Small-City Councils and Their Part-Time Experts: Dealing with Attorneys and Engineers

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Illinois has hundreds of small municipal governments. Just in the nonmetropolitan areas of the state, there are almost 700 incorporated villages and cities with populations of less than 5,000 apiece. Serving a total of more than 600,000 residents, these small and largely rural municipalities are a major part of the local government apparatus in Illinois.

Rural governments resemble in many respects municipal operations in larger and more urban communities. They have similar basic programs and responsibilities — police and fire protection, water supply, streets, wastewater treatment, economic development, parks and recreation, etc. They are also entangled in many of the same kinds of intergovernmental programs, including state and federal mandates, and grants.

Where the small municipalities generally differ from larger ones, is in the ready availability of expertise and information for policymaking and management. Few small cities have even a chief executive officer, such as a city manager. They rely instead on city councilmembers and such generalist officers as city clerks for day-to-day administration and information gathering. Certainly their tiny bureaucracies lack the internal resources needed for such specialized purposes as legal advice, engineering, planning, and budgeting — forms of expertise that are provided by full-time specialists and even entire departments in big-city and large suburban governments.

To obtain advice and information in these and other areas of concern, the small municipalities turn to outside help. Legal and engineering services, the two forms of specialized aid most frequently required, are usually obtained through consulting arrangements. Because they are outside contractors, the attorneys and engineers who serve small governments have a different relationship to their municipal bosses than in-house officers and employees. The major difference is that such consultants are relatively independent, not subject to the same degree of administrative control as are regular city staff members.

With such an independent status, how do the outside experts get along with the city councils that employ them?

This paper examines the working relationships between councils and their part-time attorneys and engineers, using data from a study of four small municipalities in rural Illinois. Our study found that, while the small governments are in fact highly dependent on the outside expertise, the independent status of the consultants causes frequent tension and disagreement. The sources of tension, however, are not the same for attorneys and consultants.

Located in east-central Illinois, the four municipalities — three cities and one village — had 1980 populations of between 1,655 and 3,839 (see Table 1). Their mayors are "weak" in an organizational sense, and formal powers are largely in the hands of the municipal councils (4-8 members each). Councilmembers, generally as "commissioners" or chairmen and other members of small committees, participate directly in the administration of municipal services including some supervision of employees. In this report the four municipalities are identified by fictitious names: Grassland, Topcorn, Nativity, and Acorn.

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*The four municipalities were part of a larger study of resource use in twelve rural governments in two states, conducted in 1981-84. The research was supported by Cooperative Agreement 58-3195-1-0153X between the Economic Research Service of the U.S. Department of Agriculture and the Institute of Governmental Affairs, University of California Davis. IGPA housed the Illinois part of the project. Two counties and four municipalities each in Illinois and California constituted the research sample. Field researchers in Illinois were John Hamman, Kent Williamson, and Elizabeth Norville.

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WHAT THE CONSULTANTS DO

Part-time attorneys and engineers are employed by each of the four rural governments. They are hired and fired by the municipal councils and receive direction from these legislative bodies and the mayors. Most of their local contacts are with councilmembers and mayors, although they also advise and work with other municipal officials such as city clerks and public works foremen.

What specific tasks are performed by these outside experts? Obviously, the attorneys and engineers provide quite different types of expertise. Less obvious, but equally significant is the fact that their operating styles and personal relationships to municipal officials also differ.

The Attorneys

City attorneys spend much of their time drafting, reviewing, and interpreting local ordinances. Councils are often uncertain about the best way to proceed with non-routine actions such as the condemnation of local property or the issuance of industrial revenue bonds. They rely on their attorneys to clarify and articulate possible options and potential liabilities. One attorney summed up his activities by saying that:

[One part of the job] would be drafting documents which would take the form of ordinances, resolutions, or agreements that the city might enter with another person or governmental entity. We’ve been involved with condemning property for sewer improvements.

As city attorney, my main responsibility would be to advise the city council on any matters that come before them that have legal ramifications. They usually contact me through the city clerk. My general procedure is to take the question, make sure I understand the nature of the problem, which having lived there for some time usually is fairly easy... and I will render an oral opinion or a written opinion.

Occasionally the attorneys also handle more complex issues. At the time of our research, Grassland’s attorney was representing his city in major litigation, attempting to close and clean up a hazardous waste dumpsite which had qualified for the U.S. Environmental Protection Agency’s Super Fund program. Much of the attorney’s time was spent in consulting with state and federal officials. He had also taken a natural gas wholesaler to court to recover alleged overcharges to the municipal-owned gas utility, stemming from discriminatory pricing practices by the wholesaler. A few years earlier, the attorney for Topcorn had represented the city in its efforts to switch engineering firms for the design of wastewater plant improvements. Problems like these are outside the general practitioner’s usual area of expertise and frequently require extensive research and time. To be somewhat better prepared and more knowledgeable about developments in the field of municipal law, city attorneys attend seminars conducted by the nearby University of Illinois School of Law and often read materials published by the Illinois Municipal League.

Among the four communities, only one attorney has a formal contract with his council; the others work by verbal agreements. The attorneys average between five and ten hours a month on routine city business (each represents only one municipality); litigation, other major projects, and participation in council meetings are extra activities. All but one of the attorneys are compensated on an hourly basis; their rates are approximately $45.00 per hour. These rates are up to 25 percent less than those charged private parties for comparable assistance. The rationale is that councils are stable clients and punctual bill payers. The attorney of the largest community receives a retainer under a written contract; he is the only attorney in the sample who attends council meetings regularly.

Depending on the type of assistance, attorneys work with different local officials. When drafting new ordinances, or when called upon to render opinions on policy related questions, they are likely to work with the mayor or possibly a councilmember acting for the entire council. Most routine matters are dealt with quickly by a phone call or letter to the city clerks.

All four attorneys are general practitioners and are current or former residents of the communities they serve. Not surprisingly, they also have social, business, and political ties to councilmembers as well as other local officials. Occasionally this leads to a change of roles; for instance, Topcorn’s former municipal attorney now serves on that city’s council.

The Engineers

Unlike the attorneys, the engineers who serve these small municipalities are members of large firms (employing as many as 15-20 employees each), which specialize in work for municipal and other local governments. The firms are not directly located in the small cities, but have offices in nearby major urban centers — Champaign, Decatur, or Mattoon. Thus the engineers have relatively limited personal links to the officials who retain them, and they keep in touch mainly by phone and on an irregular basis.

Each of the firms is a multi-disciplinary operation, employing a variety of engineering and other specialists. One engineer, describing the services his firm could provide, said:

We are architects. We do civil engineering projects, which is my daily work, and we do mechanical and electrical engineer work, too. So we cover it all — municipal buildings, private buildings, public utilities, roads, drainage.

Working agreements are made between the communities and the firms on a project-by-project basis, and a cost ceiling is negotiated for each. If the arrangement works out, the firm may eventually become known as the city’s engineers, even though there is no formal contract. As indicated in Table 1, three of the four city engineers in the sample had worked for their cities for fifteen years or more at the time of the research. Work is done on large and small projects, including street repairs, water system improvements, parking lot construction, drainage, and renovation of municipal buildings.
greater physical and personal distance from the councils. The technical nature of their work may also protect them from community pressures. However, engineers can also become enmeshed in local disputes. A good example occurred in Topcorn when the council changed engineering firms in the middle of design work for multi-million dollar improvements in the wastewater treatment plant. Although the facilities plan (the first stage in an EPA-supported clean water project) prepared by the original consultants had already been accepted by the city and the state, the council commissioned an alternative plan from a second engineering firm and decided to engage it for the remainder of the project. The original consultants took the city to court and were awarded $20,000 for breach of contract. Unrepentant, one councilmember remarked, "All I can say, it's worth every penny of the judgment.'

While city officials were hesitant about discussing this chapter of council history, two explanations have been advanced by interested parties. One is a political explanation. The engineering consultant developed ties with an incumbent faction on the council that was later voted out of office. The newly elected members made an issue out of the expense and lack of progress on the wastewater plan. The consultant was squeezed out because of the narrowness of his political base.

CONCLUSIONS

Legal and engineering services are needed by virtually all municipal governments. For small cities, unable to employ full-time and in-house professional staff, the standard method for obtaining such expertise is to retain part-time consultants.

As this study of consultant-council relations in four small Illinois municipalities shows, the outside attorneys and engineers provide essential information and advice. They contribute to municipal policymaking as well as to routine administration, helping the city governments define issues, manage programs, obtain access to other expertise, and cut through the complexities of state and federal grant and mandate programs.

Yet the consultant-city relationship is an ambiguous one. While highly dependent on their part-time experts, the municipal councils at times are also distrustful and wary of the attorneys and engineers. Professional advice is not always accepted or appreciated, and sometimes the experts are blamed for the slow or unsuccessful resolution of difficult problems. Conflict between political leaders and their experts can of course occur in any setting, including large urban governments where the engineers and attorneys tend to be full-time employees. The added tension in small cities comes from the relatively independent position of the outside consultant. City leaders have very little control over the scope and terms of the experts' work, in large part because the consultants have other clients and flexible practices. Nor are they totally dependent on their municipal employers for financial security and career advancement. The lay citizen who serves on a small-city council is also less likely to have the wherewithal to assess the performance of specialists and to assimilate their information and advice. This situation is made even more difficult in small communities where there are no generalist administrators such as city managers.

Our observations in the four Illinois municipalities led to the conclusion that there are three primary sources of council-consultant tension: contrasting objectives, communications gaps, and local politics. Both engineers and attorneys are affected by political developments at the local level. Negative repercussions are most likely to occur if either kind of consultant becomes very closely allied with a particular faction and that faction is then voted out of office.

In small communities, politics is closely interwoven with what we have called community ties; the extent to which a consultant has such ties, will in some measure determine his ability to communicate effectively with the local council. A local attorney with close and long-standing ties to his community will probably be selected as the council’s legal advisor in preference to a newcomer, and as long as he does not get on the wrong side of a political battle he is likely to keep the position. Consulting engineers — from large, multi-skill firms located in some distant town — face a different set of problems. Tensions between them and their councils are most likely to erupt over poor communications — misunderstandings that develop precisely because the engineer is not a member of the local communications network — and over fundamental differences in the ultimate goals that each side has. Both kinds of problems arose during the design, funding, and construction of the wastewater treatment projects that all four cities undertook.

It should perhaps be pointed out that money plays an important role alongside (or in spite of) any of the three sources of tension we have cited. If there is a great deal of money, problems in communicating may never flare up to the point where heads have to roll. Take for example the experiences of consulting engineers to Topcorn and Grassland. Grassland completed its wastewater plant in a relatively short time and adhered closely to the recommendations of its engineers. It also had enough money for the project, possessing a relatively affluent revenue base (fortified by a municipal power distribution system). In Topcorn, however, the community’s ability to finance its wastewater project was a constant source of concern. And the engineers who began that project did not see their work completed, since they were replaced by another firm. While politics and poor communications certainly played a major part in what happened in Topcorn, money doubtless played a role as well.

Despite the tensions, councils and experts generally maintained smooth and productive working relationships over long periods of time. At the time of our research the attorneys in the sample had been working for their cities an average of four years apiece, while the engineers had an average tenure of almost fifteen years. Only two consultants have actually been dismissed in recent years — an engineering firm whose contract was terminated ostensibly because of cost problems in a wastewater project, and a city attorney who was let go after a new council was elected. Overall the part-time experts were major and effective participants in the governing process of these small cities.
Complaints about ambiguity are frequently heard from engineers who point to the difficulty of tying local officials down to specifics. While the engineers said they received adequate direction on general goals, they noted that the councils were not able to take decisive action on short notice. This was attributed to the councils’ limited knowledge and experience in major community projects. Several attorneys also mentioned councilmember indecisiveness as an obstacle to expeditious action. Tension is frequently generated when specific items in grant applications are being worked on, and the consultants push councilmembers to state their intentions clearly and specifically. An engineer we spoke with saw it this way:

Things go pretty smooth when they [councilmembers] recognize that you’re a professional, and ask constructive questions. The problems come up when they’re real risky and hands on, or completely out of touch and suspicious.

**Poor Lines of Communications**

That a healthy rapport and exchange of information between councils and consultants is necessary for the effective use of expertise really goes without saying. Problems in communicating with the councils are troublesome for both engineers and attorneys. One engineer described communication problems in wastewater plant expansion projects:

Normally, the problems in communication are concentrated in the preliminary part of it [facilities planning]. When you get into design and construction, things seem to be more specific, whereas they aren’t in the earlier stages, and communications can definitely break down.

The complex tasks encountered during planning, design, and construction of major wastewater plant improvements were a major cause of communication breakdowns between councils and engineers. Since the development of these projects consists of many sequential, interdependent steps, council disilluisionment towards the end of a lengthy project may lead to allegations of engineering errors and cover-up. Other small-town councilmembers may share the exasperation of the Acorn aldermen who disgustedly commented about projected construction overruns:

The council can get hurt on this thing; the contractor can get hurt on it; why, the only one who can’t get hurt is the engineer who rigged it up.

An engineer is also particularly vulnerable to criticism and blame when a third-party regulatory agency is involved. Strict state and federal water quality requirements irritated many councilmembers during wastewater treatment expansion projects. Councilmembers criticized engineers for not correctly anticipating changes in regulations as well as for “over-designing” projects that legitimately needed to be brought into compliance. Such contradictory criticisms prompted counter complaints from the engineers, who felt trapped like the Greek messenger of old — innocent themselves but condemned for delivering bad news. This is illustrated by the experience of a former engineering consultant for Topcorn. According to a colleague, the offending engineer failed to prepare the Topcorn council psychologically for the complexities, cost, and time required for a major wastewater plant project. When it became clear just how costly the project would be, the council decided to blame the complications on the outside consultant.

While their frustrations at being “caught in the middle” were no doubt valid in some cases, the presence of government regulators enabled some engineers to shift blame for a variety of deficiencies onto the backs of state and federal agencies. The key to winning this triangular game boiled down to convincing the small-city councils that the regulators were the uncooperative outsiders, and that the engineer was merely an instrument of the council’s will. No doubt, one’s perspective in large part determines the validity of these criticisms. It is true that federal and state standards and grant availability do change with time. How well these are anticipated and conveyed by the engineers to the councils bears directly on the smoothness of council-consultant relations.

A different kind of communications gap faces attorneys who try to get their city councils to consider the legal ramifications of particular actions or to prepare for anticipated lawsuits. Despite the cautions of their legal advisers, many small-town councilmembers are unwilling to tackle such problems seriously. They are seen as hypothetical or “what if” situations, not worthy of the same attention as more practical, everyday problems.

Generally, however, attorneys have fewer difficulties than engineers in communicating with small-city governments. This is due in part to the fact that the two positions have different sorts of ties to the local government, a point we made earlier. Since the legal experts tend to have local ties and to be familiar with community issues and idiosyncrasies, they fit neatly into the informal operations of small municipalities. Just how important these ties can be is illustrated by an example from Nativitv, which had to look for a new attorney after their old one moved out of town. In his place the council hired a former resident who had moved his office back into town. The new city attorney continues to be a member of the local Jaycees and Chamber of Commerce and maintains lifelong friendships with several councilmembers. As all of the parties involved noted, the appointment was only natural, and everyone was happy with it.

Finally, it should be noted that all four attorneys in our sample were general practitioners and had no other municipal clients. As a result, their advice and information were usually tailored to the cities’ unique situations.

Dealing with more technical forms of expertise and serving numerous local government clients, the engineers function on a less personal basis. They tend to standardize their consulting work, giving different communities similar answers — such as wastewater project designs — to perhaps qualitatively different problems. As more distant technicians, not as sensitive as the attorneys to local conditions, the engineers are less effective in communicating information and advice to the councils.

**Politics**

Local political developments can have a profound effect on both the local city attorney and the consulting engineer from some distant community. The greatest danger — if the experiences from our small sample of communities hold true for others as well — lies in a change in council membership. A good example of this may be seen in the fate of a former Grassland attorney who had been associated with councilmembers, who in turn wound up on the losing side of a controversial effort to build a municipal swimming pool. The ostensible reason for his replacement by the newly-elected council was that his rates were too high. Interviews revealed, however, that his close association with the losing coalition was at least partly responsible.

Engineering consultants to small cities may be somewhat better insulated from such local developments because of
One type of project that all four cities were involved in was the design and construction of a new or improved wastewater treatment facility. This happened as a result of federal and state clean water requirements enacted during the 1970s for community sewer systems. These million-dollar-plus projects are easily the most expensive and complex construction activities ever engaged in by small cities. In addition to preparing plans and overseeing the contractors, engineers have helped cities apply for and administer the grants needed to finance the wastewater projects and serve as liaison with the state and federal agencies that enforce the regulations and administer the grant programs.

The average time spent on any particular community’s business varies considerably depending on the nature of the project. One employee estimated that his firm put in a little over 300 hours in the course of a year to complete the facilities plan required for the phase 1 grant of the community’s wastewater project.

As is true of the lawyers, the engineers maintain contact on routine matters through the city clerk. The engineering firms also communicate regularly with the employee in charge of operating the municipality’s water and wastewater facilities. These operators, who are certified by the state, are able to provide technical information to the engineers.

Engineering consultants usually attend only those council meetings at which their projects are being discussed. Once a council has initiated a project, both parties usually find it necessary to place aspects of it on the agenda. On relatively routine undertakings, such as parking lot or street repairs, this may simply mean presenting and justifying bills, or giving progress reports. On more complex projects, such as the wastewater facility improvements, considerable time is often spent defining alternative designs and funding strategies. As a major project progresses, some changes in the original material and design specifications usually have to be made. These too require council approval. If time is of the essence, the mayor may contact an engineer directly and resolve an issue before the city council meets.

Normally one member of a firm is assigned to a project. The liaison person may call on other members of the firm if assistance is needed. This is often the case in wastewater projects where details pertaining to both grant administration and facility construction have to be managed.

HOW THEY CONTRIBUTE TO THE GOVERNING PROCESS

Consulting engineers and attorneys assist their city councils and officials in numerous ways. They (1) help to define goals and issues, (2) provide continuity and direction in completing major undertakings, (3) provide access to other outside expertise, (4) absorb uncertainty, (5) serve as scapegoats for unpopular actions, and (6) provide general technical and administrative assistance.

Small-town councils sometimes do not know what they want done, which makes the goal-definition task that much more critical for the consultants. A good illustration of this is the tremendous difference between wanting an economical expansion of a wastewater treatment plant and obtaining a grant to complete the project. An engineering firm’s expertise and the experience gained from similar projects elsewhere brings continuity and focus to the process. The consultants can also tap other more specialized outside sources, as Grassland’s attorney did when he called in state and federal officials to help close and clean up the chemical waste site situated on the outskirts of the community.

Consultants are able to relieve councils of some of the responsibility of implementing unpopular state and federal mandates. For example, the engineering consultants helped the Nativity council justify the installation of new equipment in the water plant that would eventually be required by state health authorities. Sometimes the consultant—wittingly or unwittingly—serves as a scapegoat for local government officials, drawing the blame for problems that appear upon completion of a particular project. The dismissal of the first engineering firm that worked on the Topcorn wastewater project is a good example here.

Finally, consultants are often called upon to assist with a broad array of administrative tasks, from writing grant proposals to interpreting procedures. In Nativity and Acorn, city attorneys recently recodified local ordinances which had been recorded over the years in serial order. Engineering firms administer the wastewater grants received by small cities, which means handling the bulk of paperwork and routine contacts with state officials. As a result of their longstanding contacts with the small cities, and the files they keep on the communities’ physical plants, the engineering firms also monitor the condition of the water and sewer systems.

SOURCES OF COUNCIL-CONSULTANT TENSION

The relationship between the consultants and the small city governments is not always a smooth one. Tension often occurs between the producers and consumers of legal and engineering expertise. The tension may come about because councilmembers distrust the consultants and doubt the value of their advice. The result may be that major projects are delayed or that expert advice and information is ignored. Sometimes consultants and their municipal bosses even part company, as occurred in several of our communities in recent years. Generally, however, the consultants serve their cities for long terms, as shown in Table 1.

Recent events in the four Illinois communities suggest the following three sources of consultant-council tensions.

Contrasting Objectives and Ambiguity

Perceptions of goals and objectives can differ markedly between communities and their engineering consultants. These differences seem to result from inherent differences in the interests of the two parties as well as a more general inability to come to terms on exactly what is to be done. For example, the city of Nativity found it difficult to get a grant to help finance the expansion of its wastewater treatment plant. The council worked with its engineers for more than two years to devise an acceptable proposal. Once, against the advice of the consultants, the city submitted an application which was rejected by the state EPA. Focusing on a short-term objective, the council sought to complete only the specific improvements necessary to get a state-imposed sewer ban lifted so that it would be more attractive to industry. The consulting engineers and state officials, however, were interested in longer term objectives, including the expansion of the plant’s capacity to accommodate future growth. This would have required a more expensive project than the community desired.

Nativity councilmembers felt the engineers were insensitive to their particular situation, an observation repeated in other cities. The Nativity council recognized that the more expensive alternative would give the community a better plant in the long run, but they were fearful of the sharp increases in service charges (and possibly taxes) that would be required for the local part of construction costs and for the added maintenance of a larger plant.