Hiring, Working With, and Evaluating a Township Attorney

I. Introduction

While township officers are frequently forced to make tough decisions on how to stretch limited funds, one area of budgeting that is frequently overlooked is legal fees. Drafting and enforcing ordinances, drafting findings-of-fact, annexation issues, right-of-way disputes, open meeting law questions, conflicts of interests, and special assessments are just a few of the many issues that townships face on a regular basis where using the services of a qualified attorney can be of great assistance. While the MAT legal staff is available to provide general information on the duties, authority, and obligations of townships and township officers, we cannot serve as the direct attorney for any township. In addition, time limitations created by limited staffing versus the sheer volume of township questions prohibit us from being able to provide the level of detail and review many specific situations require. It is, therefore, important for all townships to 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 working relationship, or one of an “on-call” nature, knowing where the township can turn for legal help is the prudent thing to do. While working with an attorney may increase a township’s operating expenses, ensuring that things are done correctly instead of being held liable for damages following litigation can be a significant cost savings. Further, some townships believe that it is cheaper to risk being sued because insurance will cover the legal expenses, but this point of view fails to consider three things: (1) not all claims are covered claims; (2) some types of claims have attorney-fee limits; and (3) increased claims result in increased premiums to pay for the extra costs of defending and resolving the litigation. Finally, knowing that regulations are enforceable can make it easier for the township to achieve its intended goals which may have both monetary and non-monetary value.

This paper provides an overview of some of the factors a township should consider when hiring an attorney.

II. Finding and Hiring an Attorney

Locating an attorney these days is simply not a problem. Even in the smallest community you are likely to find at least one attorney who has hung up his or her shingle. Locating an attorney that can be of assistance to the township, however, will take a little more work. Much like with doctors, a local attorney who is a general practitioner may be able to assist the township with some issues, but while the township may like the notion of supporting one of their own, that attorney may be unaware of special requirements with which local governments must comply. If he or she has the time to research the issue, the local attorney may still be able to serve the township well. In other cases, however, the township would be better served finding an experienced municipal attorney. Likewise, because municipal law covers a broad spectrum of issues 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 the names of attorneys in our legal directory who have expressed some willingness to serve township clients. Finally, a township 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 township decides to use, the following factors should help it decide if the attorney is right one to hire.

A. **Experience and Legal Skills**

The following questions can help evaluate an attorney’s relevant experience:

1. Has the attorney ever represented a municipal client? While having served a township directly may be ideal, remember that townships and cities, and to some extent counties, schools, and special districts, all operate under comparable laws. Thus, an attorney that has represented any type of governmental client may be able to provide good assistance to the township.

2. Does the township have any pending projects or special goals it hopes to achieve? Remember, even an experienced municipal attorney is likely to have his or her personal strengths and weaknesses and cannot be a specialist in every area of law townships have to deal with. Thus, identifying specific issues ahead of time will help both the township and the perspective attorney 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, whereas a township facing a lot of infrastructure repairs may want an attorney with a municipal finance background to help wade through the different methods of financing the projects.

3. Can references be obtained? Asking neighboring communities who they have used for legal services and whether or not they were satisfied with the service received is an excellent tool. Asking the attorney for the names of other municipal clients can be used to verify information (don’t, however, expect the attorney to be able to discuss details of the representation which may be protected by attorney-client privilege.)

4. If representation in court may be necessary, what experience does the attorney have, and what is his or her philosophy regarding settling a case versus litigating it? While insurance may assign an attorney if the township is being sued, these questions are important for situations where the town board elects to initiate legal proceedings.

5. What type of access does the attorney have to legal resources? Because no attorney can be an expert in everything, nor can an attorney remember off the top of his or her head all of the possible intricacies of the law, access to reference material is essential. Some attorneys have
access to in-house libraries, others have convenient access to the substantial law library of the county, State, or even a law school, and others rely heavily on on-line computer resources. The amount of information readily available to the attorney, as well as the cost of obtaining that information should be considered.

For example, on-line legal databases usually charge a fairly substantial fee for research and such fees are generally passed on to the client. On the other hand, the instant access to on-line databases can help ensure the most current information is being obtained, and it may be faster and thus, in the long-run cheaper, to pay for on-line research as opposed to paying for travel and photocopying expenses involved with traveling to a traditional law library setting.

B. Accessibility

The inability to reach its attorney is a frequent source of frustration for municipalities. The following questions will help determine what if any problems could be encountered in trying to have access to a particular attorney.

1. Where is the attorney located? While this should not be the primary determining factor, where the attorney’s office is located can be important, especially for availability for meetings. Some legal matters can be addressed strictly by mail or over the phone (be aware of long-distance charges) and location will not be a major issue. If, however, the town board would like to have the attorney present at all or most town board meetings (or any other meetings such as of the planning commission), then having a close proximity can be essential. Likewise, a local attorney is more likely to be familiar with local concerns of importance to the town board.

2. How, and when, can the attorney be reached? Does he or she have a cell-phone? Pager? E-mail? A toll-free number? Is he/she willing to take calls “after-hours”? Having convenient access is essential to maintaining a good and effective relationship. And, because legal problems don’t always occur between 9 and 5, access at all times of day can be important.

3. How many other clients does the attorney have? The catch-22 of having an experienced attorney can be having one who has so many clients that he or she is difficult to reach. How does the attorney deal with this? How long does it usually take for the attorney to respond to an inquiry?

C. Billing

The following questions will help the township determine what its actual legal costs will be.
1. What is the hourly billing rate? While this is an obvious concern, 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 as to how fractional-hours are treated. The actual cost for an attorney billing every ten minutes can be different than an attorney charging every fifteen minutes.

2. What triggers a billable event? 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.

3. 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 own research.

4. What “extra” fees are 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? The difference in billing policies for these extras can dramatically change the bottom line of the actual costs to the township.

5. Would a retainer make sense? A retainer is a set flat fee charged for all or an itemized list of services the attorney agrees to provide the township over a set period of time. If the township intends to use the attorney’s services on a regular basis, such as for attending all meetings, then it may be able to negotiate a better deal by entering into a retainer agreement rather than being billed at an hourly rate. Further, by having a retainer, the town board may be more receptive to actually consulting with the attorney on a regular basis as it will not be concerned about having to pay by the hour. A retainer can also be helpful for budgeting purposes. The terms of such an agreement need to be very detailed as to what is and is not covered.

6. What cost saving techniques does the attorney use? This can be a difficult area to evaluate because what works well for one attorney may not work as well, and thus not be a cost saving technique, for another attorney. Examples, however, can include the use of paralegals or other assistants to do certain 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. Miscellaneous

In addition to the specific types of issues raised above, a number of other concerns should be considered when retaining the services of an attorney. The following questions will help the town board identify and prioritize some of these issues.

1. What kind of personality does your board work best with? While judging personalities can be difficult and often inaccurate in just a short conversation or in-person visit, nevertheless it is still a good idea to identify possible personality conflicts that could cause the attorney-client relationship to sour quickly.

2. What role does the town board really want the attorney to play? Different attorneys have different styles, as do township officers. Some attorneys see their role as simply saying yes or no to the client. Others are willing to offer alternative suggestions, and still others are willing, short of blatantly illegal activity, to find an argument in support of the town board’s desires.

3. What potential conflicts-of-interest exist, and how does the attorney identify and deal with potential or actual conflicts? Attorneys have an ethical duty to disclose known conflicts of interest and to avoid dual representation (with limited exceptions). However, a lot of frustration can be avoided by asking if the attorney represents any other client that may have dealings with the township, including abutting communities even if the two communities currently have a good relationship. Who pays for a second attorney should a conflict of interest arise also needs to be discussed.

4. Does the town board have any strong feelings about a larger firm, a smaller firm, or a solo-practitioner? Larger firms may offer advantages in terms of the areas of practice the firm deals with and the number of attorneys available to provide assistance including back-up to the lead attorney assigned to the township. On the other hand, they tend to have more overhead costs resulting in the need to charge more to the clients. There is also a greater potential for conflicts-of-interests due to the larger client base. Smaller firms and solo-practitioners may charge less and in some cases it may be easier to form a more direct relationship with the attorney. However, the firm may be more limited in types of resources available.

5. Pose a hypothetical to the attorney and see how it is dealt with. This is an excellent way gauge the attorney’s approach and interaction with the town board.
III. Working with the Attorney

Once an attorney has been selected, it is important to maintain a good, professional, and efficient working relationship. The first step should be to enter into a formal written agreement that outlines the scope of representation, the fee(s) to be charged, etc. Once that is in place, the following tips should help maximize efficiency and minimize conflicts.

A. Involve the attorney early on in the process. The earlier an attorney becomes involved in an issue, the easier it will be for him or her to help guide the township down the best path to avoid legal trouble after the fact. Further, seeking advice early can save both the embarrassment and legal difficulties of discovering a problem and trying to undo what has already been done. This can also be a cost saving factor as the township will not have to pay the attorney to be brought up to speed on an issue or to undo what was already done.

B. 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 he or she can provide the best advice possible based on the most current information.

C. Share all information in an honest and neutral manner. The attorney’s advice can only be as good as the information it is based upon.

D. Give the attorney time to do 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 being available.

E. Don’t overwork the attorney. While it is better to be safe than sorry, not all questions need to be posed to the attorney, and not all documents need to be read by the attorney. Calling the attorney with every minute issue will result in excessive costs for the township and frustration on behalf of the attorney.

F. Remember you are not the attorney’s only client. While a township should expect its attorney to be responsive, it is unrealistic to expect him or her to be sitting at his or her desk just waiting for your call, or that he or she will be able to stop working on another file to provide the township with an immediate reply.

G. Keep the attorney informed of general goals and objectives, as well as things that occur or about to occur in the community. This is particularly helpful for attorneys that reside outside of the township.

H. Address concerns or problems about the services being provided before they get out of control. Misunderstandings about expectations, billings, etc. can be a source of frustration to both the township and the attorney; however, if both parties discuss such issues as they arise, solutions are easier to find.
IV. Evaluating the Relationship

After the completion of a particular project, or at set intervals if the township has elected to have a continuous relationship with an attorney, it is important for the town board 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.

V. Conclusion

Legal services are not free, but they are an important 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 township has any questions about the issues raised in this paper, or if it would like additional information on how to select or evaluate an attorney, please contact the MAT offices.