Dealing with High-Level Personnel Matters

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Framing the Issues

- A "separation of powers" concept exists in most municipalities that have a Manager/Administrator framework in place
  - Council/Board: Governance
  - Manager/Administrator: Administration
  - Council/Board directs its Manager/Administrator and its other direct reports; rest of staff is managed and supervised by and through the Manager/Administrator
  - "No interference" provisions are in place in many home rule charters

Typical charter provisions

A typical charter (yours may vary) provides for "separation of powers" as follows:

- Council/Board is "the legislative and governing body" of the City/Town
- All departments of the City/Town are "under the supervision and control of the City/Town Manager/Administrator"

Typical Charter Provisions

Charters that establish a City/Town Manager/Administrator format typically contain "no interference" language along these lines:

- "Neither the Council, its members, the Mayor, nor any council committee shall dictate the appointment of any person to office by the Town Manager except as otherwise provided in this Charter or in any way interfere with the Town Manager or other Town officer exercising judgment in the appointment or employment of officers and employees in the administrative service."
- "Except for the purpose of inquiry, the Council, its members, the Mayor and any Council committee shall deal with the administrative service solely through the Town Manager and neither the Council, its members, the Mayor, nor any Council committee thereof shall give orders to any of the subordinates of the Town Manager."

Statutory Municipalities

- Statutory Towns: CRS 31-4-301 et seq. is silent on "separation of powers" concepts but recognizes a town's authority to hire a town administrator
- Statutory Manager/Council Cities: CRS 31-4-212 contains "no interference" provisions similar to those found in home rule charters
- Statutory Mayor/Council Cities: CRS 31-4-102 provides: "**The mayor of the city shall be its chief executive officer and conservator of the peace**, and it is his special duty to cause the ordinances and the regulations of the city to be faithfully and constantly obeyed. He shall supervise the conduct of all the officers of the city, examine the grounds of all reasonable complaints made against any of them, and cause any violations or neglect of duty to be promptly corrected or reported to the proper tribunal for punishment and correction."

When the "separation" can become problematic…

Maintaining the "separation of powers" has become an area of confusion or contention in many municipalities, especially in personnel matters:

- One or more elected officials may wish to reach below the level of the Council/Board's "direct reports"
- One or more employees may wish to reach up past the level of their supervisors and/or Manager/Administrator and pull one or more elected officials into employee matters

When the "separation" can become problematic…

- There may be a sense of unease on the part of the Council/Board with maintaining the separation
  - Council/Board may perceive an information vacuum about what is happening below the level of its direct reports
  - Signs of possible unhappiness or unrest may be present – seemingly high turnover, etc.
  - You may hear things through the "rumor mill"
  - Actual reports – complaints -- may surface up to Council/Board
- For whatever reason, some or all of the Council/Board may want to make a change in one or more of its direct reports

When the "separation" can become problematic…

Breaching the "separation" will create its own concerns:

- Violation of the established governance/administration structure
- Potential for creating chaos in the chain of command
  - Once broken, very difficult to re-establish
  - Manager/Administrator and Supervisors can become disempowered
  - Council/Board can be put in the position of dealing with "ground-level" issues that divert it from its own goals and priorities
- Liability concerns
  - Venturing outside your respective "job descriptions" can lead to personal liability

When the "separation" can become problematic…

- Despite those concerns, there may come a time when the Council/Board cannot avoid dealing with personnel issues at some level
- The pivotal issue is how to become involved appropriately while maintaining the "separation of powers" and avoiding the negative consequences

Strategies

- First, identify whether *any* level of involvement is in fact appropriate
  - Understand that there are relatively few scenarios where involvement *is* appropriate
  - If your concern is "100 percent employee satisfaction," that is an unachievable goal!
  - If you are responding to the rumor mill, that may not be an accurate reflection of reality

Strategies

- Actual complaints about your direct reports, especially those that could implicate legal or policy requirements, *are* a different matter – doing nothing is *not* an option – and you will need to uncover the reality
  - For such matters, an investigation by a neutral outside investigator may be appropriate
  - Findings could range from "allegations have no merit," "there are management concerns but no City/Town policy violations," "there appear to be policy violations," "there are concerns about civil law violations," "there are concerns about criminal violations," etc.
- The findings will drive your next steps and guide your appropriate level of involvement

Strategies

So let's say you've determined some level of involvement is appropriate. What do you do?

- Path is relatively clear with some findings (e.g. "meritless allegations," "concerns about criminal violations"), not so clear with others (e.g., "some management concerns")…
- Assuming your concerns may fall into the "not so clear" areas…
  - Don't take over the job of the Manager/Administrator. Instead, approach any involvement from the "governance" standpoint: what is our responsibility as the governing body?

Strategies

Responsibilities could include:

- Establishing/reiterating organizational values that you expect to be followed at every level in the organization?
- Establishing "boundaries" of conduct that must not be crossed?
- Setting clear and measurable performance expectations for your direct reports?
- Conducting regular performance evaluations of your direct reports?
- Including in your performance evaluation of your direct reports components that measure whether/how those expectations have been met?
- Ensuring a process for "recourse/escalation" exists for individuals who believe that "values" and "boundaries" are not being respected?
- Establishing a monitoring function?

Tricky Areas

- Recourse/escalation and monitoring are likely to be especially tricky areas and may implicate the concerns noted above about breaching the "separation")
- If not done carefully, you may end up more at "ground level" than you intended, or the mechanisms you set up may not be effective or credible

Tricky Areas

- You do have resources that can help you stay off of "ground level" and assist in building effective and credible "recourse/escalation" and "monitoring" functions
  - Your City/Town Attorney, who is likely another "direct report"
  - Your Human Resources Department
    - Can provide leadership and guidance in the development, implementation, and equitable administration of personnel policies and procedures
    - Should be empowered to foster a positive work environment, and earn and maintain the trust and satisfaction of the employees as well as the respect and trust of those who manage and govern the organization
  - Outside consultants
  - CIRSA

Got Model?

- Even with those resources, navigating personnel issues is still a tricky area for governing bodies
- Could "Governance" models help?
- Let's look at a couple…

Governance Models

- John Carver's work on "Policy Governance" is a well-recognized model for board governance
  - Addresses many common and recognizable inefficiencies in board-staff relationships
  - Carver, Boards That Make A Difference (2006)
  - http://www.carvergovernance.com/model.htm
- More recently, Ken Schuetz has built on and added some dimensions to Carver's work with the "Aligned Influence" model
  - The "Aligned Influence" model doesn't just carve out spheres of authority for board versus CEO, but recognizes that the two are aligned, and that the unique roles of each are carried out *collaboratively*
  - http://www.alignedinfluence.com/ComparedAndContrasted.php
  - http://www.alignedinfluence.com/index.php

"Policy Governance"

Key Carver concepts:

- **Ends versus means**: Council/Board determines the "ends," and Manager/Administrator and staff determine and carry out the "means" – in other words, you set the goals and priorities, staff determines how to carry them out
- **Executive limitations**: Council/Board sets forth the boundaries of ethics and prudence, in carrying out the means, beyond which the Manager/Administrator and staff must not cross. As long as those boundaries are not crossed, you don't question the "how" by which your goals and priorities are carried out
- **Board-staff linkage**: Council/Board determines the manner in which it delegates authority to staff, how it will evaluate staff performance (in achieving the "ends" and meeting the executive limitations)
- **Governance process**: Council/Board determines its own philosophy, the specifics of its own job, and its accountability

Aligned Influence Basics

Board's Role:

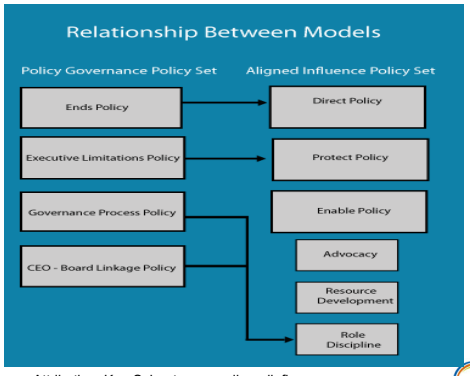
- ***DIRECT***
  - identifying the product, service or value to be created or delivered by the organization
- ***PROTECT***
  - establishing appropriate operational boundaries
- ***ENABLE***
  - Advocating for and developing resources for the organization
  - Maintaining discipline to their role ("role discipline")

Manager/Administrator's Role:

- ***LEAD***
  - Future-focused planning
- ***MANAGE***
  - Now-focused policy and procedural development
- ***ACCOMPLISH***
  - accomplishing the work defined by the Board

"Policy Governance" v. "Aligned Influence"

- Policy Governance has its adherents and its critics
  - One common critique is that it "disconnects" the Council/Board from the heart of the organization or creates/maintains an artificial separation between the two key spheres of authority (Council/Board and Manager/Administrator) in the organization
  - Another is that it is primarily a model for board development, not for Manager/Administrator/staff development
- Aligned Influence model "yokes" together the Council/Board and the Manager/Administrator in a continuing engagement and develops both in an aligned effort to move the organization forward



Attribution: Ken Schuetz, www.alignedinfluence.com

So where might Aligned Influence take you?

- Your staff is as much a resource as other organizational assets are
- So with respect to personnel-related concerns, revisiting/articulating your "ends"/"direct" policies and your "executive limitations"/"protect" policies may be in order

Examples of "Protect" Policies

- "The Manager shall not cause or allow any practice, activity, or decision that is unlawful or illegal"
  - "With respect to the treatment of staff, the Manager shall not cause or allow conditions that are unfair, unsafe, insecure, or unclear, provide for inadequate confidentiality or lack procedural clarity for recourse or escalation"
    - "The Manager shall not operate without written personnel policies that clarify personnel rules and regulations for staff"
    - The Manager shall not fail to provide an escalation policy to those who believe they have not been appropriately served according to this policy"
      - "The Manager shall not fail to establish a formal process for reporting complaints without retaliation"

Examples of "Protect" Policies

- "The Manager shall not permit the Council to be uninformed or unsupported in its work"
  - "The Manager shall not fail to submit monitoring data required by the Council in a timely, accurate, and understandable fashion, directly addressing compliance with the Council policies being monitored"
  - "The Manager shall not let the Council be unaware of relevant trends and material operational changes"

Aligned Influence

- "Protect" policies are written in the "negative" ("shall not fail") because the world of affirmative ("positive") acts is potentially unlimited and therefore impossible to capture in its entirety, while negative proscriptions are clear boundaries that must not be crossed
- "Protect" policies can establish organizational values (e.g. fairness, safety, security, clarity), basic requirements to ensure those values are carried out (e.g. personnel policies, recourse/escalation process), and a monitoring function to ensure accountability
- Note: "Aligned Influence" is a holistic model, and will take time and the expertise of its author to understand and implement
  - The foregoing are drafts that CIRSA is working on for itself; each organization's policies would reflect its own needs
  - CIRSA example: 2-3 hour introduction at Board retreat; 6-8 hours to develop "Direct" and "Protect" policy drafts; additional staff time and Chairperson/Executive Director time expected

Who Else Can Help?

- There may be issues of "style" that have substantive impacts on communication, leadership, relationships, motivation, etc.
- Training and coaching on these matters may be helpful
  - Could potentially be extended to every level of the organization, from Council/Board to Manager/Administrator to management team to the rest of the employee group
  - One-on-one coaching might be appropriate for some positions

Social Styles

- "Social Styles in the Workplace" is a useful workshop, especially for an organization's leaders – Phil Bryson, www.ontheedge.com
- Divides social styles into "Driver," "Expressive," "Amiable," and "Analytical" (primary and secondary styles), provides insights into each style, and suggestions for dealing with others' styles

Other Issues: It's Not Us, It's You

- Most Managers/Administrators (and other direct reports) understand their profession carries the risk of a sudden and unforeseen "expiration date" in their positions, and plan accordingly in their employment agreements
- A good employment agreement with a fair and reasonable severance will allow everyone to walk away gracefully
- Call your City/Town Attorney
- CIRSA can be a resource, too

Other Issues: It's One of US!!

What if a staff member accuses a member of the COUNCIL/BOARD of harassment or other misconduct??

- This is perhaps the trickiest of personnel issues you may encounter
- The most important thing to know is that "doing nothing" is not an option!
- Difficult issues to be sorted out include:
  - What enactments apply? Personnel policies?
  - Who will investigate?
  - Who will impose "discipline" if the complaint is determined to be well-founded?
  - In what setting will the "discipline" be imposed? The open meetings law does not permit the luxury of taking a member "to the woodshed" privately.

Other Issues: It's One of US!!

- Governing body may need to have a process in place for "disciplining" their own
  - Example: process for public censures
  - Charter provisions may spell out
  - Council Rules of Procedure/Conduct
- Obtain the assistance of your City/Town Attorney!
- CIRSA can also be a resource

Other Issues: Statutory Town, problem with "Officer of the Town"

- Statutory town boards appoint/reappoint" the "officers of the Town" (e.g. clerk, treasurer) following the April regular election.
- What if the reappointments take place routinely, and you didn't really have it on your radar that there were issues?
- And then in June, you come to the conclusion that one of your "officers" needs to go.
- What do you do?

Other Issues: Statutory Town, problem with "Officer of the Town"

- Removal of "officers of the Town" is governed by 31-4-307, CRS
- No removal may be made without a charge in writing and the opportunity for a hearing
- Old cases interpreting this section as applied to elective officers create some questions as to what causes are sufficient to remove
- A timely non-reappointment may also not be risk-free
- Contact your Town Attorney
- CIRSA can be a resource, too

Dos and Don'ts

- Be prepared to pay a reasonable severance: **"Money is the oil that can calm the turbulent waters of a difficult separation."**
- What is a "reasonable" separation?
  - It depends. ☺
  - Factors include: the existence of an employment contract; the duration of employment; the level of the position, etc.
  - The higher the level of the position, the greater the understanding of the need to move on…but the price of that may be a reasonable severance
- Don't try to "cheap out" on a severance that's due contractually.
  - Trying to negotiate off a few months from what's due is not worth the extra turbulence you will cause.
  - Trying to deny severance by going the "for cause" route may not be worth the extra trouble, if you don't have really, really good cause
- Make sure employment agreements have been reviewed by counsel before finalizing
- Either write an "acceptable release" requirement into the contract as a condition of severance, or be prepared to pay a little more to obtain a release, if one seems warranted.
  - This is where CIRSA may be able to help, if you have contacted us early and opened a claim file.

Dos and Don'ts

- When dealing the potential separation of someone who reports to you:
  - You MUST follow your established policies to the letter…charter, ordinances, resolutions, policies, contractual provisions, state statutes
  - You write the rules…failure to follow those rules will be held against you!
  - If a separation is the only solution, look for ways to script an exit with dignity and compassion
  - Consider the use of an outside consultant if there is an issue that legitimately requires an investigation, audit, or management review
  - Be very mindful of competing requirements for transparency and confidentiality where personnel matters are concerned
  - Be aware of timing, especially where the potential for retaliation allegations exists
  - Understand that the time it takes to solve a problem needs to be commensurate with the time over which the problem developed…there may be no instant solutions
  - Contact your City/Town Attorney BEFORE you take action!
  - CIRSA can be a resource, too.

Dos and Don'ts

- Contemplate exit issues at the time of entry
- Have in place an ambiguity-free employment agreement that sets out a reasonable process for no-cause separation
- Have a reasonable severance in place for a no-cause separation
- DO NOT let the agreement lapse!
- Don't waive the performance evaluation!!! it is an opportunity for open communication on issues that may be festering

Dos and Don'ts

- CIRSA members are welcome to contact us BEFORE you take action on high-level personnel matters
- We may bring a different perspective to the situation
- It's much harder to undo an action that may not have been fully thought out, than it is to create and implement a comprehensive and well-thought out strategy
- We have assisted our members in many difficult personnel situations
- By opening a claim file, you have an experienced attorney assigned to you, fees and expenses are charged to the file (after deductible), and in the event of a claim, the deductible may have been satisfied
- Win-win-win is possible!!

Conclusion

- Be sure you have a firm handle on the *reality* of the situation
- Ascertain whether your involvement in the situation is appropriate
- If so, determine what path needs to be taken
- Decide whether to go it alone, or with outside assistance

Let's Play THE HYPOTHETICAL GAME!

Hypothetical: Performance issue, department head

- You've heard "through the grapevine" that one of your department heads has major performance issues that are affecting departmental productivity and morale.
- A few employees within the department have come to you to share their deep unhappiness.
- Some members of the community have also made snide remarks to you about the department head.
- The Manager's been on board for only a few months, and the department head has been there for 25 years.
- What do you do?

Hypothetical: Performance issue, direct report to governing body

- You are hearing reports that the municipal judge has started having a lot of problems
- You hear he's almost always late for court sessions, and on some occasions he has been a complete no-show
- You've heard the police chief and town attorney say that some of his rulings seem to come out of left field
- You sit in on a court session and are shocked to hear him yelling at several defendants in a row.
- The judge is an appointee of the governing body, and your board has just re-appointed him for a two-year term
- What do you do?

Hypothetical: Group of employees complains about Manager

- You get a letter from someone claiming to be "President of the Concerned Employees"
- The letter alleges that the whole City is mismanaged, that morale is at an all-time low, and that there is widespread gender and age discrimination practiced by the Manager. Some specific examples are given that seem to ring true
- The writer claims to be writing on behalf of 50 unnamed City employees who are terrified to come forward
- What do you do?

Hypothetical: Elected official

- Your new mayor seems to have an expansive view of her authority. She ran on a platform of "cleaning up" city government. She involves herself in administrative matters. She insists on attending weekly department head meetings. She has told employees to call her directly and bypass the Manager. She sometimes gives orders to employees.
- Everyone is unhappy, including the rest of the Council and the Manager. But she seems to have a particular vendetta against the police chief, and has raised with the Council the idea of eliminating the police department and contracting with the sheriff for law enforcement services.
- Your police chief stops you on your way in to a Council meetingHe says, "I believe the mayor is out to get me. Before she became mayor, I used to go to the bar she owns. One evening, she propositioned me, and I turned her down. She's hated me ever since. I think she's retaliating against me for that."
- What do you do?