

Western City Magazine – League of California Cities

How to Balance City and Regional Interests When You're Asked to Serve Both

June 2004

Everday Ethics for Local Officials

This column is a joint effort of the members of the Institute for Local Self Government's advisory panel on ethics. The questions in this column thus far have been suggested by the ethics advisory panel members to stimulate discussion and thinking on ethical issues faced by local officials. For more information about ILSG, visit www.ilsig.org. To suggest a future topic, e-mail ilsig@cacities.org. Thanks to all who responded to the request (on the League's Mayors and Council Members listserve) for input on this issue.

QUESTION

My city has appointed me to represent it on a regional body. All of our council members serve on a number of these entities, but there are no guidelines (that I am aware of, at least) on how we are supposed to make our decisions. Specifically, are we there to promote our city's interests or our sense of what serves the region's interests as a whole? What if the two conflict? What if my view of how I should vote conflicts with my city's?

ANSWER

Local agency officials frequently serve on state-created regional bodies, joint powers agencies and other groups whose decision-making horizon extends beyond the city or county boundaries. State-created regional bodies (for example, one of the many conservancies in the state) are typically created by statute to achieve a state goal (for example, management and preservation of an environmental resource). Joint powers agencies are voluntary arrangements among local agencies to accomplish a shared objective, including provision of such services as fire protection, water supply, libraries, criminal justice, recreation, transportation, open space, congestion management and animal control.

Like many ethical dilemmas, this involves conflicting sets of "right values": the value of loyalty to your city and your loyalty as a decision-maker on the regional body. Which loyalty should prevail? Put another way, every time someone becomes a member of a governing body, that person acquires another set of fiduciary duties; what do you do when those duties conflict? This is an exceptionally difficult ethical dilemma, for which there is probably no universally right answer. Here are some thoughts, however.

What Kind of Regional Body?

As a starting point for your analysis, examine the purpose of the regional body in question. If the purpose of the body is to make decisions about a shared regional resource, a number of city officials believe the regional perspective should prevail. For example, Barstow Mayor Pro Tem Paul Luellig expressed this view: "The good of the represented region overshadows local representation. At the regional level, you have to think regionally - that is why regional bodies are created ... [otherwise] regional bodies will not be effective."

Mount Shasta Mayor Audra Gibson frames the role of a city representative on a regional body this way: "Naturally, drawing examples from experience is appropriate, but in the actual decision-making, one has to ask: 'Is this the decision that represents the greatest good for the region?'"

Veteran observer of state and local government Richard "Bud" Carpenter agrees, drawing an analogy to the role council members ought to play when they are elected by district. "Although they are elected by district, their duty is to the city as a whole. Likewise, while one might be appointed by a city, the obligation is to act with the overall best interests of the region served by the body in mind."

There may be a long-term/short-term aspect to consider as well. For example, a particular vote could be in the short-term best interest of your city, but what if the roles were reversed in some manner the next time around? Is this a Golden Rule situation (do unto others as you would have others do unto you)? It may be that, in the long run, the city's best interests are aligned with the region's interests if all of the members of the regional body consistently use the overall best interests of the region as their guidepost.

Poway City Council Member Bob Emery believes this more cooperative approach has served his region well. He says he views his role, when sitting on a regional body, as bringing the perspectives of his city to the table and then meshing them

with those of the other local agencies. Emery credits local government representatives' willingness to see the big picture as contributing to the success of regional governance in the San Diego area.

Institute for Local Self Government President Rosemary Corbin notes that the challenge can be compounded when a council member represents a regional group on a bigger board. As a former mayor of Richmond, Corbin represented East Bay cities on a body governing the entire San Francisco Bay Area. She notes that she took her role as the representative for cities in her two counties very seriously, even when it meant voting against what her colleagues on her council may have preferred. However, she believes that her presence on the board was always beneficial to Richmond as a whole, because she always brought a Richmond perspective to the discussion.

What About Joint Powers Agencies?

Getting back to the "what kind of regional body" issue, a different approach may be appropriate if the regional agency is created by local agencies for their mutual benefit (for example, a joint powers agency to provide services to member agencies). A stronger argument can be made in those situations that the mutual expectation is that each local agency's representative will represent their respective cities' interests. This is particularly true if each member agency has a representative on the governing board.

Communication Is Key

Longtime local government observer Randy Hamilton suggests that part of this ethical dilemma can be avoided if the council states its expectations clearly when making appointments to regional bodies. In other words, will appointees be expected to vote: 1) their views on what serves the best interests of their city; or 2) the best interests of their region?

Santa Clara City Manager, Jennifer Sparacino notes that a practical way to do this is to maintain a list of council committee assignments and appointments. This list can include a brief description of what each entity does and how appointments/ assignments are made. This helps the council keep track of its various appointees which, given the number of organizations some cities are asked to participate in, can sometimes be a complex task.

Seal Beach Council Member John Larson observes that his city requires regional body agenda materials to be distributed to each city council member, so the council can ask for a discussion of a given issue.

What if My View Conflicts With Those Of My Council Colleagues?

On one hand, appointing agencies bear a certain responsibility in making the appointment of a representative to a regional body. As Claremont Council Member Jackie McHenry notes, "The body that elects or appoints you should have enough faith in your ethics and decision-making abilities to trust that you will make the right choices at the right time."

On the other hand, John Beaumont, mayor of Brea, believes that the appointee has a responsibility to discuss an issue with the full council if the representative believes that his or her view may be at odds with that of the full council. The City of Santa Clara institutionalizes such communication with a standing agenda item that allows council members to briefly comment on their committee assignments and other appointments.

Of course, keeping city colleagues in the loop can be a challenge. As Jeff Reinhardt, council member for Agoura Hills, notes, many regional issues require additional study and information gathering by the appointee. The council that discusses the issue may not have the full benefit of the information provided to the regional body and its appointee. Moreover, a council that frequently second-guesses its appointees' decisions on regional bodies may find itself with a great deal of extra work and analysis.

Consulting with your city council may enhance your reputation for being a straight shooter among your colleagues and within your community (which, of course, is a great reputation to have). It could also result in your being divested of your regional appointment if you feel you cannot set aside your contrary view. Although the city council does not have legal authority to direct its appointees on how to vote in a given matter, it may have authority to remove an appointee (check the appointment provisions of the joint powers agreement or governing statute).¹

What do you do if you fear that voting your conscience will cost you your appointment (either before or after you make the vote in question)? If your concern is that you will lose your appointment before you are able to vote, you have an ends-versus-means dilemma. Does the "end" of being able to vote justify not telling your colleagues that you're going to vote in a way that displeases them? Under certain circumstances (such as a very important vote), the answer could be yes. However, it will do long-term damage to your relationship with your city council colleagues and those in the community who share their views on the issue in question. It will also prevent your participation in future decision-making by the regional body.

Generally, the preferred approach is to address the issue of how you plan to vote up front with your city council colleagues. This gives everyone an opportunity to share the information and philosophy represented by the divergent viewpoints. It gives you an opportunity to consider information or viewpoints that you may not have factored into your decision. It also gives you the chance to persuade others of the correctness of your position after you have carefully considered your colleagues' opinions.

The voters will decide what is most important to them both in terms of the merits of your decision and the leadership you exhibited in the process of taking a position. As Ed Corridori, mayor pro tem for Agoura Hills, observes:

An official must do the job he/she was chosen to do. In no event should the official vote against his/her conscience or best judgment. If the decision is wrong for those who elected you but right for the larger majority you represent by appointment, then the conflict can be resolved only by following your conscience and making the decision you believe to be in the best interest of all concerned. You may not get re-elected, but you can sleep soundly.

Moreover, as Hollister City Council Member Tony Bruscia notes, "It's important to strike a balance between working cooperatively for the greater good of the region and representing the interests of your piece of the region. When the two conflict, look for alternatives that may minimize the detrimental effects to both. Barring the availability of a compromise between the two sets of interests, if the fair or right thing to do is most beneficial for the region, you need to do what is best for the greater good."

Institute Publishes Ethics Bookmark

The Institute for Local Self Government (ILSG) has prepared a new ethics checklist, available as a bookmark, which outlines the key concepts and principles that drive California's ethics laws. The goal of this resource is to alert officials when they need to consult with their agency attorney. The bookmark supplements the wallet-sized checklist prepared at the recommendation of the League's Ethics Education Task Force (see "Everyday Ethics for Local Officials," April 2004, *Western City*).

Called the Public Official's Ethics Law Overview Checklist, the bookmark provides a checklist of situations in which public officials should consult with agency counsel. It was based on ILSG's ethics research and reflects the suggestions of city officials. ILSG thanks Kronick, Moskovitz, Tiedemann & Girard for its financial support of this project.

The bookmark is included in this month's *Western City* and is available free of charge from the Ethics Resource Center on the ILSG website (www.ilsg.org/trust). If the bookmark attached to this page has already been taken by another reader, additional copies are available for sale from CityBooks (\$5 for a set of five bookmarks). Ordering information is available at www.ilsg.org or by calling (916) 658-8257.

Ethics Codes Can Help

The City of Santa Clara's Code of Ethics and Values includes provisions that provide guidance in this situation. It says, in part:

As a Representative of the City of Santa Clara, I will be collaborative.

- I act in a cooperative manner with groups and other individuals, working together in a spirit of tolerance and understanding.
- I work toward consensus building and gain value from diverse opinions.
- I accomplish the goals and responsibilities of my individual position, while respecting my role as a member of a team.
- I consider the broader regional and statewide implications of city decisions and issues.

As is the case with most ethical dilemmas, it is usually easier to know what to do before coming face to face with a concrete situation (with concrete consequences) that involves the application of those values. Moreover, if the council can reach consensus on those values, there will be a collective mutual support and accountability mechanism when those values are tested in a given situation.

These advantages are why the Institute for Local Self Government (ILSG) recommends that all local agencies consider adopting a value-based ethics code. In February 2004, the League board of directors endorsed this effort. For more

information on how to adopt a values-based code of ethics, consult ILSG's ethics code guide; available online at www.ilsg.org/trust or from CityBooks at (916) 658-8257 or www.cacities.org/store. The guide includes sample ethics code provisions drawn from existing codes of ethics, such as the City of Santa Clara's.

Access to Regional Body Closed Session Information: What Can an Appointee Disclose?

What happens if a regional body is involved in litigation of interest to the city council? May the city's representative share information about closed-session discussions by the regional body? According to the attorney general, the answer is generally no.²

The opinion was issued in the context of deliberations by the Coachella Valley Mountains Conservancy. The conservancy is a regional body created by state law whose membership includes the mayors of a number of cities.

After noting that local agencies with representatives on the conservancy had no authority to participate in the conservancy's deliberations or closed sessions, the attorney general found that there was no authority to disclose closed-session, confidential information to the represented agencies' attorneys. The attorney general also observed that the local government open meeting law (the Brown Act) would not allow local agencies to discuss confidential information relating to the conservancy in their own closed sessions (because the Brown Act allows only closed sessions to discuss litigation in which the city or county is a party). The implication of the attorney general's opinion is that there was no way for the information to be disclosed in a way that would preserve its confidentiality.

As a general matter, a member of a governing body may disclose closed-session information only when authorized by the body as a whole.³ When such disclosure occurs, the confidentiality of the closed session then is waived for everyone.⁴ As a result, the information either remained confidential among the conservancy board members or was not confidential at all.

Footnotes

1 See 83 Cal. Ops. Att'y Gen. 263, 268 (2000) (finding the fact that a city had taken a position on an issue before the joint powers agency did not limit the appointee's authority to cast his vote as he saw fit, but noting that the appointing authority could remove the appointee if allowed by the joint powers agreement).

2 86 Cal. Ops. Att'y Gen. 210 (2003); *But c.f.* 85 Cal. Ops. Att'y Gen. 87 (2002) (finding no section 1090 issue when a joint powers agency contracted with city council member of member city); 83 Cal. Ops. Att'y Gen. 59 (2000) (finding no section 1090 issue when joint powers agency board member's spouse advises member agency on contract and observing that "[b]oth spouses have been appointed to further the best interests of the city.").

3 Cal. Gov't Code section 54963 (Brown Act); see generally *Kleitman v. Superior Court*, 74 Cal. App. 4th 324, 327 (1999).

4 *Kleitman*, 74 Cal. App. 4th at 324.