

Keep Calm and Call the Lawyer: Understanding the Role of a Municipal Solicitor

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Newly elected officials may be surprised to discover their votes and actions have legal implications. Preventing a resident from speaking at a public meeting may result in a violation of the First Amendment and a civil rights law suit. Failure to comply with the state Sunshine Act during a public meeting could invalidate Borough Council's official actions during that meeting. In some cases, an improper firing of a public employee could result in the violation of the employee's due process rights. In fact, a substantial part of an elected official's responsibilities involve legal questions. But, there is no need to worry. Keep calm, and call your borough's solicitor.

An elected official's interactions with the borough's lawyer, most often referred to as the "solicitor," will most likely be different than anything the elected official has experienced as a private citizen.

The purpose is to describe the types of issues on which a borough solicitor can advise an elected official, identify problems the solicitor can help resolve and provide a few tips on how to use a solicitor in a cost-effective manner.

■ Taking the Romance and Mystery Out of Everything

The late Justice Antonin Scalia reportedly said that, "[t]he main business of a lawyer is to take the romance, the mystery, the irony, the ambiguity out of everything he touches." When it comes to addressing municipal issues and advising elected official who are entrusted with making decisions about how to spend taxpayer money, Justice Scalia's portrayal of the legal profession's objective is apt. Ambiguity is detrimental when interpreting a lease or drafting a zoning ordinance—the clearer, the better.

A borough solicitor may be a solo practitioner or an attorney at a law firm. According to Pennsylvania's Borough Code, a borough solicitor must control all "[t]he legal matters of the borough."^[1] Specifically, it requires a duly appointed solicitor to provide the following services to the borough.

■ Ordinances

A borough solicitor must prepare or approve, if directed or requested to do so by council or the mayor, any ordinances to which the borough or any department of the borough may be a party. The Pennsylvania State Association of Boroughs, who publishes this magazine, and other local government associations are good resources for sample ordinances. However, sample ordinances are by no means one-size-fits-all. All draft ordinances, including sample ordinances, should be reviewed by the solicitor prior to being enacted.

■ Contracts, Leases, Deeds

Professor John F. Murray, a distinguished law professor who (quite literally) wrote the book on law contracts, once told a group of law students in his contracts class that "there would be zero need for contracts, if people kept their promises." If requested to do so by council or the mayor, the borough solicitor must prepare and/or approve any contracts, leases, or conveyances to which the borough or any department of the borough is a party.

Public projects ranging from sidewalk and street repairs to new computers for the municipal office require contracts that necessitate borough council approval. The Borough Code imposes contracting requirements that a borough must follow, including the obligation that "all contracts and purchases must be made with and from the lowest qualified and responsible

bidder.”[2] A borough solicitor is an elected official’s ally in selecting the “lowest responsible bidder” for a public project. Failure to do so may result in a lawsuit by a contractor claiming the borough violated the law by not selecting it for the job.

Clear, comprehensive request for proposals and contracts are essential in running the day to day business in a borough. Elected officials should not hesitate to call their solicitor to review any contract prior to its approval.

▪ **Bonds and Obligations**

Municipal bonds are debt obligations issued by a government entity to raise money to finance public projects such as streets, sewer systems, municipal buildings, and others. Your borough solicitor must handle bonds, obligations, and assurances that pertain to the borough. If your solicitor does not have the expertise with bonds, he or she may refer you to another lawyer to handle the paperwork and filings. This referral is permitted by the Borough Code and does not cancel your solicitor’s appointment.

▪ **File Lawsuits on Behalf of the Borough**

Just like a person, a borough can hold estates, rights, trusts, privilege, claims and demands. Sometimes, lawsuits are necessary to protect or enforce those interests, and that’s where your borough solicitor can step in. For example, the Municipal Claims and Tax Lien Act authorizes a borough to file a claim (or lien) against a resident’s property for unpaid charges for services provided to the property by or on behalf of the borough. The borough solicitor can help you file municipal claims (or liens) against these types of properties and collect unpaid amounts that are a drain to the borough’s budget.

▪ **Defend Against Lawsuits**

A borough, just like an individual or corporation, can be sued. When such a lawsuit is filed against your borough, the solicitor must defend the borough or any borough officer acting in his or her official capacity against all actions or suits in which any of the estates, rights, privileges, trusts, ordinances or accounts of the borough may be brought in question.

If your borough is insured against tort claims, and the lawsuit falls within the borough’s insurance policy, you may discover your solicitor will let the insurance company’s lawyer handle the case. This does not mean your solicitor ceases to have any participation in the lawsuit. You can always ask him or her questions about the case. Finally, while you may develop a trusting relationship with your solicitor, remember that they represent the borough only. A borough solicitor cannot defend an elected official or employee in personal matters.

▪ **Legal Opinions**

Upon request, a borough solicitor must give the council, the mayor or the head of a department an opinion in writing upon any number of questions of law. The law is constantly changing and our legislature passes new legislation every year affecting municipalities. A borough solicitor can be an elected official’s guide to understanding the Borough Code, new developments in the law, and how the law applies to a specific situation in the borough.

When borough council, the mayor, or department head requests an opinion on a certain issue, the solicitor will perform research and provide advice in writing for the matter requested. A practical word of advice is to provide the solicitor with all of the information that is available on the issue presented before requesting a legal opinion. (Many legal answers are fact-specific and if the solicitor is missing information on the issue presented, the solicitor’s opinion may be incomplete.)

▪ **Other Professional Duties**

A borough solicitor may also provide advice and direction on a number of other areas. Below are just a few.

Sunshine Act. The Pennsylvania Sunshine Act,[3] requires a borough council to deliberate and take official action on borough business in an open and public meeting. There are, however, exceptions to this rule and elected officials should be careful to understand when the exceptions apply. Violations of the Sunshine Act carry penalties of up to \$2,000. A solicitor can help the borough develop a policy to comply with the Sunshine Act. If such policy already exists, the solicitor may be directed to enforce it.

Right to Know Law. The Pennsylvania Right-to-Know Law[4] requires a borough to disclose a “public record” to any person who is a legal resident of the United States. What this means is that all public records by the borough can be accessed and reviewed by almost anybody in the country. What was designed to be a law that fostered open government has turned into a nightmare for many local agencies who are plagued with multiple requests everyday. However, like the Sunshine Act, the Right-to-Know Law has several exceptions—30 to be precise—that the borough can use to temper frivolous requests. A borough solicitor can train somebody in the borough office to process requests and review requests to determine if (or when) a legal exception may apply.

Labor and Employment. A borough solicitor, especially one who specializes in labor relations and employment, can save the day when it comes to drafting or negotiating a collective bargaining agreement, disciplining or discharging an employee, or developing an employee manual for the borough. There is an entire layer of laws that protect public sector employees that don’t apply in the private sector. For example, some borough employees may have a constitutional right to keep their job, often referred to as a “property right” guaranteed by the Fifth Amendment to the U.S. Constitution. An improper discipline or discharge could lead to a due process and civil rights claim against the borough that would cost thousands of dollars, including attorney fees.

■ Cost Saving Strategies

A borough solicitor charges legal fees (solicitors are not elected) so borough council members may wonder how to get the most for taxpayers’ money. A borough can maximize its legal fees by including the solicitor in the decision making process instead of waiting to call the solicitor after an employee sues the borough or a million-dollar construction project goes south.

Another cost-saving tip is to do ground work before assigning a project to a solicitor and agree on a deadline for the solicitor to respond. For example, before asking the solicitor to prepare or review an ordinance, a borough official or employee may research if there is a sample ordinance available, discuss the “nuts and bolts” of the ordinance at a committee meeting, and request input from department heads.

For additional information contact: Daniel Conlon, Robert McTiernan or Gavin Robb.

[1] 8 Pa.C.S. § 1116.

[2] 8 Pa.C.S. § 1401(b).

[3] 65 Pa.C.S. §§ 701-716.

[4] 65 P.S. §§ 67.101.