a township directly may be ideal, townships and cities, and to some extent counties, schools, and special districts, operate under similar laws. An attorney who has represented any type of governmental client may be able to provide proper assistance to the township.

If the township has any pending projects or particular goals it hopes to achieve, it should inform the attorney of such issues. All municipal attorneys are likely to have personal strengths and weaknesses and cannot be specialists in every topic related to towns. Identifying specific questions ahead of time allows the township and the prospective attorney to determine whether the relationship will be a good match. For example, a township experiencing growth may want an attorney with more of a land-use background. In contrast, a town facing many infrastructure repairs may want an attorney with a municipal finance background to help wade through different financing methods.

Ask neighboring communities which they have used for legal services and whether they were satisfied with the service received is an excellent tool. Also, asking the attorney for other municipal clients' names can be used to verify the information. However, do not expect the attorney to discuss details of the representation that may be protected by attorney-client privilege.

If representation in court may be necessary, ask if the attorney has experience litigating and what is the attorney's philosophy regarding settling a case versus take the case to trial. While insurance may assign an attorney if the township is in the middle of a lawsuit, making these questions less useful, nevertheless, these questions are essential for situations where the town board elects to initiate legal proceedings.

B. Accessibility

The inability to reach its attorney is a frequent source of frustration for municipalities. The town should consider things such as the attorney's location, how the town can contact the attorney, or how many other clients the attorney has before hiring them.

The location of the attorney is becoming less relevant as technology makes communication easier. Some legal matters can be addressed strictly by e-mail or over the phone, and location will not be a significant issue. However, if the town board wants to have the attorney present at town meetings, such as board meetings or planning meetings, then having an attorney near the township may be desirable.

The board should inquire about how and when they can contact the attorney. Since it is common for towns to hold events after regular business hours, the town should know if the attorney is available for after-hours meetings or calls. Convenient access is essential to maintaining a pleasant and productive relationship.

Having an attorney with many clients is both encouraging and concerning. There is some comfort or credibility offered by having an attorney that is trusted by many other clients. However, a busy attorney may be challenging to reach or have less time and attention to give your town's legal matter. The busy attorney may assign your town's legal work to associates or other attorneys in their office. That may be acceptable to the town board, but if not, then the town board should communicate the expectation that the attorney performs the work. The town should

consider how the attorney deals with this and how long it usually takes for the attorney to respond to an inquiry before agreeing to hire an attorney.

C. Billing

Determining the actual legal costs is incredibly important for the township so that it can best spend money to pursue the town's goal. Attorneys will often bill at a specified hourly rate. This rate is an obvious concern; however, it should not be the sole basis for accepting or rejecting an attorney. An experienced attorney may charge more per hour but may be able to get the work done faster. Further, a township needs to pay close attention to how attorneys treat fractional hours. The actual cost for an attorney billing every ten minutes can differ from an attorney charging every fifteen minutes. For example, if a township calls the attorney and asks a question and the call takes 15 minutes; overall, the attorney who bills for every ten minutes may bill the town .33 hours or the equivalent of 20 minutes. However, during a 15-minute call, the attorney who bills every fifteen minutes will charge the town .25 hours or, for 15 minutes. The difference between these two costs can add up substantially over time.

Some attorneys charge for any work done for the client. Other attorneys will provide a limited amount of service at no charge. For example, some attorneys will charge their clients for reading a letter that was carbon-copied to them. Others will take short telephone calls seeking general information or clarification without turning on the billing meter. Billing for travel time can also make a significant difference.

What are the "extra" fees involved? Will there be extra fees, in addition to the hourly billing rate, charged for things like photocopies, faxes, long-distance telephone calls, and on-line research? Is there a separate charge for the work of paralegals or others assisting the attorney? If so, how is the workload generally divided? While a paralegal cannot offer legal opinions, their time for conducting the preliminary research may be cheaper than paying the attorney to do his or her research. The difference in billing policies for these extras can dramatically change the bottom line of the actual costs to the township.

Having an attorney on retainer may be prudent if the attorney agrees to this pay structure, and the township expects to use the attorney frequently. A retainer for legal services is paying the attorney at a set flat fee intended to charge for all or an itemized list of services that the attorney agrees to provide the township over a set period. For example, a town may have an attorney on retainer if the township intends to have the attorney attend all meetings. If the attorney is at the board meetings, the town may negotiate a better deal by entering into a retainer agreement rather than billing at an hourly rate. Further, by having a retainer, the town board may be more receptive to consulting with the attorney regularly as it will not be concerned about having to pay by the hour. A retainer can also be helpful for budgeting purposes. However, the terms of such an agreement need to be very detailed about what is covered.

The town should also ask the attorney if they are using cost-saving techniques. It can be challenging to evaluate cost-saving techniques because what works well for one attorney may not work as well for another, and thus not be a cost-saving technique. Examples, however, can include the use of paralegals or other assistants to do specific work at a lower hourly rate, the use of templates for standard documents, and the presence of resource files with past samples that can be updated and modified to meet the current need.

D. Other Considerations

A town should consider several other issues when retaining an attorney. For instance, towns may consider the attorney's personality, the role the attorney will play, conflicts of interest, and the attorney's law firm's size.

Personality: Judging personalities can be difficult at the start of the relationship, but it is still wise to identify possible personality conflicts that could undermine the attorney-client relationship.

Practice Style: Attorneys have different styles of practice, just like township officers. Some attorneys see their role as merely answering questions posed to them. Others are willing to offer counsel and advice, while others are willing to find any argument supporting the town board's desires, short of blatantly illegal activity, of course. It is essential to understand the attorney's style and set expectations at the start of the relationship.

Ethical Concerns: Attorneys have an ethical duty to disclose known conflicts of interest, avoid dual representation, or accept clients and work they are unable to serve and represent adequately. These concerns can be avoided by asking if the attorney represents any client that may have dealings with the township, including abutting communities, even if the two communities currently have a good relationship. A local attorney is likely to represent individuals and businesses in the community, increasing the likelihood of conflicts of interest for that attorney.

Law Firm Size: Larger firms may offer advantages in the number of attorneys available to work on a town matter and greater depth of practice areas and expertise on municipal law matters. On the other hand, they tend to have more overhead costs resulting in the need to charge more to them. There is also a more significant potential for conflicts of interest due to the larger client base. Smaller firms and solo practitioners may cost less, and in some cases, it may be easier to form a more direct relationship with the attorney. However, the attorney or firm may be more limited in their expertise and resources.

Always pose a hypothetical to the attorney and see how they resolve the issue. Posing a hypothetical is an excellent way to gauge the attorney's approach and interaction with the town board.

II. WORKING WITH THE ATTORNEY

Once an attorney is selected, it is vital to maintain a good, professional, and efficient working relationship. The first step is to enter a formal written agreement that outlines the scope of representation, what fee(s) are charged, how and when to contact the attorney and other preliminary issues.

Involve the attorney early in the process. The earlier an attorney becomes involved in an issue, the easier it will be for him or her to guide the township down the best path to avoid legal trouble after the fact, rather than hiring an attorney as damage control. Further, seeking advice earlier can save both the embarrassment and legal difficulties of discovering a problem and undoing what has already happened. Involving an attorney early in the process can also be a cost-saving factor as the township will not have to pay the attorney by bringing them up to speed on an issue or to undo what was already done.

Keep the attorney informed. As the town board makes its decisions, and as new facts emerge or conditions change, the attorney needs to be informed so that they can provide the best advice possible based on the most current information. Share all information honestly and neutrally. The attorney's advice can only be as good as the information it is based upon. Keeping the attorney informed also gives the attorney time to do the needed research. Demanding "on-the-spot" answers can be embarrassing and lead to bad advice. Similarly, waiting until the last minute can result in incomplete research, and only a partial answer is available.

However, overworking the attorney can also lead to issues. While it is better to be safe than sorry, the attorney does not need to hear all questions, and not all documents need to be read by the attorney. Calling the attorney with every minute issue will result in high costs for the township and frustration on behalf of the attorney. Remember, you are not the attorney's only client. While a township should expect its attorney to be responsive, it is unrealistic to expect the attorney to be sitting at their desk waiting for your call or that they will be able to stop working on another file to provide the township with an immediate reply.

Nevertheless, keeping the attorney informed of general goals and objectives and things that occur or about to occur in the community is particularly helpful for attorneys who reside outside of the township. Address concerns or problems with the services provided before they get out of control. Misunderstandings about expectations, billings, or any other issue can be frustrating to both the township and the attorney; however, if both parties discuss such issues as they arise, solutions are easier to find.

III. EVALUATING THE RELATIONSHIP

After completing a project or at set intervals, if the township has elected to have a continuous relationship with an attorney, the town board needs to step back and ask, "Are we getting the service we expect? Are we satisfied with what we are paying? Are there any issues that need to be addressed?" Reviewing the questions and tips above can serve as the starting place for evaluating your satisfaction with the legal services your township is receiving.

Legal services are not free, but they are a vital part of doing township work correctly and efficiently. Establishing a relationship with an attorney or group of attorneys will pay off for the township in the long run. If a town has any questions about the issues raised in this paper, or if it would like additional information on selecting or evaluating an attorney, please contact the MAT offices.