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Manual for Municipal Secretaries

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Manual for Municipal Secretaries

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I. Office of the Secretary

City clerks and borough and township secretaries are both public officers and employees of the municipality. A municipal officer is one who occupies a permanent position of trust and responsibility with definite powers and duties. As an appointed public officer, the secretary's formal status is defined in state laws and local ordinances, resolutions and policies. Significant differences in the office exist from place to place because of variations in law and local arrangements.

This manual deals with the office of secretary to the extent it is defined in the municipal codes. For those municipalities operating under home rule charters, optional plans and optional third class city charters, the role of secretary can be considerably different. While some parts of the manual may be useful, secretaries in these communities should be careful to differentiate those portions of the manual not applying to them.

Informal factors also create wide differences in the status of secretaries, even within the same class of municipality. Aside from state legal provisions, the status of the secretary is affected by local legislation and practice, expectations of the general public and administrative actions by federal, state and county agencies. Local custom, attitudes and political practices are another principal source for the great variety in the role of the secretary in municipal operations.

Appointment

Secretaries are appointed by the governing body of the municipality. In boroughs and townships, secretaries are appointed for indefinite terms and serve at the pleasure of the governing body. Second class township secretaries are reappointed at each organization meeting. Only city clerks have a specified term of office. They are appointed for a four-year term, starting on the first Monday of May every fourth year.¹ Incumbent clerks remain in office until a successor is appointed.

Oath. All municipal officers, including secretaries, must swear or affirm to support, obey and defend both federal and state constitutions and exercise the duties of office with fidelity.² The codes for cities and townships contain specific provisions for an oath of loyalty and fidelity. Oaths of all officers must be filed with the municipal secretary within ten days after appointment.

Bond. State law does not specifically require municipal secretaries to be bonded as in the case of treasurers, tax collectors and others. The codes give the governing body discretion to require a bond. Bonding is advisable when the secretary handles public funds.

Dismissal from Office

Municipal secretaries, as public officers not under civil service, may be dismissed by the governing body for any reason and at any time. Article VI, Section 7 of the Pennsylvania Constitution provides "appointed civil officers . . . may be removed by the power by which they shall have been appointed." Such removal may be without cause, as well as without notice. Protections of the Local Agency Law do not apply to appointive offices held at the pleasure of the appointing authority where the employee has no expectation of continued employment guaranteed by contract or statute.³

Qualifications

There are currently no statutory qualifications for the office of municipal secretary. Prior to 1999, the only statutory qualification appeared in the First Class Township Code, requiring the secretary to be a registered voter of the township.⁴ In addition, no one may be appointed secretary who has been convicted of embezzlement of public monies, bribery, perjury or other infamous crimes.⁵ Some other informal qualifications are often applied to secretaries by local practice. Citizenship is not required, but this is virtually universal in fact. Residence also is the common, if not universal, rule.

Incompatible Offices

Holding of more than one public office at the same time is not in itself illegal. The General Assembly has authority to declare by law what offices are incompatible, and in some instances it has done so. Secretaries may hold any other public office not declared incompatible. Offices commonly held by secretaries include zoning officer, health officer, various kinds of inspectors, collector of some Act 511 taxes and secretary of a variety of local boards, commissions and other municipal agencies.

Positions secretaries are specifically authorized by law to hold include:

1. In cities, boroughs and townships, the secretary may be a member of the planning commission⁶ or zoning officer.⁷
2. In cities, the clerk may be a member of the pension board for nonuniformed employees.⁸
3. In boroughs, the secretary may be manager, street commissioner, treasurer or chief of police.⁹
4. In second class townships, the secretary may be a member of the board of supervisors and/or treasurer.¹⁰

Positions a secretary may not hold include:

1. In cities, boroughs and townships, the secretary may not be a member of the U.S. Congress or a federal employee or officer¹¹ nor a member of the zoning hearing board.¹²
2. In cities, the clerk may not be a member of the board of health¹³ nor the civil service commission.¹⁴
3. In boroughs, the secretary may not be a member of council nor the mayor¹⁵ nor a member of the civil service commission.¹⁶
4. In first class townships, the secretary may not be a commissioner¹⁷ nor a member of the civil service commission¹⁸ nor the treasurer.¹⁹
5. In second class townships, the secretary may not be a district justice.²⁰

Assistant Secretary

The Borough Code, First Class Township Code and Second Class Township Code authorize governing bodies to appoint an assistant secretary by resolution.²¹ The Third Class City Code has no specific provision, but council could do the same under its authority to create offices and appoint all city officers and employees.²²

Except in third class cities, the assistant secretary may be a member, but not another officer of the governing body. If a member, the assistant secretary receives no compensation, except in second class townships where compensation can be paid not to exceed that of the absent regular secretary. In all cases, assistant secretaries temporarily perform the duties of the office in the absence or disability of the secretary.

Compensation

Compensation for secretaries is fixed by the governing body, but the procedures vary. In third class cities, compensation is fixed by ordinance at any amount deemed adequate by the council.²³ Borough councils also fix the amount of compensation.²⁴ The method varies, with a simple recorded motion or resolution being most widely used.

The secretary's salary in first class townships is fixed by ordinance or resolution of the board of commissioners.²⁵ The supervisors of second class townships determine the amount paid to the secretary as compensation, except where a supervisor serves as secretary the compensation is fixed by the auditors.²⁶

Additional compensation may be paid for other offices held by the secretary on appointment of the governing body. The secretary's compensation may be increased or decreased by the governing body at any time, but it is most commonly set at the time of appointment.

Expenses. While the other codes are not as explicit, the Borough Code clearly authorizes the council to pay legitimate authorized expenses of elected or appointed officers in connection with their duties or other municipal business.²⁷ All four codes are clear in authorizing payment to secretaries to cover expenses for travel to and attendance at meetings of local, county and state associations, other professional conferences and training sessions.

It is reasonable to cover all legitimate expenses of officers or employees while engaged in public business. Expenses are usually justified if the purpose is directly in the interest of the municipality, is related directly to the duties of the office and is reasonable in amount based on local standards. In most cases, unusual expenses should be approved in advance by the governing body. When using a personal vehicle for municipal business, secretaries may request mileage reimbursement. Such reimbursement must be made at a uniform rate set by the local governing body.²⁸

Retirement. Differing retirement plans are available to secretaries and other appointive officers at the discretion of the governing body. Secretaries of all jurisdictions may be covered by Social Security by action of the governing body. If not covered by a local retirement system, municipal employees, including the secretary, must be covered by Social Security. Secretaries may be covered by group annuity or pension contracts established by the governing body. If the municipality elects to participate in the Pennsylvania Municipal Retirement System, the secretary can be included. Third class cities can create their own pension funds for nonuniformed officers and employees or establish independent retirement systems.

Sick Leave. The secretaries of all political subdivisions may be granted sick leave by local regulation. Practice varies throughout the state.

Sometimes the amount of sick leave with pay is based on the length of service, while elsewhere uniform leave is applied equally to all appointive officers and employees. Some municipalities pay full compensation for a fixed period and partial for a specified additional number of days. It is not uncommon, in recognition of long and faithful service, to continue full or partial paid leave almost indefinitely in the event of extended illness or incapacity.

Military Leave. Under state law, all officers and employees of any political subdivision who are members of military reserves are entitled to 15 days paid military leave each year.²⁹

Insurance. Municipal employees are covered by unemployment insurance and workers compensation. In addition, the governing bodies can provide life, health, hospital, medical and surgical and accident insurance to employees and their dependents.³⁰

Vacation. Under authority to fix compensation, hours and other conditions of employment, governing bodies may provide as benefits vacations, holidays and special or emergency leave, with or without pay, or allow compensatory time off.

Extent of Authority

A secretary is a municipal officer and possesses only authority and powers conferred by state law, local ordinance or other municipal regulations. The secretary's duties are both ministerial and discretionary. Ministerial duties are those mandated by law or ordinance and leave no choice as to whether or not the secretary will perform them. Thus, when a statute or ordinance requires the secretary to record and preserve the minute and ordinance books, file the oaths of public officers or submit reports to state agencies by a specified date, the secretary must do so. A discretionary duty is one where the secretary must exercise judgment in deciding the course of action. An example of a discretionary duty is issuing a permit. The secretary must determine if the applicant fulfills the criteria set by the ordinance.

Many secretaries exercise only duties specifically mandated by law and routine clerical duties. But governing bodies often rely on their experienced secretaries to exercise responsibilities of the board or council. The question is where the line should be drawn. No governing body may legally delegate any of its legislative power. Administrative authority, such as the authority to make certain purchases without prior approval, may be delegated, as may the authority to formulate regulations within the scope of guiding standards.

Secretaries should exercise caution in making and carrying out decisions which may border on or exceed their authority. Reliance on the secretary's ingenuity or personal knowledge of what the board will tolerate is a hazardous approach. Certainly, if secretaries perform an act without explicit prior approval, at least they should seek assurance that the act will be officially ratified at the next meeting. Better still, the secretary should obtain prior approval where possible. If a written job description has been developed and approved for the secretary, the extent of decision making authority can be outlined in that document.

Supervision of the Secretary

One of the most difficult problems faced by secretaries is the question of to whom they are directly responsible. The uncertainty arises from vagueness or inconsistencies in the codes, as well as the failure of local authorities to set and adhere to a definite policy.

As municipal secretaries are appointed and are removable by the governing body as a whole, there is a presumption the secretary is responsible directly to and takes orders only from the governing body collectively. There is no problem when an order to perform a given act is directed to the secretary in the form of a motion recorded in the minutes. The problem arises, however, when orders are given in the interim between meetings of the board or council. Who, then, has the authority? The presiding officer? Individual members of the governing body? Committee chairs or members? Department heads? And what does the secretary do if the orders of any two are in conflict?

The problem seems to have been solved in different ways. Most commonly, secretaries make their own decisions as to who is boss on the basis of circumstances and knowledge of local practice. But the problem is not aided by continuing to act as though it does not exist. The best solution is to face the issue immediately upon appointment, or when the composition of the governing body changes, by talking it out and reaching an understanding clear to everyone. This policy should be set out in the minutes, procedural rules, administrative code or local policy manual. The secretary's written job description should also specify which parties are to give direction to the secretary.

Penalties for Violation of Duty

For violation of duties, a secretary is subject to penalty as are all public officers. No sections of the Crimes Code deal exclusively with secretaries; but some sections are particularly applicable to public officers and employees, such as bribery, improper influence, perjury, tampering with public records or official oppression.

The municipal codes also contain provisions relating to the failure to perform specific responsibilities. These code sections are to be read in conjunction with the Crimes Code, especially in regard to the type of penalty prescribed. For instance, there are minor penalties for failure to file certain reports when due. Penalties for other actions sometimes entail heavy fines and/or imprisonment.

Secretaries also may be held personally liable for civil damages in tort action for which municipalities may not be held liable, in which they personally caused the injury and the act constituted a crime, actual fraud, actual malice or willful misconduct.³¹ In other cases, the municipality must defend the secretary from suits arising out of acts performed in the course of duty.

References

1. 53 P.S. 36301; Third Class City Code, Section 1301.
2. 65 P.S. 214; Pennsylvania Loyalty Act, Section 1.
3. *Gough v. Borough of Norristown*, 444 A.2d 839, 66 Pa.Cmwlth. 401, 1982.
4. 53 P.S. 55901; First Class Township Code, Section 901.
5. Pennsylvania Constitution, Article II, Section 7.
6. 53 P.S. 10202; Pennsylvania Municipalities Planning Code, Section 202.
7. 53 P.S. 10614; Pennsylvania Municipalities Planning Code, Section 614.
8. 53 P.S. 39341; Third Class City Code, Section 4341.
9. 53 P.S. 46143; Borough Code, Section 1143.
10. 53 P.S. 65511; Second Class Township Code, Section 511.
11. Pennsylvania Constitution, Article VI, Section 2.
12. 53 P.S. 10903; Pennsylvania Municipalities Planning Code, Section 903.
13. 53 P.S. 37301; Third Class City Code, Section 2301.
14. 53 P.S. 39402; Third Class City Code, Section 4402.
15. 53 P.S. 46104; Borough Code, Section 1104.
16. 53 P.S. 46173; Borough Code, Section 1173.
17. 53 P.S. 55901; First Class Township Code, Section 901.
18. 53 P.S. 55627; First Class Township Code, Section 627.
19. 53 P.S. 55511; First Class Township Code, Section 511.
20. 65 P.S. 5.1; 1963 P.L. 436.
21. 53 P.S. 46112; Borough Code, Section 1112; 53 P.S. 55901.1; First Class Township Code, Section 901.1; 53 P.S. 65542; Second Class Township Code, Section 543.
22. 53 P.S. 35901; Third Class City Code, Section 901.
23. 53 P.S. 36301; Third Class City Code, Section 1301.
24. 53 P.S. 46006; Borough Code, Section 1006(6); 53 P.S. 46101; Borough Code, Section 1101.
25. 53 P.S. 55901; First Class Township Code, Section 901.
26. 53 P.S. 65540; Second Class Township Code, Section 540.
27. 53 P.S. 46005; Borough Code, Section 1005(9).
28. 65 P.S. 371; 1981 P.L. 141, No. 46.
29. 65 P.S. 114; 1935 P.L. 677, Section 1.
30. 53 P.S. 37403; Third Class City Code, Section 2403(53); 53 P.S. 46201; Borough Code, Section 1202(37); 53 P.S. 56563; First Class Township Code, Section 1502(LXIII); 53 P.S. 65713; Second Class Township Code, Section 702(XIII).
31. 42 Pa.C.S.A. 8550.

II. Preparing for Meetings

Municipal secretaries are deeply involved in preparing for regular and special meetings of the governing body. This includes publishing notices, gathering materials for members and preparing and distributing the agenda. The secretary performs a series of clerical functions during the course of the meeting. These include reading or presenting written copies of the previous meeting's minutes, recording attendance, recording minutes of the proceedings, reading communications, resolutions or ordinances and supplying various reports. The secretary's participation in open discussion before decision making can vary from complete nonparticipation to participation as full as that of members except, of course, for the right to vote.

Only the Borough Code specifies the secretary is to attend all meetings of the borough council.¹ As a matter of practice, all secretaries are required to attend official meetings of the governing body and such other meetings as required, unless excused by the appropriate official. There is a wide diversity of practice for secretaries in attending executive sessions or committee meetings. In some places regular attendance is required, in some only on invitation and in some, the secretary is excluded.

Advance Preparations

Meetings of governing bodies are not productive unless careful preparations are made, and most of this responsibility rests with the secretary. The duties of the secretary as the aide and recorder for the governing body include responsibility for at least the ministerial aspects of meeting preparation. Although much activity is compressed into the day or two before the meeting, many preparations should be made as early as the conclusion of the previous meeting. The amount and type of preparation varies with local practice. Some critical elements are listed below.

Distribution of Minutes. Since the minutes of one meeting contain orders for actions affecting the next meeting, they should be prepared and distributed as soon as possible after the meeting, rather than just before the next meeting at which they will be approved. Early distribution ensures prompt circulation of orders or directions to appropriate officials and employees. It also gives the members an early opportunity to check the accuracy of the minutes.

Distribution of minutes to the public prior to official approval by the governing body has raised questions about Sunshine Law requirements. Many secretaries are reluctant to release meeting minutes to the public prior to this official approval. Often these requests come from the media or persons or groups interested in actions taken on a particular issue. This can be remedied by the governing body authorizing the release of minutes in a draft form. Any copies of minutes released in this fashion should be conspicuously stamped with the word "draft" on all pages.

Based on information in the minutes, the secretary should prepare a checklist of orders or actions to be taken by officials and employees. A procedure for reporting back completed actions should be established so the secretary can make the proper reports at the next meeting.

Agenda File. The secretary should set up and maintain a separate agenda file or folder and place into it on a daily basis any matter considered as a possible subject for the next meeting. These can include a variety of items, including those having a particular deadline, monthly recurring items, pertinent written communications or suggestions or directives of the presiding officer, other officials or committee chairs. An agenda file can become quite voluminous, particularly when a month elapses between meetings. A few minutes culling at agenda preparation time eases the secretary's burden and helps ensure nothing important is left off the agenda for the coming meeting.

Materials for the Meeting. Communications received by the secretary addressed to or intended for the governing body's attention should be date stamped and filed. Some secretaries note how the communication was received. Many secretaries participate in preparing committee reports to the governing body. Sometimes they physically participate in committee meetings, or else they help arrange meetings, prepare information and assist in compiling and duplicating committee reports or preparing briefs or summaries for inclusion in the agenda. Other records or documents required for the business of the meeting should be assembled, prepared or obtained by the secretary well in advance of the coming meeting. Last-minute efforts in this regard usually create problems.

Forms for Use in Meeting. Secretaries are usually very busy at meetings of the governing body. Consequently, experienced secretaries have evolved a variety of forms for reducing the amount of writing required to record actions at meetings. These range from small index cards or half sheets of paper with penciled or typed headings for various anticipated actions to elaborate printed or duplicated forms. Listed below are types of forms used by secretaries.

1. Roll call forms with preprinted names of members and columns for yeas and nays for easy checking.
2. Attendance forms for recording attendance of members and other officials by checking their names.
3. Forms for disposition of reports to the proper file, or to officials or committees for action.
4. Lists of officers and committees in order to refer matters to them.
5. Forms for approval of minutes.
6. Forms for recording motions and other actions taken.
7. Forms for tabulating bids.
8. Forms for noting informal suggestions or requests arising during discussions.

Checking Physical Arrangements. Although larger municipalities may place responsibility for meeting arrangements elsewhere, it is common for secretaries to assume this responsibility, either by direction or because they feel personal responsibility. Checks can include last-minute contact with officials such as the presiding officer, committee chairs or administrative officers. They can include last-minute checks on the arrangement of records and documents, testing recorders or microphones, heat and lighting, providing pads and pencils and accommodation for the public.

Notice

The secretary is responsible for publication and posting of notices for meetings of the governing body, public hearings, advertisements for bids, actions taken by the governing body under the Pennsylvania Municipalities Planning Code and budgetary procedures. In the case of special meetings, the secretary notifies members of the time, place and purpose of the meeting as well as making public notice.

Public Notice. Under the Sunshine Act, all deliberations and formal actions of the governing body must occur at meetings open to the public at a time and place of which the public has been notified.² Public notice must be given by publishing once in a newspaper of general circulation within the municipality, posting a copy of the notice at the municipal office or the public building where the meeting is to be held and providing copies to media and other interested parties who have provided mailing envelopes. The schedule of regular meetings must be advertised at least three days in advance of the first regular meeting. Notice of each special or rescheduled regular meeting must be given at least 24 hours before the time of the meeting. Special provisions for public notice and public hearings are required if the governing body is to take certain actions under the Municipalities Planning Code and during the budget adoption process.

Special Meetings. The Third Class City Code provides for calling special meetings by the mayor or on request of at least two council members.³ At least 24 hours notice must be given to members. In boroughs, special meetings may be called by the president of council or on request of one-third of the council members.⁴ Members must be given at least 24 hours notice. The township codes do not have specific provisions for special meetings, but they may be held on call of the presiding officer or a majority of members under the rules adopted by the board.

ADA Compliance. In order to be in compliance with the federal Americans with Disabilities Act, the public notice for any meeting should include an accessibility notice. Suggested wording is included below.

Any person with a disability requiring a special accommodation to attend a (council, supervisor's) meeting should notify (name or title) at (phone number) as early as possible, but not later than (3 to 5 work days) prior to the meeting. The (borough, city, township) will make every effort to provide a reasonable accommodation.

If your meeting room is already wheelchair accessible (and it should be), you can avoid forcing people to call about this by including the wheelchair accessible symbol (♿) at the beginning of this statement.

Agenda

Secretaries are probably more aware than anyone else of the potential for confusion, unproductivity and frustration in a meeting conducted in a haphazard manner and without preparation by members and officials. An agenda is the first step toward orderly, productive meetings, no matter how large or small the municipality. The agenda is a written plan of the order and content of a meeting, a prearranged outline for the conduct of business in the most efficient manner. Without the discipline of an agenda, meetings of governing bodies tend to become long, disorderly and fruitless, as well as offensive to the interested citizen.

Preparation. Preparing the agenda for upcoming meetings is a prime responsibility of the secretary. Determining the actual contents of the meeting and the order of business are policy decisions made by the appropriate officials. The order of business should be established in the governing body's rules of procedure. Inclusion of specific items is usually by decision of an appropriate official, such as the presiding officer. The secretary is responsible for preparing the final format of the agenda, writing or assembling supporting information and duplicating and distributing both prior to the meeting. It is advisable to prepare additional copies for citizens at the meeting. The secretary is often included in discussions on the items to be covered. At this point, the secretary's agenda file will prove valuable to elected officials in reviewing potential issues for the meeting.

Format. The physical appearance of the agenda will depend on factors such as the size of municipal operations, number and character of business items and provisions for public participation. The agenda should be typed and duplicated, and the number of pages kept to a manageable number. Specific items should be arranged under the appropriate order of business and headings clearly identified.

The agenda should contain at least briefs or short summaries of reports covering items listed. These may include reports of officials, committees and municipal boards and commissions. Including complete reports makes the agenda too cumbersome and complicates preparation and duplication. Copies of full reports can be made available after submittal.

Order of Business. Most municipalities follow a general order of business at official meetings. This may be established in rules of procedure adopted by the governing body at the organization meeting, usually by resolution. In some cases, informal rules are followed by joint consent. Orders of business can vary widely

depending on local needs and practices. A common order of business appears below. Alternate orders of business can be found in the *Borough Council Handbook*, *Township Commissioners Handbook* and *Township Supervisors Handbook*.

1. Call meeting to order.
2. Roll call.
3. Action on minutes of previous meeting.
4. Treasurer's report.
5. Citizen input, by prior request to be placed on agenda.
6. Correspondence and other communications.
7. Reports of officials and committees.
8. Unfinished business ready for action.
9. Unfinished business, not ready for action.
10. Ordinances or resolutions.
11. New business.
12. Review and authorization to pay bills.
13. Adjournment.

Act 93 of 1998 amended the Sunshine Law to provide reasonable opportunity for public comment at any regular or advertised special meeting. The governing body must provide an opportunity for comment "*prior to taking any official action or as an option, may accept all public comment at the beginning of a meeting.*"

This amendment was enacted to remedy governing bodies from delaying public comment until the end of a public meeting. Elected officials should provide secretaries with a policy as to when to include public comment in the meeting agenda.

An established order of business can help assure systematic conduct of the work of a meeting. But it is only the general framework around which a complete and effective agenda is constructed for each specific meeting. A complete agenda includes the specific items of business to be considered at each meeting, together with supporting data and information arranged under the appropriate headings in the order of business. Effective organization work by the secretary will ease the work of the members by providing them the background material needed for the meeting and fitting in all the items to be considered at the appropriate place.

Consent Agenda. Some municipalities have instituted a consent agenda as an effective procedure to handle routine matters on the agenda expeditiously. A consent agenda separates out routine items which are not controversial in nature and which do not need further discussion. This usually includes a list of bills payable. Early in the council meeting, the whole group of items may be approved with one motion and one roll call vote. In some municipalities, the consent agenda has been called the consent calendar or general order of business, but its purpose and manner of use are the same. Generally, the consent agenda portion of the printed agenda is preceded by an explanatory note to the public.

Distribution. If the agenda is only a skeleton listing of the standard order of business, unchanging from month to month, it can be provided at the meeting. However, if the agenda is a well-developed and detailed plan of business with supporting information, it should be distributed far enough in advance for the members to read and digest the information so they can come to the meeting prepared. A cutoff date before the meeting for items to be included on the agenda should be set so the appropriate officials can make the necessary decisions and the secretary can compile, duplicate and distribute the agenda.

The time of distributing the agenda varies in practice from as much as five days before the meeting to as little as a few hours before, or even when the meeting opens. Setting the distribution at three days before the meeting allows the members sufficient time to study and react to the material, yet permits a cutoff date late enough to include timely items.

Preparing the agenda three days before the meeting allows the municipality to provide a copy to the local news media in time for publication of stories anticipating business to be handled at the meeting. This is excellent for media relations and also provides a valuable service in keeping citizens informed of matters to be discussed at each upcoming meeting. This alerts them to actions in advance and can be effective in building goodwill, public confidence and understanding.

Many municipalities post the agenda at the municipal building, or make copies available to citizens attending the meeting. Some municipalities advertise abbreviated agendas with the time and place of the meeting.

References

1. 53 P.S. 46111; Borough Code, Section 1111.
2. 65 P.S. 274; Sunshine Act, 1986 P.L. 388, No. 84, Section 4.
3. 53 P.S. 36005; Third Class City Code, Section 1005.
4. 53 P.S. 46006; Borough Code, Section 1006(1).

III. Minutes

The municipal codes make the secretary responsible for the minutes of meetings of the governing body. Minutes, which are the official record of the proceedings of the governing body and the permanent record of its actions, must be kept in a permanent minute book and are controlled by the secretary. It is the usual practice for secretaries to physically take notes at the meetings and type up the minutes. In some larger municipalities, the secretary has been freed from this task. A clerical assistant can be hired to take verbatim notes or use electronic equipment to record the meeting. The secretary then prepares the minutes from the meeting transcript. In all cases, the secretary is identified as the keeper of the minute book.¹

The Sunshine Act requires that written minutes be taken at all public meetings. The minutes are open to public inspection. There is no legal requirement for minutes to be taken in executive sessions. The reason for holding any executive session must be announced at the public meeting held immediately before or immediately after the executive session. This announcement should be included in the minutes of the relevant public meeting. Sometimes notes are made of discussions in executive sessions, but often there is no written record of any kind. Use of formal written minutes is restricted to public meetings.

A basic purpose of minutes is to provide legal proof of the official actions of the governing body and other officials. This purpose stresses the need for accuracy and completeness in recording actions. There are occasions when, under pressure of action-packed meetings or due to lack of clarity in the form of a motion, omissions or errors can occur in minutes. Extreme care should be taken to avoid this situation, but such an error is not fatal.

Pennsylvania courts have long held the failure to record passage of an ordinance or resolution in the minutes through inadvertence or mistake does not invalidate the action.² The fact of passage can be proven by testimony of those present at the meeting. Actions of a governing body are valid whether duly recorded or not.³ However, proving governing body action on a matter of municipal business when there is no valid minute entry is a difficult and expensive process. The value of clear, correct minutes that accurately describe the actions of the governing body are important.

Method of Taking Minutes

In most municipalities, the secretary is personally responsible for taking the minutes during meetings and recording the actions of the governing body. Accurate minutes are necessary. They provide legal evidence of the substance and procedure of municipal actions. They also substantiate the authenticity of municipal decisions and actions.

There is no single standard method of taking notes during the meeting, for wording motions, for deciding what to include and what to exclude, or for the format of the finished product. Methods of taking notes and how the finished product looks depend on the skills of the secretary, local practice and the needs and expectations of governing body members.

The most common method of recording actions in a meeting is manual note taking, with or without the use of prepared forms. Abbreviated notes or summaries of discussions are taken either with shorthand or some personal method of taking notes. Actual wording of all motions, amendments and other proposals must be included, but most minutes exclude remarks made in extended discussions among the members.

Tape recording meetings is growing in popularity. Tape recordings have definite drawbacks of quality, clarity and consistency. Often it is difficult to identify who is speaking. When more than one person speaks at once,

there can be difficulty in determining what is being said. Some municipalities combine note taking with tape recording to provide a complete and accurate record. This gives the secretary a review aid in compiling the written minutes for recording in the minute book. Tape recordings do not have any legal status as public records and are often kept only for a short period of time. The official record of the transactions of the governing body at a meeting are the written minutes.

Experienced secretaries often develop and use prepared forms at meetings to record such actions as roll calls and to minimize the amount of writing required. Some of these are listed in Chapter 2, Preparing for Meetings. These forms are also useful when the secretary prepares the final typed minutes.

Secretaries should be scrupulously accurate in taking minutes. Although the governing body has the power to amend its minutes to make them accurately correspond with what occurred,⁴ such amendments should not be necessary. Secretaries can urge the members of the governing body to require motions and resolutions to be submitted in writing. At the very least, motions should be orally repeated by the presiding officer in a form approved by the maker of the motion and its seconder, so both the secretary and the governing body have a clear understanding of the subject of the issue presented for decision. Recording the action taken by the governing body on each motion is equally important.

Contents

A problem common to all secretaries is deciding what actions and how much detail should be included in the minutes. Some minutes are too sketchy to be of real value, while others are too wordy to be usable.

The Sunshine Act requires a minimum of four items be included in the minutes entry for each meeting.⁵ These include:

1. The date, time and place of the meeting.
2. The names of members present.
3. The substance of all official actions and a record by individual member of the roll call votes taken.
4. The names of all citizens who appeared officially and the subject of their testimony.

The municipal codes provide little real guidance to the secretary, although requirements for inclusion of material in the minutes can be outlined in the procedural rules of the governing body. Few governing bodies actually have done this, though.

The Third Class City Code requires the yeas and nays for every vote to be recorded, as well as the reason for a member not voting when the member excused by the council. Every motion, resolution and ordinance is to be reduced to writing before a vote is taken.⁶ The other codes provide little guidance beyond general statements.

Secretaries should use the minutes as legal evidence. They are valuable in directing municipal programs and are useful as the guiding criteria in determining their contents. Adherence to these criteria may ease uncertainties to some degree. It is always better to err on the side of including too much, rather than leaving out essential elements. Some of the basic contents for any set of minutes are listed below.

Legal Verification. The minutes should show conformance to legal requirements by establishing the date, hour and place of the meeting, as well as whether it is a regular, adjourned or special meeting. If it is a special meeting, the minutes should contain a statement of the notice to board/council members and to the public.

Attendance. The minutes should record the attendance of members and officers and the time for appearance or departure of any member not present throughout the entire meeting. This is necessary to provide evidence of the continuing existence of a quorum. It also identifies which members are included in a unanimous vote.

Excused absences of members should be noted in the minutes. If any member departs from an official meeting, the time should be noted in the minutes.

Minutes. The minutes should record official approval of the minutes of the preceding meeting, together with any additions or corrections by members. The vote of the board/council to accept the minutes validates their accuracy and completeness.

Communications. Minutes should note the identity of persons appearing to make oral presentations to the governing body and their subject matter. Petitions and other written communications should be noted by source, subject, date and disposition.

Reports. Reports to the board/council by municipal officers and committees of the governing body should be identified by reporter, subject, date and disposition by the governing body. The full text of oral or written reports is not included in the minutes. Creation of a meeting file to hold copies of all reports, petitions and other written communications presented at each meeting will allow easy cross reference from the minutes to the text of these documents.

Approval to Pay Bills. In boroughs and townships, bills are presented to the governing body for approval before payment is made. These are most often presented in a bills payable list, which includes the name of the creditor, the object of the expenditure and the amount. Including the entire list in the minutes is not necessary. A copy of the bills payable list should be included in the meeting file for that date. The minutes should show governing body action to approve the list, so auditors can verify that expenditures were officially approved. Any controversial or questioned items should be listed separately. The vote of each member should also be listed.

Ordinances. Ordinances and resolutions should be identified by number and title. Unless specifically required by law or advised by the solicitor, it is unnecessary to enter the full text of ordinances in the minutes. Neither the full text in the minutes nor a digest is good evidence in courts. Only the original text as entered in the ordinance book is acceptable evidence. The minute entry serves the vital purpose of establishing the result of the action of the governing body on the ordinance and its adherence to legal requirements, such as advertising and public hearings, if required. Votes of members on all ordinances and resolutions should be carefully recorded.

Contracts. Minute entries on awarding contracts should include the subject of the purchase, identification of all bidders and amounts and statements establishing the fulfillment of legal requirements. Each member's vote on awarding contracts should be accurately recorded. This is critical if there is ever any question of surcharge for illegal or improper expenditures.

Oral Statements. Minutes should accurately reflect what occurs at a meeting. Unless the governing body desires a verbatim record, oral expressions of opinions, remarks or statements should not be included on a word by word basis. A short summary of the discussion, prepared by the secretary, should be enough to give the reader an understanding of the subject of the discussion, the varying points of view expressed, and the major proponents of each. The summary should relate clearly to the resulting governing body action on the issue and should help to explain the disposition of the culminating motion. Requests by members to have their statements recorded in full in the minutes are legitimate, but are subject to approval by the presiding officer or the full membership under the governing body's own rules. If approval is granted, the secretary should be sure to secure the member's approval of the form and contents of the remarks entered. When the member is speaking from a prepared text, a copy of this text should be provided for the secretary's use in preparing minutes.

Motions. City and borough councils and townships boards are collegial bodies. This means their authority can be exercised only as a group. The vehicle for placing an issue before the governing body is the motion. The motion proposes an action or an expression of the sense of the entire body on an issue. When a governing body appears to be ready to take action on a matter under discussion, the presiding officer asks for a motion

and a second. Simple, routine motions are often made in the same wording used at each meeting. New or complex issues often require considerable work in reducing them to motion. A motion can come at the end of a long statement by the member with the words "I so move." It is the specific responsibility of the member to word the motion properly and the duty of the presiding officer to put the motion to the board/council in words acceptable to the mover and seconder. Except in the case of simple, routine motions, the secretary should insist on reading back the wording of the motion before the vote. This procedure minimizes misunderstanding on what is being voted on and protects both the secretary and the members. The motion should be accompanied by the names of the mover and the seconder. If the motion does not receive a second, that fact should be entered in the minutes and the matter goes no further.

Yeas and Nays. The Third Class City Code requires the vote of members be recorded on every action. This is only required in specific instances for other municipalities, either by code provisions or in other state laws. General practice indicates members' votes are recorded in the adoption of ordinances and resolutions, enacting taxes and budgets, approving expenditures, awarding contracts and making loans or issuing bonds. Votes are not recorded for actions usually decided on a voice vote, such as adjournment, assignment of tasks to committees or officers or administrative authorizations for projects previously approved in a formal manner. Careful discrimination can save time at meetings and ease the secretary's work. Requirements for roll call votes should be included in the procedures of the governing body. Prepared roll call forms can ease the secretary's task in recording roll call votes.

Format and Disposition

Meetings conducted with a written agenda provide the secretary with a ready-made outline for writing up the minutes. Meetings without an order of business raise problems, because actions of a similar nature may be taken up at different stages of the meeting. These actions should be organized under common headings to ease later problems of locating information.

Minutes of public meetings must be promptly made available as a public record. It is advisable to make sufficient copies of the minutes for distribution to each member of the governing body, appropriate municipal officials, the news media and all interested citizens. Copies should be distributed as early as possible following the meeting so members may check them while memories are still fresh, news media can use them for timely stories and municipal officials directed to take actions can receive these directions in a timely manner. The secretary may want to keep a file copy of minutes of recent meetings available for public inspection to save wear and tear on the official minute book. In some places, minutes of the latest meeting are duplicated in small quantities for distribution to interested citizens.

Minute Book. In boroughs and townships, minutes must be recorded or transcribed in a mechanical post binder book capable of being permanently sealed with consecutively numbered pages with a security code printed on them and a permanent locking device with the municipal seal impressed on each page, or into a bound book with numbered pages. The Third Class City Code requires minutes be transcribed into a bound book. Minutes are valid if typewritten, printed, photostated or microfilmed and may be stapled, glued or taped to the pages of such books. If the municipal seal is impressed upon each page to which the pages of minutes are attached, the seal impression must cover both a portion of the attached page of minutes and a portion of the page of the book to which it is attached. It is not necessary for officers or the secretary to sign minute book entries, but this is a common and sensible practice.

Indexing minutes is difficult and time-consuming, but it can be a rewarding time-saving measure. To avoid the frustration of trying to find needed information in an accumulation of unindexed minutes, Secretaries should set up an index system that is tailored to local needs.

Minute books, which are permanent records of the municipality, should never be discarded. Creating a backup copy of each volume of minutes, either by photocopy or microfilm, is a recommended practice. Original minute books should be stored in the vault along with other valuable records of the municipality.

Amendments and Corrections. When a member of the governing body feels that a minute entry is inaccurate or incomplete, a request for correction should be made to the presiding officer. Depending on the rules of procedure which may have been adopted, a vote may be required to permit the change. Typical procedure is to order the change if there are no objections. The secretary must never use correction fluid or tape over the entry being corrected. Rather, a note should be added in the margin that a correction was approved.

References

1. 53 P.S. 46111; Borough Code, Section 1111. 53 P.S. 55901; First Class Township Code, Section 901. 53 P.S. 65540; Second Class Township Code, Section 540.
2. *Fisher v. South Williamsport Borough*, 1 Pa.Super 386, 1896.
3. *Boston v. Pittsburgh*, 4 Brewster 373, 1870; *Jefferson County v. Rose Township*, 129 A. 78, 283 Pa. 126, 1925.
4. *Ontelaunee Township Annexation Case*, 92 A.2d 262, 172 Pa.Supra. 71, 1953.
5. 65 P.S. 276; Sunshine Act, Section 6.
6. 53 P.S. 36008; Third Class City Code, Section 1008.

IV. Legislative Actions

As the chief assistant to the governing body, the secretary is intimately involved in the process of enacting local legislation. The degree of involvement ranges from purely ministerial activity in places with strong elected leadership to almost total involvement in the process, except for voting, where inexperienced members rely on the skill of a veteran secretary.

Types of Legislative Actions

A governing body can only take official action as a body. Directions made by a single member have no legal standing. Different types of actions are available to the board/council to use for different purposes. The most commonly used types of action are ordinance, resolution, motion and regulation. The specific type of action used may be determined by a statutory mandate or by the written or unwritten policy of the governing body.

Ordinance. An ordinance is a local law of general or permanent nature. As a local law, an ordinance stands until it is amended or repealed by another ordinance enacted by a later board/council. Penalties, which can be enforced in court, may be attached for failure to obey ordinances.

Various sections in the codes and pertinent general legislation require adoption of an ordinance for specific actions. Procedures for adopting ordinances are more complex, involving the expense of advertising and recording in a permanent manner. Some municipalities are tempted to bypass these procedures by adopting resolutions instead of ordinances, but if they wish their actions to have permanent effect and be enforceable with penalties, they cannot shortcut the ordinance adoption procedures.

Resolution. A resolution is an official statement of the will of the governing body. It lacks the permanent nature and the enforceability of an ordinance. Resolutions are particularly useful for actions of a temporary nature, particularly those governing municipal activities, such as adopting budgets (except where ordinances are required), governing investments, setting salary schedules and awarding contracts. These actions are not intended to be permanent and do not require penalties for enforcement.

Some confusion exists over when to use ordinances or resolutions. Some code provisions specifically require an ordinance. Other laws state either ordinance or resolution. The governing body, with the help of its solicitor, should carefully consider the nature of its action and be aware that most municipalities err on the side of using a resolution when they should enact an ordinance.

Motion. A motion is the method of submitting issues to the board/council for formal deliberation and decision. All ordinances and resolutions are submitted by motion. Motions also are used to determine the will of the governing body on any issue presented to it. A motion is a parliamentary tool, not a legislative form. If an action of a permanent nature is desired, the motion should propose or amend an ordinance, resolution or regulation, since these are recorded in distinct places. There have been cases in which a motion was used to take action, then forgotten by the governing body.

Regulation. A regulation is an administrative, rather than a legislative, instrument. It is used to order the internal administrative affairs of the municipality. Since the majority of governing bodies wield administrative as well as legislative powers, the secretary is involved in formulating and enacting regulations. These can include such matters as the governing body's own rules of procedure, employee policies, regulations to govern administration of Act 511 taxes or regulations governing sewer hookups. Regulations provide specific procedures to implement general policy statements established by ordinance or statute.

Ordinance Adoption Procedures

The role the secretary plays in the process of enacting ordinances is defined both by law and by local policy. The secretary performs a ministerial role in carrying out statutory requirements for adopting ordinances. In many places, the secretary acts as unofficial parliamentarian and advises the board/council on correct procedure.

Preparation. Secretaries or members of the governing body will, on occasion, attempt to draft ordinances for consideration by the board/council. This practice is risky, particularly if the measure is adopted without being reviewed by the solicitor. Another unwise practice is to adopt without change an ordinance copied from another municipality that is not reviewed by the solicitor.

Only solicitors prepare ordinances. Members can submit oral or written suggestions concerning the desired measure, but the proposals should be drafted for final consideration solely by the solicitor. This is one of the solicitor's important duties that should never be transgressed.

The secretary may assist the solicitor by obtaining sample ordinances, gathering and formulating the views of the members on what is desired in the measure, and checking related ordinances to determine if any existing measures need repeal or amendment to conform to the the new proposal. In third class cities, bills and ordinances must be numbered. This may be done in other municipalities, as well, and is usually the duty of the secretary.

Consideration. Only the Third Class City Code contains specific and detailed requirements for consideration of legislative proposals.¹ In cities, a council member must present or produce all proposed ordinances in the form of a written bill. The bill is then serially numbered by the clerk for the calendar year. No bill, except for appropriations, may include more than one subject as expressed in the title. On introduction, the title of every bill must be read, as must all amendments or revisions at length prior to final adoption. The bill may not be finally passed on the same day it is introduced. At least three days, not including the day of introduction nor the day of passage, must intervene. The measure is finally acted on after a second reading by a title only, except for changes in the original bill.

Codes for boroughs and townships do not specify procedures to introduce a measure, require any time lapse between introduction and final passage, nor stipulate any number or the nature of readings. In these municipalities, adoption procedure is generally set by written or unwritten policy of the governing body. Although proposals can be introduced and adopted at the same meeting, they are usually introduced, then advertised within the required time period, then passed at a later meeting.

Sometimes proposals are discussed and revised in a committee before the proposals are formally introduced before the governing body. In other places, measures are introduced, then referred to committees or considered by the governing body as a whole. In addition, some measures require public hearings before they are enacted. In some cases, governing bodies will hold public hearings even if they are not required by law. Arrangements for the public hearings, including notice and agenda, are usually the responsibility of the secretary.

Advertising. All proposed ordinances and resolutions of a legislative character must appear in a newspaper of general circulation within the municipality not more than sixty nor less than seven days prior to passage.² Publication must include the full text or the title and a brief summary that is prepared by the solicitor. The summary must include all provisions in reasonable detail and indicate a place within the municipality where the complete proposed ordinance can be examined. Full texts are to be supplied to the newspaper and filed in the county law library or other designated county office. Pennsylvania courts have held that the advertising requirements of the municipal codes are mandatory. Ordinances adopted without strict compliance to the advertising requirements are void, even if there has been substantial, but incomplete compliance.³ If substantial amendments are made in the proposed ordinance, the proposal, including a summary of the ordinance and the amendments, must be readvertised before the final enactment.

Three types of ordinances have special advertising requirements. Ordinances adopting standard building or housing codes by reference need not be published. However, the municipality must publish a notice of the intention to consider adopting such a code and identify a place where copies can be examined. Ordinances establishing comprehensive plans, subdivision regulations and zoning ordinances are adopted by reference and require publication only in the form of a notice identifying the nature of the contents and the place where copies can be obtained or examined. Ordinances consolidating, codifying or revising a group or body of already existing ordinances with no substantive changes may be adopted by reference. A notice of its consideration must be published, indicating the general nature and content and the place where a copy can be examined. If the changes contain penalties, the notice must so state.

Parliamentary Procedures

The municipal secretary should be familiar with the rules and procedures for conducting business at meetings and the mechanics of voting on legislative matters. Rules of parliamentary procedure are designed to channel conflicting views on issues, expedite business, yet preserve the right of each member to contribute to deliberations. Some governing bodies have adopted formal written rules of procedure. In most cases, procedural rules are unwritten, fixed by practice. As long as an ordinance meets statutory requirements, it will not be invalidated because the governing body did not follow its own rules of procedure. Having voluntarily adopted or adhered to them, the board/council also may waive or alter its own rules at any time.

Quorum. A quorum is the minimum number of members of a legislative body required to be present to conduct the business of the body. Each municipal classification has different rules for determining the existence of a quorum. While it is the duty of the presiding officer to declare the existence of a quorum so business may commence, an experienced secretary may be called on for advice.

In boroughs, a majority of the membership then in office constitutes a quorum. Valid passage of a measure requires only a majority of those voting in the presence of a quorum.⁴ This is the case even if those currently in office constitute less than half the authorized membership.⁵ In first class townships, a quorum is a majority of the members of the board, and an action passed by a majority of those voting in the presence of a quorum reflects the will of the board.⁶ In second class townships with three-member boards a quorum is two, and in those with five-member boards a quorum is three. Except where a special majority is required, an affirmative vote of the majority of the entire board of supervisors is required to transact business.⁷ In third class cities, the required quorum is three of the five council members.⁸

Extraordinary majorities may be required to pass certain types of legislation as specified in the codes or other state legislation. These requirements should be checked before the proposed action comes up for a vote.

Absenteeism. Failure of members to attend meetings can hinder or stop the conduct of municipal business. The oath of office pledges members to discharge the duties of their office with fidelity, necessarily implying faithful attendance at meetings. Only the Borough Code contains a provision authorizing removal of a member for nonattendance at meetings. Courts have found this measure to be highly penal and require it to be strictly construed.⁹ Removal for nonattendance is a very rare practice.

Nonvoting. Although members are prohibited from voting on any issue where there is a personal conflict of interest, they sometimes abstain from voting on issues where they have no personal interest. Local government is based on the concept of representative democracy. Governing body members are elected to represent their constituents in making decisions for the community. Refusing to vote because a matter is contentious or may cause personal resentments is not acceptable. Members refusing to vote are violating their sworn duty to represent the voters in helping to decide matters before the governing body.

Veto

For local governments operating under the municipal codes, the power of veto exists only in boroughs. All ordinances and resolutions of a legislative nature must be submitted to the mayor after passage by council. The mayor may sign the ordinance, let it become effective without signing it after ten days, or veto it and return it to council. Vetos can be overridden by a special majority of council. Veto power also is given to strong mayors/executives in certain home rule charters, optional plans and optional third class city charters. Procedural details can vary according to the specific charter or plan.

Recording

Proper and adequate certification and recording of legislation passed by the governing body is a central facet of the secretary's duties.

Certification. No ordinance is valid unless the original has been signed by the presiding officer, attested by the secretary and signed by the mayor, where appropriate. Signatures of elected officials are not required for the ordinance copied into the municipality's ordinance book, but this copy of the ordinance must be certified by the secretary. Actual forms of certification vary, but the following form is a good sample.

I hereby certify that the foregoing ordinance was advertised in (name of newspaper) on (date), a newspaper of general circulation in the municipality, and was duly enacted and approved as set forth at a regular (or special) meeting of the (governing body) held on (date).

(Signed) _____

Secretary

(seal)

Minutes. Recording the full text of ordinances in the minutes is not a recommended practice. It entails unnecessary duplication of work and expands the minutes beyond the point of manageability. The minute book should refer to the bill or ordinance by title or number and subject, accurately show the action taken, and record the yeas and nays of the members.

Ordinance Book. The original copy of the ordinance along with the proof of publication should be kept in a permanent ordinance file. Each of the codes requires every ordinance, with some special exceptions, to be copied into the ordinance book. For all jurisdictions, except second class townships, this must be done within one month after adoption. If this is not done, the validity of the ordinance is subject to challenge. Ordinances not properly recorded in full compliance with the requirements of the code can be invalidated by the courts.¹⁰ The entry must be a complete and exact copy of the original, attested by the secretary and impressed with the corporate seal. The original, signed by the presiding officer and mayor, if applicable, must be filed in the secretary's office. Standard building and housing codes adopted by reference and comprehensive plans, subdivision regulations and zoning ordinances are not entered into the ordinance book in full. Only the ordinance of adoption is recorded in the book with a notation of the place where full copies are available.

Indexing. The codes do not require secretaries to index ordinance books or make annual compilations of ordinances. Because of the obvious advantages, however, municipalities are increasingly instituting this practice. This task is usually assigned to the secretary, sometimes under the supervision of the solicitor.

Effective Date. To be effective, all ordinances must be signed by the appropriate officials, attested by the secretary and entered into the ordinance book. In third class cities, most ordinances become effective ten days after enactment and in second class townships, five days after enactment. In boroughs and first class townships, ordinances are effective when recorded in the ordinance book. Special types of ordinances may carry different effective dates.

Court Proceedings. Accuracy is necessary in keeping minutes and recording ordinances. If proper procedures are not followed, evidence loses its validity in court proceedings. The Third Class City Code and the Borough Code have identical provisions for evidencing ordinances.¹¹ Ordinances and resolutions of a legislative character are proved by a certificate of the secretary, under the corporate seal, and when printed in book or pamphlet form under authority of the governing body, are to be read and received as evidence in all courts. The practice in townships is the same.

Codification

Every solicitor, secretary or other municipal official has experienced frustration and apprehension when searching uncodified ordinance books to determine what local legislation is currently effective. Since ordinances are local laws, ordinances on many subjects have been adopted, amended and repealed at various times over the years, often without adequate reference to prior legislation. Both officials and citizens are uncertain just which ordinances remain effective. As an informal practice, many secretaries would pencil out or note provisions changed by later ordinances, but such a practice is highly questionable and even somewhat dangerous.

Codification of ordinances is frequently undertaken as a result of encouragement or insistence by the secretary who sees the need for such an action. Codification of ordinances is not within the duties of a secretary. It is usually done by the solicitor or a contracted specialist. The secretary does participate in assembling materials for the job and acting as liaison if it is done by an outside firm.

The procedure for adopting an ordinance to consolidate, codify or revise the body of municipal ordinances is the same as for other ordinances with certain exceptions. When adopted as a single ordinance, it must be introduced at least 30 days before final enactment. At least 15 days before final passage, a notice of its introduction must be advertised in a newspaper of general circulation in the municipality, specifying its general nature and the table of contents. In case of a single ordinance amending or repealing a group of existing ordinances, the notice need only state the titles of those amended or repealed. After final passage, a notice stating the ordinance was passed must be published.

References

1. 53 P.S. 36012; Third Class City Code, Section 1012; *Lancaster City Ordinance Case*, 119 A.2d 307, 383 Pa. 471, 1956.
2. 53 P.S. 36014; Third Class City Code, Section 1014; 53 P.S. 46006(4); Borough Code, Section 1006(4); 53 P.S. 56502(I); First Class Township, Section 1502(I); 53 P.S. 65741; Second Class Township Code, Section 702(XLI).
3. *Lower Gwynedd Township v. Gwynedd Properties, Inc.* 591 A.2d 285, Pa 1991.
4. 53 P.S. 46001; Borough Code, Section 1001; *McAdoo Borough v. Pennsylvania Labor Relations Board*, 469 A.2d 693, 79 Pa.Cmwlth. 158, at 164, 1983; *Meixell v. Hellertown Borough Council*, 88 A.2d 594, 370 Pa. 420, 1952.
5. *In re Gianoplos*, 11 D.&C.3d 436, 1979.
6. 53 P.S. 55702; First Class Township Code, Section 702; *Kline v. Fawkes*, 51 D.&C.2d 467, at 471, 1970; *Melrose Park Improvement Association v. Cheltenham Township*, 88 Montg. 341, at 343, 1967 citing *Meixell v. Hellertown Borough Council*, 88 A.2d 594, 370 Pa. 420, 1952.
7. 53 P.S. 65512; Second Class Township Code, Section 512.
8. 53 P.S. 36004; Third Class City Code, Section 1004.
9. 53 P.S. 45904; Borough Code, Section 904; *Zaffarano v. Ambler Borough Council*, 216 A.2d 79, 420 Pa. 275, 1966.
10. *West Conshohocken Borough Appeal*, 173 A.2d 461, 405 Pa. 150, 1961.
11. 53 P.S. 36014; Third Class City Code, Section 1014; 53 P.S. 46008; Borough Code, Section 1008.

V. Records and Notices

In most municipalities, the secretary is responsible for keeping municipal records and giving official notice. Effective discharge of these duties, adhering to all requirements, is a central part of the duties of a secretary. In many smaller municipalities, the secretary also performs many clerical tasks and is responsible for gathering, filing and maintaining various kinds of data, information and records.

Information Management

We live in the “information age.” Virtually every organization, of any size, including all levels of government, utilizes computers in its daily operation. The computerization of local government functions is no longer reserved for just the largest or most sophisticated. Prices for computers, printers, scanners and other related equipment have declined to the point of being affordable for almost everyone. The municipality without computers is becoming more and more the exception rather than the rule.

Information management in local government can range from inexpensive “off-the-shelf” software to costly customized applications. Most municipalities begin with small steps and expand into more sophisticated functions as their experience, confidence and needs grow and their budgets permit.

A municipality just beginning to use computers might begin with basic word and data processing and accounting software, combined with a dial-up connection to the Internet. An Internet connection is increasingly important, as state and federal agencies make more information and resources available on-line. Many grant applications and mandated reports can now be submitted on-line and in some cases, only on-line. Communications by email with government agencies and citizens alike is becoming commonplace.

Municipalities can add other functions later to generate tax or utility bills and records, track building or zoning permits, inventory municipal equipment and road signs, or maintain a municipal website. Websites themselves can range from basic and static to extensive and interactive. Municipalities considering more sophisticated functions should seek expert advice before making costly investments in new hardware or software.

Storage

All public records should be securely filed or stored at one central location within the municipality. All secretaries should insist on this policy for their own protection, as well as the general protection of all officials, because they are statutorily responsible for the preservation of municipal records. Important, and sometimes irreplaceable, papers, documents, maps, deeds, minute and ordinance books and similar records have been lost, stolen or destroyed because of the lack of a secure central storage site.

Communities that have municipal buildings or other central offices have comparatively few problems on this score, except for the not uncommon practice of permitting such materials to be removed by an official or employee. Where no secure central storage location is available, serious problems can occur. Losses frequently occur when secretaries are replaced and all or many records are kept at the secretary’s house or business office. Missing materials also may be attributed to the common practice of keeping them in houses or offices of other officials, or permitting officials to take out records for temporary use. Losses under such conditions may not be willful, but they are certainly indefensible and harmful. There are criminal penalties for altering, destroying, concealing or removing public records.

Transcribing

The municipal codes provide a uniform method for recording or transcribing records.¹ Any records required to be recorded or transcribed are valid if typewritten, printed, photostated or microfilmed. Where recording in a specified book is required, such items may be recorded or transcribed into a mechanical or key-operated post binder book or into a bound book with consecutively numbered pages. Records may be attached to a bound book by stapling or gluing, but in such case the corporate seal must be impressed on each page covering both the entry and the page to which it is attached.

Reproduction for Evidence. The secretary is frequently asked to provide copies of the records and needs to be familiar with the legal method of reproducing such records. When required or authorized by law, or otherwise, to record, copy or recopy any document, plat, paper or instrument of writing, any public officer may do so by any photostatic, photographic, microphotographic, microfilm or any other mechanical process producing a clear, accurate and permanent copy of the original.² The reproduction standards must be at least equal to those approved for permanent records by the National Bureau of Standards. Microfilm copies of permanently valuable records also must meet technical standards approved by the Local Government Records Committee. Records that are provided for evidence in court must be on 8 1/2" by 11" paper.

Preservation and Disposition

All municipal codes make the secretary responsible for preserving the municipality's records and documents, unless otherwise specified by statute or local law. The Municipal Records Act of 1968 creates the Local Government Records Committee and defines public records as any papers, books, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by an entity under law or in connection with the exercise of its powers and the discharge of its duties".³ This broad definition generally left secretaries in a quandry as to what records should be retained. With the adoption of the municipal records retention and disposition schedule, a clear standard for record disposal was established.

The first municipal records retention and disposition schedule, approved by the Local Records Committee in 1973, has undergone several revisions. The Committee, in conjunction with the Pennsylvania Historical and Museum Commission (PHMC), is responsible for preparing, adopting and amending schedules for retention and disposition of records in the offices of municipal governments in third class cities, boroughs, incorporated towns, townships and municipal authorities created by these municipalities. The schedule prescribes minimum periods for retaining specified classes of records. The Act does not prevent any municipality from retaining records longer than the period established in the schedule. The Act supplements, but does not replace, any provisions of the municipal codes relating to retention. Municipalities may elect to use the retention schedule or continue to use the old provisions scattered through the codes and other statutes.

Records may be destroyed or transferred in conformance with the Municipal Records Act and the schedules and procedures approved by the Local Government Records Committee. A municipality must declare its intent to follow the schedule by municipal ordinance or resolution, approve each individual act of disposition by resolution of its governing body, and receive written consent from PHMC before destroying or transferring original records which have been microfilmed, photographed or microphotographed, or which do not appear on the schedule. Records disposal certification request forms are available from the PHMC.

Municipal officials who dispose of public records in accordance with provisions of the Municipal Records Act cannot be held liable on their official bonds or by suit for recovery of damages, or in any other manner, civil or criminal.

For advice and assistance in connection with the application of the records retention schedule, write or call:

Pennsylvania Historical and Museum Commission
Division of Archival and Records Management Services
350 North Street
Harrisburg, Pennsylvania 17120-0090
(717) 783-9875 or 783-9874

For more information, visit the PHMC website at www.phmc.state.pa.us

Public Inspection

The Right to Know law guarantees every citizen of the Commonwealth the right, at any reasonable time, to examine and inspect any public record.⁴ This includes the right, under reasonable rules and regulations, to make extracts, copies, and photographs or photostats under supervision of the custodian of the records.

This right extends to all citizens, regardless of the nature or extent of their interest.⁵ Prompt, courteous and helpful compliance on the part of the secretary in this matter provides one of the best sources of good public confidence in the local government.

The Right to Know Law was extensively amended in 2002, and the new law took effect on December 26, 2002. Some of the more notable features of the new law are:

1. Adding definitions of “Commonwealth agency,” “Non-Commonwealth agency,” “Record,” “Requestor,” and “Response.”
2. Provisions for verbal, anonymous, and written requests for access to public records.
3. Authorizing agencies to make public records available through any publicly accessible electronic means.
4. Providing for the redaction of nonpublic information from public records when providing public access.
5. Authorizing the filing of exceptions if a written request for access to a public record is denied.
6. Increasing the penalties for failure to comply with legitimate requests for public records.
7. Empowering agencies to establish user fees for the provision of enhanced electronic access to public records.
8. Requiring agencies to establish written policies to implement the act.

The Right to Know law includes among the public records open to examination accounts, vouchers or contracts documenting the receipt or disbursement of money or purchase, lease or sale of services or supplies and any minute, order or decision affecting the personal or property rights, duties or obligations of any group.⁶ Municipal officials are not required to allow public inspection of: reports or communications disclosing the progress of official investigations, any document where public access is prohibited by law or court order, any document which would operate to impair a person’s reputation or personal security or any document which would result in the loss of federal funds.

Municipal governing bodies may establish reasonable fees for making copies of records when a copy machine is available. Most fees are set on a per page basis. Some municipalities also have established research fees where a request to review records involves extensive work on the part of municipal employees to locate and retrieve old records. However, prior to assessing research fees, municipal solicitors should review and consider the impact of a recent Commonwealth Court case.

In *York Newspapers, Inc. v. City of York* (1753 C.D. 2002 Pa. Commonwealth, 2003), the newspaper appealed the city's refusal to respond to a request for documents under the Right to Know Act, seeking access to records involving police files and court cases concerning civil disturbances and unsolved homicides. The York County Court of Common Pleas issued an order establishing a procedure for conducting a search. A second Common Pleas court judge issued an order that both judges determined which records were public records subject to access and denied the city's claims for fees for time spent searching records. The city appealed the denial of reimbursement. Commonwealth Court held that: (1) the city could not charge newspapers for labor costs for searching or for gathering public records, and (2) the issue of whether the city could charge newspapers for labor charges for searching for and gathering requested public records was required to be decided under the Right to Know Act, not under common law principles.

For further information on what records are considered public records, how to manage requests for information, and samples of fee and records request forms, please refer to the publication, *Open Meetings Open Records*, available from the Department of Community and Economic Development.

Legal Notices

Whether specifically required by statute, or if directed by the governing body, the secretary devotes considerable time to publishing legal notices and providing other types of official notice. Legal notice may be by general publications, by personal service to a person or his agent or tenant or by posting handbills. Personal service may be delivered by an authorized officer, such as a police officer or constable, or by certified or registered mail. Notices may be published in one or more newspapers, authorized trade journals or in the county's legal newspaper. In some cases, notices are posted.

Specific types of notices are designated to protect the interest of particular individuals, the general public and the municipality. Unless the proper procedure is scrupulously followed, serious consequences may occur to one or more of the interested parties. Questions arising about correct notice procedure in any given instance should be immediately addressed to the solicitor.

Computing Time. The method of computing time for notices or other legal procedures affecting municipalities is defined in the Statutory Construction Act.⁷ Whenever a period of time is specified, it is computed by excluding the first but including the last day of the period. If the last day falls on a Saturday, Sunday or legal holiday, it is omitted from the computation. Successive weeks means successive calendar weeks. Publication may be made on any day within the calendar week, but at least five days must elapse between each publication, and at least the number of weeks specified must elapse between the first publication and the date of the event.

Publication. The Newspaper Advertising Act designates a uniform set of qualifications for publications where legal advertisements and publication can be made.⁸ When all four municipal codes require a notice to be published in one newspaper, it must be one of general circulation both printed and circulating within the municipality. If there is no newspaper meeting both requirements, a newspaper circulating generally in the jurisdiction is an acceptable alternative.⁹ The Borough Code allows notice to be placed in newspapers printed outside the borough if their circulation is greater than any paper published within the borough. If a notice is required to be published in more than one newspaper, cities and townships must publish the notice in at least one paper of general circulation printed in the municipality if there is one. The Newspaper Advertising Act requires official or legal advertising involving a road, highway, bridge, municipality or boundary to include the common, local or general usage designation so the advertising can be readily understood by the people of the area involved.¹⁰

In addition to authorized newspapers, municipalities must publish in the county legal newspaper, if any, whenever a notice relates to any proceeding or matter in court, the holding of an election for an increase in debt, or the issue and sale of bonds to be paid for by taxation. This publication requirement can be waived by court or-

der. A third medium for legal publication, restricted to advertising for bids, is construction trade publications or journals published weekly in Pennsylvania.

Proof of Publication. Municipal actions requiring notice are not binding and effective unless supported by proof of publication.¹¹ This requirement is not satisfied by the common practice of secretaries simply clipping notice from newspapers. The Newspaper Advertising Act does not set minimum requirements for legal proof of publication. However, the Act does require a proof of publication to be filed as a part of the record in a proceeding where notice is required.

Notice by Mail. Whenever a statute or ordinance requires service of personal notice by mail, it should be sent by registered or certified mail with a return receipt requested. This assures legal evidence the subject party has actually received the notice. Whenever a law specifically indicates registered mail, certified mail may now be used instead.¹²

References

1. 53 P.S. 37402.2; Third Class City Code, Section 2402.2; 53 P.S. 46009; Borough Code, Section 1009; 53 P.S. 56590; First Class Township Code, Section 1503; 53 P.S. 65513.1; Second Class Township Code, Section 513.1.
2. 65 P.S. 63.1, 63.2; 1949 P.L. 908, Sections 1 and 2.
3. 53 P.S. 9002; Municipal Records Act, Section 2.
4. 65 P.S. 66.2; 1957 P.L. 390, Section 2.
5. *Wiley v. Woods*, 141 A.2d 844, 393 Pa. 341, 1958.
6. 65 P.S. 66.1; 1957 P.L. 390, Section 1.
7. 1 Pa.C.S.A. 1908, 1909 and 1910; Statutory Construction Act.
8. 53 P.S. 35109; Third Class City Code, Section 109; 53 P.S.45109; Borough Code, Section 109; 53 P.S. 55110; First Class Township Code, Section 110; 53 P.S. 65110; Second Class Township Code, Section 110.
9. 45 Pa.C.S.A. 101; Newspaper Advertising Act.
10. 45 Pa.C.S.A. 309; Newspaper Advertising Act.
11. 45 Pa.C.S.A. 307; Newspaper Advertising Act.
12. 1 Pa.C.S.A. 1991; Statutory Construction Act.

VI. Budget and Finance

A budget is a yearly plan outlining the revenues a municipality expects to receive and the ways it will spend them. The budget is more than a financial document. It is a vital element in policymaking. It establishes what programs are to be implemented for the year and provides a way to exercise administrative and legislative control over municipal operations.

A sound budget is carefully planned. Failure to plan or a slapdash effort reduces a budget to a formality undertaken solely to fulfill the legal mandate. To be an effective tool, the budget must be viewed as a comprehensive plan of proposed municipal operations that is based on factual information and well-considered priorities. Vigorously administered, the budget is a tool that can be used to help achieve municipal goals for the year.

Secretary's Role in Budget Preparation

It is impossible to generalize on the role of the municipal secretary in the budget-making process beyond the routine clerical duties of advertising and filing as required by statute. The secretary participates in varying degrees in many, if not most, municipalities. The clerk's part is minimal in third class cities, although a few have indicated they actually draw up the tentative budget. In nonmanager boroughs and townships, participation ranges from discharge of the minimal statutory responsibilities to a role as extensive as that of a budget officer, administrator or manager. Some basic suggestions are included here. Further information on budget preparation can be found in the *Fiscal Management Handbook* available from the Department of Community and Economic Development (DCED) and by attending DCED training courses on budgeting. Consultive assistance on budget techniques also is available from DCED.

The key to effective budgeting is recognizing that preparation is a continuous process which should begin on the first day of a fiscal year and conclude with final adoption at the close. Fiscally sound budgets are often based upon historical trends within a municipality. These trends can be recognized and examined by using the municipal audit as a tool for planning and developing a realistic budget. Although the municipal codes prescribe deadlines for initiating and completing official action on the budget document, they leave the matter of preparation procedures entirely to the discretion of each governing body. For most municipalities, budget preparation is still commonly a hectic operation crammed into a relatively short period near the end of the year.

Adoption of a workable budget preparation calendar that distributes activity throughout the year is the first essential step toward realistic and effective budgeting. Secretaries who are in a position to do so in their municipalities can make a significant contribution to effective budgeting by implementing a general budget preparation calendar. It helps to reduce or eliminate the confusion and resulting errors of last-minute decisions. It also encourages the use of the final days to review and evaluate program priorities instead of hectic juggling of estimates to achieve a comfortable mathematical balance. In addition, it facilitates valid estimates based on accumulated data and thus precludes deadline decisions made by guesswork.

Basic Budget Preparation Steps

Gathering Facts and Estimates. As the keeper of official minutes, the filer of administrative reports and the key liaison between officials, the secretary is in a position to establish an experience and suggestion file. Throughout the year, the secretary accumulates information on operating experience and suggestions for potential future projects. Such information is valuable in proposing activities for the next year and providing measures of cost per unit.

Monthly cumulative financial reports should reflect financial operations to date in relation to budget projections. Differences between budget and actual revenues and expenditures can be promptly identified and adjustments can be made in operations or the budget can be amended. Comparisons allow for more accurate projections in future years. Creation and continued maintenance of a multi-year budget and expenditure history is valuable for trend analysis in budget preparation.

Forms for estimating revenues and expenditures for the next fiscal year should be prepared in the summer for later use by appropriate officials. The forms should conform to classifications of revenues and expenditures in the budget format. After the forms are prepared, revenue and expenditure data for the current year to date should be entered, giving responsible officials a current point of departure in making estimates.

In late summer, appropriate officials should consider work to be done during the upcoming year and recommend programs. These recommendations should be reflected in completed estimate forms submitted to the secretary for accuracy check and summarization. The governing body, conferring with responsible officials, should carefully review recommendations for programs and estimates of cost. Basic decisions on the outline of municipal programs should be made by early October.

Budget Preparation. At a public meeting of the governing body, a preliminary budget document should be submitted and approved for publication. In cities, the budget must be submitted to council for first reading at the last meeting in November.¹ For boroughs and townships, the budget must be prepared at least thirty days prior to adoption.² This means a proposed budget is presented at a public meeting of the governing body and approved for advertising and public inspection. This should occur as early as feasible in November.

For effective management, the municipality must also prepare a working budget. In the working budget, expenditures are broken down into specific object items, such as salaries and wages, contracted services, supplies and materials within each of the functional areas. This type of budget allows the governing body to judge the reasonableness of the amounts that are spent for each function, yet retain control over line item expenses. More complex budgeting systems may be in use in larger or more sophisticated jurisdictions. These often include capital budgets based on multi-year capital programs.

Advertising and Inspection. After tentative adoption, the budget must be advertised. Under the municipal codes the proposed budget must be open for public inspection for ten days in cities and boroughs³ and for twenty days in townships.⁴ The notice must state where and at what hours the budget is available for inspection and the date of the meeting when it will be considered for final adoption.

Final Adoption. Tentative budgets may be amended before final adoption. In cities and townships, if amendments to the budget increase aggregate expenditures by more than ten percent or any individual item by more than 25 percent, the budget must be readvertised before final adoption.⁵ Boroughs are permitted to make unlimited revisions in the proposed budget without readvertising before final adoption.⁶ The final budget and tax ordinances must be adopted at a regular or special meeting before December 31. Real estate taxes must be enacted each year, even if the rate has not changed. Act 511 tax ordinances are permanent until amended or repealed; there is no reason to reenact them each year.

Reopening Budgets. Annual budgets and real estate tax levies may be reopened in the January following a municipal election.⁷ This allows newly-elected members of governing bodies a chance to alter the budget for the current year. Requirements for passing a reopened budget are the same as those used to adopt the original budget. Amended budgets must be finally adopted not later than February 15.

Financial Accounts

The role of the secretary in keeping financial accounts varies by type and size of municipality. City clerks are seldom involved in keeping accounts. The township codes require secretaries to preserve account books and other financial records, but do not preclude the hiring of others to perform the bookkeeping function.⁸ The Borough Code does not include keeping accounts in its listing of the secretary's duties, but it is common practice for councils to require the secretary to keep accounts and make financial reports.

Except for the required annual financial report forms for filing with DCED, municipalities are free to develop budgets and keep accounts in any type of accounting system. The DCED provides a recommended *Chart of Accounts*. This account numbering system incorporates and expands the same numbering system used in the annual audit and financial report. Whether or not the *Chart of Accounts* is used, the budget and accounting systems should conform. However, where line item classifications in the accounts do not parallel the financial report forms, it requires considerable work each year to properly translate items from the local system to the state forms.

Payment of Funds

In boroughs, the president of council and the secretary must attest all orders for payment of funds from the treasury. In first class townships, such orders must be signed by the president or vice president of the board of commissioners and be attested by the secretary.⁹

Budget Transfers. Budgets are financial and operational guides. The municipal codes permit governing bodies to transfer funds from one account to another during the year and to make supplemental appropriations if additional funds become available. In cities, transfers may be made at any time, but transfers exceeding five percent of the total appropriation require approval by an extraordinary majority.¹⁰ Borough councils can make transfers or supplemental appropriations at any time with no restrictions.¹¹ Transfers and supplemental appropriations in townships are restricted to the last nine months of the fiscal year.¹² In first class townships, if a transfer exceeds five percent of the total appropriation item within a fund or is over five percent of the total appropriation to a fund, it requires the affirmative vote of two-thirds of the commissioners.

Financial Reports

The annual budget is the municipal action program expressed in terms of revenues and expenditures. Board/council members are generally quite well informed on the current status of individual budgeted projects, either because they have personally observed activity or because of progress reports made at meetings. Governing bodies are often not as equally well informed on the current status of their general finances as they could be in order to make decisions on implementing the activity programs.

Virtually every municipal governing body receives, monthly and at the close of the fiscal year, a variety of financial reports. Financial reporting is an administrative function assigned to a variety of local officers, depending on the municipality's size and organization. In the majority of boroughs and townships operating without managers, at least some financial reporting responsibility is assigned to the secretary.

The most common problem with monthly financial reports is showing transactions for the current month only, and failing to inform the board/council members of the financial situation for the year to date with comparison of budgeted and actual amounts. Further, many cumulative reports reflect the position existing after payment of bills nearly a month previously, but do not include the effects of bills paid at the current meeting. Most reports also fail to relate actual revenues and expenditures to the estimates in the budget. Board/council members must either guess at the true financial status when making program decisions or spend unnecessary time and effort personally to get an accurate and timely picture.

A simple reporting form provides members with an informative summary of finances to date. In most instances, it can be used with little or no change in the system. It is most effective when issued monthly, although bimonthly or quarterly reports are not uncommon. The form gives a running account of revenues and expenditures in relation to the annual budget. The revenue summary form should list all sources of receipts. Opposite each source, columns should be provided to show in order, the budget estimate for the year, the current month's estimated and actual receipts, the amount over or under the current month's estimate and the total balance to be collected for the remainder of the year.

The cumulative comparative statement of expenditures should also list at least the major categories of expenditures based on the budget. Opposite each item, columns should be provided to show, the budget estimates for the year, the month's estimated and actual expenditures and the amount over or under the month's estimate. Parallel to these columns should appear the amount estimated in the budget for the year to date, actual expenditures to date, the amount over or under budget estimates, unexpended balances, encumbrances and the total expenditures to date.

While they realize the value of such a reporting form, many secretaries feel they have neither the personnel, equipment or time to implement it. Computers greatly ease the work involved in preparing financial reports. For municipalities without computers, it might be more feasible if such a cumulative report is submitted quarterly at first, gradually working toward a monthly report.

Tax Collections

The municipal secretary typically plays a key role in tax collections. The secretary, except in cities, generally prepares the real estate tax duplicate and assists in the procedure for exonerating the tax collector from additional responsibilities for uncollectible personal taxes. The governing body of any taxing district may make exonerations for uncollectible occupation and per capita taxes, mistakes, indigent persons, unseated lands, deaths and removals. The municipal secretary must enter all exonerations granted by the governing body in special books that are provided and include the name, reason, amount and date when granted.¹³ The secretary also must certify the nature of the tax and the amount of exoneration to the tax collector so evidence of the exoneration is available when the governing body makes settlement with the tax collector. A common error is to believe exoneration relieves the taxpayer of any further liability for payment of that tax. Only the tax collector is exonerated from accountability for collecting the tax.

The Local Tax Collection Law¹⁴ has a number of important requirements in the collection of the real estate tax that impacts the operations of the secretary's office. The tax collector must remit tax collections to the taxing district by the 10th day of each month for the previous month's collections unless the taxing districts requires more frequent remittances.¹⁵ The tax collector must provide a reconciled monthly statement in writing on a form approved by the Department of Community and Economic Development. The monthly form is submitted to the secretary or clerk of the taxing district for each type of tax collected under the Local Tax Collection Law.¹⁶ Taxing districts may impose financial penalties on tax collectors for failure to meet the reporting deadlines (10th of each month or more often if required by the taxing district). Tax collectors are required to settle or reconcile the real estate tax duplicate as of December 31 of each year. The annual reconciliation report must be completed for all taxing districts by January 15 (complete settlement of duplicates) for the prior year.¹⁷ Elected tax collector records must be audited annually by the controller or auditors of the taxing district, or at the option of the taxing district, by an independent certified accountant (CPA) or public accountant (PA). If a CPA or PA conducts the audit, it must be conducted in accordance with generally accepted accounting standards.¹⁸ Two or more taxing districts are authorized to conduct a simultaneous audit of any elected tax collector serving the taxing districts. The elected auditors or controller of one taxing district, or a designated CPA or PA may conduct such audits upon agreement by all taxing districts.¹⁹

Municipal Borrowing

Procedures governing municipal borrowing are set forth in the Local Government Unit Debt Act. All debt proceedings should be conducted under close supervision by the solicitor. Generally, the extent of a secretary's participation in the borrowing process is determined by local practice. The secretary may be the principal agent for the governing body or may not participate at all, except for attest of notice duties. The statutory role of the secretary is confined to certifying the complete and accurate copy of the necessary papers for incurring debt to DCED.²⁰

An ordinance for incurring debt must be advertised in summary form not less than three nor more than thirty days prior to its enactment.²¹ The advertisement is to appear once in a newspaper of general circulation that is published or circulated in the area of the local government unit. The advertisement must also indicate the hours a copy of the full proposed ordinance can be examined by the public at the office of the municipal secretary. Within 15 days after the final enactment of the borrowing ordinance, a notice must be advertised once stating briefly the substance of any amendments, the price bid for the bonds or notes and the range of interest rates named in the successful bid.

Before issuing any bonds or notes all local governments must file their borrowing proceeding materials with DCED. DCED examines the proceedings for compliance with the debt limit and required procedures. Bonds or notes issued in excess of \$125,000, or 30 percent of the borrowing base, whichever is less, requires the approval of DCED. For borrowing of the lesser of \$125,000 or 30 percent of the borrowing base, an expedited borrowing procedure known as Small Borrowing can be followed. The governing body of any local government may cancel wholly or in part the authorization to incur electoral debt. More information can be found in DCED's *Debt Management Handbook*.

Annual Financial Report

Annual financial reports are the responsibility of officers other than the Secretary. In third class cities, the Director of Accounts and Finance maintains this responsibility.²²

The report must be submitted to the city council at a stated meeting in March. The report and a concise financial statement must be published once in not more than two newspapers of general circulation. In third class cities, a certified copy must be filed with the DCED no later than March 1.

In boroughs and townships, the annual financial report is the duty of the auditors.²³ It is a recommended practice for the Secretary to submit an annual summary at the close of the year, in addition to creating monthly financial reports. Audits must be reported on forms designated by the DCED. In general, the forms request a summary and detailed statement of revenues and expenditures for each municipal fund and municipal indebtedness.

Audit reports for boroughs, townships and home rule communities must be completed and filed with the municipal secretary, the clerk of courts or prothonotary, and the DCED no later than April 1. Municipalities now have the option of electronically filing these audit reports with DCED upon completion of a training course and remittance of the appropriate security form.

The auditors of the boroughs and first class townships must publish a concise financial statement within ten days after the completion of their report; in second class townships, before March 10. In Townships with a population less than 200 person, publication requirements may be met by posting in public places.

Survey of Financial Condition

The Municipalities Financial Recovery Act requires each municipality to complete and return a Survey of Financial Condition. This survey must be filed on forms DCED provides to the municipal secretary. The survey contains questions to alert the department to the possibility of municipal financial distress under the Act. In many cases, the secretary completes the information on the form. However, the form must be signed by the presiding officer of the municipal governing body and be returned to the department by March 15 in order to qualify the municipality for distribution of state liquid fuels funds.

References

1. 53 P.S. 36809; Third Class City Code, Section 1809.
2. 53 P.S. 46307; Borough Code, Section 1307; 53 P.S. 56701; First Class Township Code, Section 1701; 53 P.S. 65902; Second Class Township Code, Section 90.2.
3. 53 P.S. 36809; Third Class City Code, Section 1809; 53 P.S. 46307; Borough Code, Section 1307.
4. 53 P.S. 56701; First Class Township Code, Section 1701; 53 P.S. 65902; Second Class Township Code, Section 902.
5. 53 P.S. 36809; Third Class City Code, Section 1809; 53 P.S. 56701; First Class Township Code, Section 1701; 53 P.S. 65902; Second Class Township Code, Section 902.
6. 53 P.S. 46309; Borough Code, Section 1309.
7. 53 P.S. 36810; Third Class City Code, Section 1810; 53 P.S. 46311; Borough Code, Section 1311; 53 P.S. 56701.1; First Class Township Code, Section 1701.1; 53 P.S. 65902.2; Second Class Township Code, Section 902.2.
8. 53 P.S. 55902; First Class Township Code, Section 902; 53 P.S. 65540; Second Class Township Code, Section 540.
9. 53 P.S. 46313; Borough Code, Section 1313; 53 P.S. 55804; First Class Township Code, Section 804.
10. 53 P.S. 3.06804; Third Class City Code, Section 1804.
11. 53 P.S. 46312; Borough Code, Section 1312.
12. 53 P.S. 56701; First Class Township Code, Section 1701; 53 P.S. 65902; Second Class Township Code, Section 902.
13. 72 P.S. 5511.37; Local Tax Collection Law, Section 37.
14. 72 P.S. 5511.1; Local Tax Collection Law, Section 1.
15. 72 P.S. 5511.25; Local Tax Collection Law, Section 25.
16. Ibid
17. 72 P.S. 5511.26; Local Tax Collection Law, Section 26.
18. Ibid
19. Ibid
20. 53 P.S. 6780-351; Local Government Unit Debt Act, Section 801.
21. 53 P.S. 6780-3; Local Government Unit Debt Act, Section 103.
22. 53 P.S. 36812; Third Class City Code, Section 1812.
23. 53 P.S. 46041; Borough Code, Section 1041(d); 53 P.S. 56003; First Class Township Code, Section 1003; 53 P.S. 65547; Second Class Township Code, Section 547.

VII. Purchasing and Contracts

The municipal secretary usually plays a large role purchasing equipment and supplies. Critical points of the purchasing and contracting process are covered in this chapter. More detailed information can be found in the *Purchasing Handbook for Local Governments*, available from DCED.

The purchasing process can involve a formal contract following advertising, submission of bids, award to the lowest responsible bidder and execution of the contract document. Smaller purchases can be made through an informal process.

Secretary's Role

The secretary generally plays a more extensive role in the process of letting municipal contracts than is apparent from the provisions of the municipal codes. The codes direct the secretary to advertise bid notices, serve as custodian of all papers and documents involved and attest the final contract. The secretary's role is frequently more extensive, particularly in smaller municipalities. It is common for the secretary to acquire specifications, prepare and advertise appropriate notices, prepare and distribute invitations and instructions to prospective bidders, answer prospective bidders' questions on specifications, tabulate bids after public opening, notify unsuccessful bidders and return their bid bonds, notify the successful bidder, arrange for the formal contract and required bonds, follow progress of performance and report to the governing body and conclude the contract at the direction of the governing body by returning the bonds.

No matter the scope of the secretary's role, each should be familiar with the code provisions concerning contracts.¹ Any questions on the interpretation of these provisions should be taken to the solicitor because purchasing provisions must be strictly followed. If local practice permits, the secretary can help the governing body improve the purchasing process through some simple techniques that are used by professional purchasing agents.

Specifications File. Most secretaries maintain a file of past specifications. Newspaper copies of specifications advertised for various items by neighboring municipalities can be clipped and added to the file. Standard specifications for materials and construction of streets, roads, bridges and drains are available from the Pennsylvania Department of Transportation. Standards for other items used by the municipality can be obtained from the National Bureau of Standards.

Prospective Bidder File. Maintaining a current file of suppliers of goods and services allows the municipality to gather and keep information that is helpful in establishing a bidder's qualifications at the time of a contract award. It also provides the secretary with a ready list of prospective bidders who can be sent invitations to bid directly, rather than relying on firms to spot the published legal advertisement.

Negotiated or Nonbid Purchases

In boroughs and townships, the codes require at least three written or telephone price quotations for all contracts between \$4,000 and \$10,000.² A written record of telephone price quotes must be made, including vendor's name, the purpose of the contract and the price. Records of informal written or telephone price quotes must be retained for three years.

Many routine purchases that fall below \$4,000 are made by the secretary through an informal process. A common tendency for informal purchases made from a single vendor for a particular item sacrifices the advantage of shopping around for a better price. Some governing bodies require the secretary to secure price quotations by letter or telephone, and purchase the item, if the quality is satisfactory, on the basis of the lowest quotation. These purchases and quotations should be filed as sources of future information as well as evidence of compliance with municipal regulations.

Small purchases under a given amount are usually made from a petty cash fund. Even with small purchases, appropriate records should be kept for accounting purposes. Some municipalities use a specially designed form, commonly termed a purchase order, to be submitted to the vendor as evidence of authority to purchase. A copy is retained by the secretary. When the invoice is received, it is matched to the purchase order before payment is made.

Municipal officials are often under pressure to give preference to local vendors on the grounds they are taxpayers. This is particularly difficult to avoid in small communities. However, the officials are responsible for obtaining the best work or materials for municipal use at the lowest cost. Giving preference to a local vendor is illegal and constitutes a subsidy borne by the taxpayers as a whole. The only exception is when the specifications stipulate continuing service for a product, reasonable access to service facilities can be taken into account in awarding the bid.

Even in small municipalities, significant savings can be made by reducing or eliminating the practice of purchasing goods and supplies only as needed. When done to get below the bidding limit, the practice is illegal. The requirements for each specific item over the year should be projected and consolidated into a single bulk purchase that is awarded on the basis of competitive quotations. Storage and inventory problems of purchasing a year's supply can be overcome by a bulk purchase with periodic partial deliveries as needed at the contracted price.

Competitive Bid Purchases

All municipal contracts of more than \$10,000, with very limited exceptions, must be awarded to the lowest responsible bidder on the basis of publicly advertised and competitive bidding. Contracts falling within the following categories may be awarded either on a competitive or negotiated basis.

1. Maintenance, repairs or replacements for water, electric light or other public works, provided they are not new additions, extensions or enlargements of existing facilities or equipment.
2. Repairs and maintenance of any kind made or provided by the municipality's own employees, except construction materials in excess of \$10,000 require competitive bidding.
3. Particular types, models or pieces of new equipment, articles, apparatus, appliances, vehicles or parts which are patented manufactured articles or copyrighted products.
4. Insurance policies and surety bonds.
5. Public utility services under tariffs on file with the Public Utility Commission.
6. Purchases, leases or loans from other political subdivisions, municipal authorities or state and federal agencies.
7. Personal or professional services.

Attempts to avoid competitive bidding by piecemeal purchase of goods and services in amounts under the bidding limit, resulting in the total of separate purchases exceeding that amount, should always be avoided. The municipal codes stipulate advertising requirements may not be evaded by piecemeal purchases when, in the

exercise of reasonable discretion and prudence, the purchase should be conducted in one transaction of more than \$10,000. Any member of a governing body who knowingly violates this provision is liable for a surcharge of up to 10 percent of the full amount of the contract or purchase.

Advertising for Competitive Bids

Advertising notice of bids is the secretary's responsibility. Advertisements must appear at least two times, at intervals of not less than three days, in a daily newspaper of general circulation, or once each week for two successive weeks in a weekly newspaper of general circulation. The advertisements must appear not more than 45 days nor less than ten days prior to the date set for opening bids. Plans and specifications must be on file and available at least ten days prior to the bid opening date. In addition to newspaper advertising, municipalities can advertise bid notices in publications or journals in the construction field that are published weekly in the state and circulated among potential contractors or suppliers.³

The bid notice must be detailed enough to give prospective bidders a clear picture of the nature of the contract to be awarded. Notices should include the nature of the item or project, a notice of the place and times where specifications may be obtained, when and where bids will be received and publicly opened, bid bond requirements, deadline for receipt of bids and a statement the contract will be awarded to the lowest responsible bidder, reserving to the municipality the right to reject any or all bids or waive any informalities. The notice or bidders' instructions usually require the bids to be sealed and sometimes specify the type of envelope or require it to be marked in a specific way for identification purposes.

Invitations to Bid. Requirements in the municipal codes for public advertising for bids are only the minimum established by law to allow competition. Its value to general bids is limited. Many contractors who might bid are not aware of the proposal because they do not receive that newspaper, do not read the legal notice or might miss the particular issue carrying the advertisement.

A secretary responsible for obtaining bids can send out letters inviting bids without a request from a contractor. Maintaining lists of prospective contractors from as wide an area as feasible and alerting them to upcoming contracts can help reduce prices and increase quality. In one municipality, the secretary relied exclusively on legal notices to solicit bids for police cars. Only one or two bids were received, and the cost was the highest in the county. The next time, the secretary sent special letters inviting bids to 17 dealers in a two-county area; bids were received from ten firms and a police vehicle was acquired at the lowest price in the county.

Local Preference. Every secretary is aware of local pressures to spend public tax money at home. When competitive bidding is required, the contract must be awarded to the lowest responsible bidder who meets the specifications. Out-of-town contractors must be allowed to bid and must receive equal consideration with local contractors. Despite local pressures to purchase at home, it is also sound business practice to secure several quotations on purchases below the competitive bid level, in or out of town. Favoritism to local contractors penalizes the whole community by not getting the greatest value for expenditure of public tax dollars. Many municipalities have enacted regulations to require several informal quotations for purchases under the bidding limit.

Specifications

Secretaries commonly prepare specifications for contracts, at least for minor purchases or projects. In certain instances, such as standard items purchased periodically, specifications previously prepared by a qualified person are copied and modified, while in others the secretary has become qualified through instruction.

Preparation of specifications by unqualified persons is one of the primary causes of failure to obtain the exact type and quality of service or material desired. A secretary who is not qualified or experienced should not risk performing this function. The job should be done by the engineer, solicitor, department head or other qualified person, depending on the nature of the item.

The decision on whether a bidder meets all specifications is frequently complex and time consuming. An error in interpretation or computation may even result in a lawsuit. Whenever possible, a specially prepared bid form should be used, tailored to clearly show the exact description of the time, unit and total prices, quality and identification by the bidder of any item where the bid varies from the specification together with an explanation and description of the substitute.

Bonding

The municipal codes authorize governing bodies to require bid bonds. This means each bid must be accompanied by a certified check in a reasonable amount as evidence the bid is sincere and as a financial guarantee the successful bidder will follow through with the transaction. The most common amount is 10 percent of the bid, although higher amounts are permissible. One of the secretary's duties is to return the checks of the unsuccessful bidders after the contract has been awarded. The bid security of the successful bidder is withheld until the contracts have been signed and the contractor has provided the necessary performance and payment bonds.

All public works construction or maintenance contracts over \$5,000 require the successful bidder to provide a performance bond and a payment bond in the amount of 100 percent of the contract liability or bank letter of credit or restricted escrow account.⁴ For other contracts, the codes provide for performance bonds of 50 percent and payment bonds of between 50 and 100 percent. The contractor is released from the bonds after the governing body determines all contract provisions have been met and the contract completion has been finally approved.

Awarding Contracts

The procedure for awarding competitive contracts includes receipt of bids, opening bids and awarding of the contract.⁵ Bids are receivable at the place and before the deadline specified in the public notice. Any bids not received in this manner can be summarily rejected.

Bids must be sealed. They can be received and accepted at a public meeting or at a specified time before the meeting. The contract may be awarded at the same meeting or at a subsequent meeting announced at the time bids are opened. If the announced meeting is not held, the award may be made at another meeting held on five days' public notice.

Simple contracts are usually awarded on the night of receipt. More complex ones are usually held for study by department heads or committees so specifications can be properly evaluated and computations accurately made. Votes to award contracts must always be taken at public meetings. Often bidders or their agents are present at such meetings and may be requested or permitted to answer questions or make statements.

The codes require contracts to be awarded to the lowest responsible bidder. This does not always mean the lowest bidder. Factors in determining bidder responsibility can include consideration of the quality of previous work, records of completing projects on time, history of payments to subcontractors and suppliers, maintenance of a permanent place of business, adequacy of equipment and plant to do the job, technical experience and whether the bidder has a solid financial base to guarantee contract completion. Local preference is not an acceptable consideration in evaluating bidder responsibility. Municipalities contemplating awarding a bid to other than the lowest bidder should consult their solicitor before voting to do so.

Intergovernmental Purchasing

Agreements with neighboring municipalities for joint purchasing to obtain the advantage of quantity prices have become quite common in Pennsylvania. Many governing bodies are not sufficiently aware of the potential benefits of such a program. Secretaries can encourage joint purchasing by investigating the possibilities, learning current practices and showing the governing body an example of savings achieved. Most councils of governments in Pennsylvania sponsor joint purchasing programs. In some cases these include counties and school districts to add purchasing power.

Municipalities can purchase materials, supplies, equipment and vehicles from contracts entered into by the state Department of General Services. This program is known as cooperative purchasing or piggyback purchasing. Cooperative purchases through the state are exempt from statutory requirements relating to bidding and contracting. The governing body must pass and file a resolution with the Department requesting authorization to participate in cooperative purchasing. The municipality can then review available state contracts for possible use. Since this is a voluntary program, passing the resolution does not obligate the municipality to use the state contracts. Additional information is available from: Cooperative Purchasing, Department of General Services, P.O. Box 1365, Harrisburg, Pennsylvania 17108, (717) 787-1105.

References

1. 53 P.S. 36901; Third Class City Code, Section 1901; 53 P.S. 46401; Borough Code, Section 1401; 53 P.S. 56801; First Class Township Code, Section 1801; 53 P.S. 65801; Second Class Township Code, Section 801.
2. 53 P.S. 46402(a.1); Borough Code, Section 1402(a.1); 53 P.S. 56802(a.1); First Class Township Code, Section 1802(a.1); 53 P.S. 65802(a.1); Second Class Township Code, Section 802(a.1).
3. 45 Pa.C.S.A. 306; Newspaper Advertising Act.
4. 8 P.S. 193.1; Public Works Contractors Bond Law, Section 3.1.
5. 53 P.S. 36901; Third Class City Code, Section 1901; 53 P.S. 46402; Borough Code, Section 1402; 53 P.S. 56802; First Class Township Code, Section 1802; 53 P.S. 65802; Second Class Township Code, Section 802.

VIII. Personnel Management

In most municipalities, the secretary has some responsibility to carry out the decisions of the governing body regarding the hiring of municipal employees, orienting them to their work assignments and responsibilities, paying them and informing them of fringe benefits the municipality provides. Various state and federal laws confer certain rights on employees and restrict the actions that the local governing body may take. These laws also require reports to be made and records to be kept, which usually becomes the secretary's responsibility.

Hiring

Competitive examination programs that are provided by an appointed civil service commission are required to be used for the hiring and promotion of employees in certain positions. These include paid fire and police positions in boroughs and first class townships with a police force or paid fire department of three or more members. In third class cities, positions in the police department, fire department, engineering or electrical departments, health officers and building inspectors are included in this requirement.

When filling positions not covered by civil service requirements, an objective, job-related process should be followed. Such a procedure not only helps to assure that qualified persons are hired, but also guards against practices which, even if unintended, may violate state or federal laws prohibiting discrimination based on race, sex, religion, age or disability.

Tools for employee selection include:

1. Job descriptions that not only specify duties, but also list knowledge, skills, abilities, experience and training that applicants must possess.
2. Pay ranges established by comparison with similar positions in the appropriate labor market.
3. Open advertising of vacancies.
4. A well-designed application form. Avoid using out-dated forms.
5. Structured interviews, reference checks and performance tests.

Documentation of any hiring procedure, such as completed applications, test results and interview notes, should be kept for use as evidence in case of charges of discrimination. Federal law also requires the employer to verify that each employee hired is a United States citizen or authorized to work in the United States. These records must be kept on forms supplied by the U.S. Immigration and Naturalization Service.

Pay

The federal Fair Labor Standards Act specifies a minimum wage that must be paid to all employees, except those exempted as executive, administrative, professional or selected officials. The federal Equal Pay Act requires adherence to the principal of equal pay for equal work. There are many ways of arriving at fair pay rates, but the most important principle is to determine the pay rate based on what the work is and how well the employee does it, rather than other considerations not related to the job. Supervisors in second class townships may be employed by the township. When employed to work on the roads as road superintendent, roadmaster or road laborer, supervisors are not to be paid rates in excess of those generally paid in the locality for similar services. In any case, where elected supervisors also serve as employees, their pay is set by the elected auditors.

Pay is usually related to hours of work. Although there is no legal limit on the number of hours an employee is allowed to work, the Fair Labor Standards Act requires that above a set limit, employees must be paid one and a half times their regular rate or given compensatory time off at the time and a half rate, if agreed to in advance. This limit is 40 hours in a week for most employees, with higher limits for police and firefighters. Employees who operate commercial motor vehicles that weigh more than 17,000 pounds have maximum daily and weekly limits on their hours of employment, except under certain conditions during an emergency. The municipality is required to keep records of the number of hours employees work and the amount paid for those hours to prove they are meeting this requirement.

Benefits

Benefits such as medical insurance and life insurance are a normal part of most employment situations and are authorized, but not required, by the municipal codes. In order to assure compliance with equal opportunity laws, it is important to grant these benefits consistently. This is usually done based on whether jobs are permanent or temporary, full- or part-time. If a municipality with 20 or more employees provides a medical insurance plan, federal law (COBRA) requires that terminating employees be given the opportunity to continue the coverage at their own expense for a limited time.

Retirement. All municipal codes authorize establishing retirement plans for employees. In some cases, the type of plan is left to the discretion of the governing body. In other cases, the type of plan is specified by law. For example, Act 600 of 1955 governs police pensions in boroughs and townships with a police force of three or more and requires retirement benefits to be computed in accordance with a definite formula which the municipality can only modify slightly.

The main legal requirement for municipalities regarding pensions is full funding. Whatever pension benefit the municipality agrees to provide, it must set aside enough money to pay for the benefit. Act 205 of 1984 requires periodic reporting to the state on the condition of municipal pension funds.

Time Off. Local governments may establish policies to grant employees time off for sick leave, vacation, holidays or other reasons. Most plans place limits on the amount of leave that can be accumulated, when it can be used, and the conditions under which a departing employee may be paid for unused leave. This requires maintaining accurate leave records.

State law guarantees municipal employees who are members of military reserve units up to 15 days leave per year to fulfill their military obligations. During such leave, employees must be paid their normal salary.

Workers' Compensation. State law requires municipalities to carry insurance in case of work-related injuries or illnesses to employees. Such insurance covers the costs of treatment for the injury or illness and also pays a portion of the employee's salary during any period of disability.

Employers, including municipal employers, are required to inform employees of details of any hazardous substances in the workplace. It is not enough just to have this information available or to tell employees where they can get it. The information must be posted, the hazardous material must be labeled, and employees must be trained in its proper use.

Unemployment Compensation. Municipal employees may be eligible for unemployment compensation if they lose their jobs through no fault of their own. The municipality pays the cost of this compensation.

Social Security. Effective July 1, 1991, virtually all employees not covered by a retirement system must be covered by Social Security. This includes elected officials, temporary and part-time workers. The cost of coverage is split between the employee and the local government. Secretaries responsible for payroll must see that deductions are made from employees' pay, that matching contributions are made by the municipality and that payments are submitted on a timely basis.

Labor Relations

Municipal employees have the right to form employee organizations for the purpose of bargaining with the employer on terms and conditions of employment. Two state laws govern this right, one for police and firefighters, and one for other employees. The local governing body is required to bargain in good faith with employee representatives and put any agreement reached into the form of a written contract.

If an agreement cannot be reached, the law provides for arbitration to resolve the impasse in the case of police and firefighters. Other employees have the right to strike if an agreement cannot be reached after several intermediate steps are taken.

Employee Protection

Many local governments operate under the doctrine of employment at will. That is, because the governing body hires an employee, it also has the authority to terminate that employment at any time for any reason. This doctrine may be appropriate for appointed positions which are defined in the law as serving at the pleasure of the appointing authority, but in practice there are many limitations on at will employment. These include:

Labor Relations Law	Employees cannot be fired for exercising their right to organize.
Equal Opportunity Law (State Human Relations Act)	Employees cannot be fired due to race, religion, sex, handicap or age.
Local Agency Law	Requires a formal hearing before termination.
Civil Service Requirements Police Tenure Act	Grant employees appeal rights, if terminated. Require just cause for termination of police officers.
Age Discrimination in Employment Act	Employees cannot be forced to retire at an arbitrary age.
Crimes Testimony	Employees cannot be fired for testifying as a witness in a court case.
Whistle Blower Act	Employees cannot be fired for reporting waste or wrongdoing.
Americans with Disabilities Act	Prohibits discrimination on the basis of disability in employment and provision of services.

For these reasons, it is usually wise to develop a policy requiring due process and just cause for any negative employment action taken against an employee. The municipal solicitor should review the policy before formal adoption. The solicitor should also be consulted prior to an employee termination.

IX. Land Use Control and Environmental Protection

Pennsylvania municipalities are given extensive police powers to protect the health, safety and welfare of their inhabitants. In addition to general and specific police powers granted by the municipal codes, a series of state laws give municipalities power to control land use and exercise regulatory power over critical aspects of the environment.

The power and responsibility to plan for land use and its regulation lie exclusively with local governments. They were given the power to plan their own community development through the Pennsylvania Municipalities Planning Code (MPC).¹ No state agency has been assigned responsibility to administer any of the land use powers if a local government fails to exercise a delegated power. The MPC is a true enabling act that gives municipalities great leeway in shaping their own land use programs.

The MPC gives municipalities the tools to plan for future development by preparing a comprehensive plan, and to govern land use through zoning, subdivision and land development ordinances. The Code outlines procedures to be followed. Copies of the MPC and other publications concerning municipal planning and zoning are available from DCED.

In some municipalities, the secretary may be deeply involved in one or more land use control activities or may function solely in a routine clerical capacity. The secretary's assigned duties under the provisions of the MPC include receiving and forwarding plans, plats and other documents to appropriate local or county agencies, and to publish or issue various public or individual notices. This role is important because land use control can have a major economic impact and statutory requirements are strictly construed by the courts.

Performance of these clerical duties tends to expand the overall role of the secretary, because the secretary is drawn into significant relationships with a variety of agencies, officials and citizens. In many instances, the secretary may even become a member of the planning agency. Or, more commonly in smaller municipalities, the secretary may serve as secretary for the planning agency or as zoning officer.

Comprehensive Planning

Development controls are the tools to implement comprehensive land use plans, or master plans as they are sometimes called. Planning is the process of making decisions today to guide actions to occur in the future.

Comprehensive planning is the basis for the regulation of land use and control of development. A zoning ordinance should be consistent with the comprehensive plan. The zoning ordinance should reflect community development goals and objectives and, in the absence of a comprehensive plan, must contain a statement of community development objectives. If zoning regulations lack evidence of good planning and a controversy with a developer reaches the courts, they stand a good chance of being rejected or overruled.

The preparation of a comprehensive plan requires considerable data collection and analysis. The effect of different land use alternatives on development patterns, soil conditions, environmental factors, water availability, traffic, population growth, government services and other factors must be weighed. After the study is completed, recommended land uses are determined and illustrated on maps. The comprehensive plan document is prepared by the planning agency and submitted to the governing body.

A planning agency must hold at least one advertised public hearing before forwarding a proposed comprehensive plan or amendment to the governing body. Before voting on the proposal, the governing body must hold at least one advertised public hearing. Notice must be given once each week for two consecutive weeks in a newspaper of general circulation not more than thirty days nor less than seven days before the public hearing.

After the adoption of a comprehensive plan, proposed actions of the governing body must be submitted to the planning agency for recommendations if they fall within one of the following areas:

1. Location, opening, vacating, extending, widening, narrowing or enlarging any street, public ground, pierhead or watercourse.
2. Location, erection, demolition or sale of any public structures.
3. Adoption, amendment or repeal of any official map, subdivision and land development ordinance, zoning ordinance or capital improvement program.

Official Map. Prior to the adoption of an official map ordinance or any amendment to it, the governing body must refer the proposal to both the municipal and county planning commissions and to adjacent municipalities for a 45 day review period. Before voting, the governing body must also hold a public hearing pursuant to public notice. Following the adoption of the ordinance and official map, or any amendment to it, a copy verified by the governing body must be submitted to the recorder of deeds for recording within 60 days of the effective date.

Zoning Ordinance

Zoning is a method of regulation to obtain proper land use. The zoning ordinance specifies the types of activities permitted in various areas of the municipality, such as residential, commercial and agricultural. Chronologically, the zoning ordinance should follow development of the comprehensive plan. The municipality enacts, amends and repeals zoning ordinances to implement the comprehensive plan.

The zoning ordinance is prepared under the direction of the planning commission based on a comprehensive development plan. Zoning classifications should be based on the most accurate information about the municipality's current status and the areas where the most probable future development may occur. The zoning ordinance is usually drafted under the guidance of a trained planner to insure proper professional planning techniques.

The secretary receives proposed zoning ordinances and amendments for the consideration of the governing body. Proposed zoning amendments not prepared by the planning agency must be submitted to it for recommendations prior to the public hearing. An initially proposed zoning ordinance must be sent to the county planning agency 45 days prior to the public hearing by the governing body and any proposed zoning amendments must be sent to the county 30 days prior to the public hearing. The county's review function, in most cases, is advisory.

The secretary publishes the designated notice for the public hearing the governing body must hold before adoption of a zoning ordinance or amendments. If the notice includes only a summary of the proposal, the secretary must indicate where the full text can be examined before the hearing. If a zoning map change is involved, the tract must be conspicuously posted along a perimeter at least one week prior to the hearing. After adoption of a zoning ordinance or amendments, they can be incorporated into the official ordinance book by reference. A copy must be sent to the county planning agency.

Subdivision and Land Development Ordinance

Subdivision regulations govern the division of land into lots for development. The governing body controls land development within the municipality by enacting a subdivision and land development ordinance. These ordinances usually require that all plats of land be submitted for approval to the governing body and meet stated requirements prior to development. These usually include standards for sewers, water supply, street construction and lighting, sidewalks, utility placement and storm drainage.

The secretary has certain duties under the terms of the Planning Code. When subdivision and land development ordinances or amendments are proposed, the secretary submits them to the planning agency for recommendations if they have not been prepared by that body, and publishes the required notice for a public hearing prior to their adoption by the governing body. Enactment of subdivision and land development ordinances and amendments can be advertised by reference and only the adopting ordinance must be entered into the ordinance book. Copies of ordinances and amendments must be filed with the county planning agency.

Copies of applications for approval of plats must be submitted to the county planning agency for recommendation. If the governing body chooses to hold a public hearing on a developer's application, the secretary advertises the public notice. The secretary usually receives the financial security required of the developers and notifies them of their release from the bond following acceptable completion of all improvements. The secretary also marks approval of the developer's plats so they can be accepted by the county recorder of deeds.

If the municipality had previously adopted a separate planned residential development ordinance (PRD), that allows clustered development, the secretary performs notice and transmittal functions similar to those for subdivision proposals. The Planning Code requires that all single purpose PRD ordinances be converted to zoning provisions by February 21, 1994.

Sewage Enforcement

The Pennsylvania Sewage Facilities Act, administered by the Department of Environmental Protection (DEP), provides for planning and regulating both community and individual sewer disposal systems.² It requires municipalities to submit plans for sewage systems and permits for the installation of all sewage systems.

Municipalities are responsible for issuing permits for all on-lot sewage disposal systems. Sewage enforcement officers that are appointed by the governing body must undergo a training program and be certified by DEP. The sewage enforcement officer should file copies of approved or denied permits with the municipal government.

The DEP mails report forms annually to all municipalities to report permits issued, expenditures incurred by the local government and any request for reimbursement for activities relating to the municipality's permitting function. The sewage enforcement officer usually completes this form, but the secretary should ensure it is filled out and sent to DEP.

Solid Waste Management

The Municipal Waste Planning, Recycling and Waste Reduction Act requires counties to adopt and submit to DEP a municipal waste management plan for all waste generated in the county.³ The municipality is responsible for the collection, storage and transportation of the wastes. The county is responsible for processing and disposal under the plan. Municipalities that have over 5,000 in population are also responsible for establishing and implementing waste recycling programs. Some municipalities are undertaking their recycling and solid waste programs on a cooperative basis through their council of governments. The law also provides that a representative from each class of municipality within the county be appointed to an advisory committee that reviews the county plan.

Municipalities must take action within 90 days of receipt of the county plan to either ratify or object to the plan. If no action is taken, it is deemed that the municipality has ratified the plan. In addition, municipalities must report on the implementation of their recycling programs by February 15 of each year.

Secretaries with questions regarding the requirements of the Municipal Waste Planning, Recycling and Waste Reduction Act (Act 101 of 1988) should contact their county solid waste office or their DEP regional office.

Stormwater Management

The Stormwater Management Act establishes local administration and control of accelerated stormwater runoff resulting from land development.⁴ Watershed plans are developed by the county. Within six months after adoption of a watershed plan, each municipality must bring its ordinances into line with the county plan. This may involve changing zoning or subdivision ordinances or enacting stormwater management regulations for new development.

Floodplain Regulations

Floodplain regulations are adopted by municipalities to manage their floodplains in order that damage caused by floods can either be avoided or minimized. These regulations are found in zoning ordinances, building codes, subdivision regulations, single purpose floodplain management ordinances and health regulations. Federal and state laws require officially identified floodprone municipalities to adopt flood plain regulations.

The National Flood Insurance Program provides for flood insurance coverage of buildings and structures located within municipalities participating in the program through the adoption of regulations to control development within identified flood hazard areas. The Floodplain Management Act requires Pennsylvania municipalities to participate in the National Flood Insurance Program.⁵ Enacting and administering local flood plain regulations can involve the secretary in notice, filing and permitting activities.

Pennsylvania Uniform Construction Code (UCC)

The Pennsylvania Uniform Construction Code (Act 45 of 1999) establishes the first statewide building code in the history of the Commonwealth. Virtually all construction activity, including additions and renovations, must now comply with construction standards mandated under the Act. Exempt from the UCC are new and renovated buildings contracted or permitted prior to the effective date of the law, certain utility and accessory structures, and agricultural building that do not house people.

A major component of the UCC is the training and certification requirements for building code officials. Any individual who is employed or contracted to issue building permits, perform plan reviews and conduct construction inspections must comply with the training and certification regulations.

Local Governments have several options in dealing with administration of the UCC. Municipalities may “opt-in” and self-administer the regulations utilizing their own employees or purchase enforcement services from another municipality. Elected officials may also contract with private individuals or firms, referred to in the Act as “third party agencies”. In addition, many municipalities have embraced an intergovernmental approach in establishing a code enforcement program. Several municipalities may work together to retain the professional services of a third-party agency, share employees, or develop a combination of the two. This tactic may be especially effective in regions of the Commonwealth where it may not be feasible for a municipality to provide these services on their own.

The Act also gives a municipality the choice to “opt-out” of enforcing the UCC. Property owners and builders proposing a residential construction project in opt-out communities will be responsible for retaining the services of a third party agency to perform the functions associated with the Uniform Construction Code. If non-residential or commercial construction is proposed, the Department of Labor and Industry will have the sole responsibility of administering the permitting, plan review and inspections for those projects at a cost established by the Department. Local government officials that decide to opt-out lose the ability to issue building permits or regulate construction code enforcement in their municipalities.

Historic Districts

The Historic District Act permits municipalities to designate certain areas as historic districts that are subject to special controls to protect the local architectural and historic heritage.⁶ The boundaries of the districts are defined by surveys of local architectural and historic resources. Controls cover demolition or alteration of existing buildings and new construction within the district. Regulations on building spacing, texture and type of materials and architectural details are intended to preserve the exterior appearance of the district. The degree of controls enacted and their ongoing administration are local choices. The secretary may be involved in notice and permitting activities.

Agricultural Reserves

The Agricultural Area Security Law authorizes local governing bodies to create agricultural areas composed of at least 500 acres of viable agricultural land.⁷ Land within a designated agricultural area is given protection from local ordinances that would restrict farming operations, as well as safeguards against condemnation by state and local agencies and public utilities. County governments and/or the state are authorized to purchase agricultural conservation easements within agricultural security areas.

Creation of an agricultural area requires a proposal from one or more landowners, review by the planning commission and a special agricultural area advisory committee and a public hearing before the governing body. Under application of this law, the municipal secretary is involved in making public notice of proposals, receiving proposals for modifications, publishing notice of hearings and giving written notice to property owners, organizing the public hearing and filing the description of the designated area. Notice of creation of an agricultural security area should be made to the Bureau of Farmland Protection, Pennsylvania Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110.

References

1. 53 P.S. 10101; Pennsylvania Municipalities Planning Code.
2. 35 P.S. 750.1; Pennsylvania Sewage Facilities Act.
3. 53 P.S. 4000.101; Municipal Waste Planning, Recycling and Waste Reduction Act.
4. 32 P.S. 680; Storm Water Management Act.
5. 32 P.S. 679.101; Flood Plain Management Act.
6. 53 P.S. 8001; 1961 P.L. 282.
7. 3 P.S. 901; Agriculture Area Security Law.

X. Communication and Information

The municipal secretary serves as a major point of contact for information and communication both within and outside local government. The secretary is the person most likely to communicate with individual citizens or groups, including the news media, other local officials and employees, other municipalities and the county or the state.

Many important relationships grow out of procedures required by law, local ordinance or regulation. Often these are routine or clerical duties, such as publishing notices, preparing minutes, recording ordinances, filing reports or certifications and attesting to official documents. The routine clerical side of the secretary's duties places the secretary in a key position in the functioning of any local government.

Another side of the secretary's role can make the office the core of municipal activities, a civic leader and advisor to elected officials and the personification of the municipal government. This side of the role depends to a great extent on relationships with others in areas not mandated by law, but made possible by it. The office reaches full stature when the secretary is accepted as the interpreter of municipal policy to interested individuals and groups, when the secretary is free to respond to ordinary service requests from the public by taking action without going to the governing body, and when the secretary is informed of and responds to services and programs of other local, county and state agencies by maintaining contacts and keeping the governing body informed.

Reports to Governing Bodies

To govern well, board/council members must be kept informed. A governing body member who is kept current on a situation or problem as it evolves is more likely to respond to proposals when submitted than if the issue is suddenly raised without previous warning. Secretaries of all municipalities play at least some role in the informing process. In larger municipalities, the major responsibility rests with the mayor, manager or administrator. But in the vast bulk of Pennsylvania boroughs and townships, the secretary is at the center of the action and is the most logical and productive information source.

Ideally, the secretary should pass along pertinent information simultaneously to all board/council members. Unfortunately, this can be done only at a meeting of members and does not take care of situations when the information should be reported immediately. To avoid frictions, the secretary should request an understanding, preferably in the form of a written policy statement, clarifying procedures for reporting. Such a policy may direct the secretary to keep the presiding officer briefed on a regular basis. The presiding officer then decides when to instruct the secretary to contact other members. The policy may specify matters to be referred to a committee chair, or perhaps to the whole committee. In any case, the secretary should avoid releasing any information to the press, a special group, a friend or a favored board/council member before presentation to the appropriate official for disposition.

Board/council members do not want to know everything, nor would it be possible to keep them informed of every little occurrence. The secretary must frequently use discretion in deciding what to pass along at once, what to report at a meeting, or what not to report at all. Certain reports at meetings are standard procedure. Outside these required reports, the secretary must frequently decide what is to be reported and in what form. There is no single simple rule to help solve this recurring problem. Each secretary should evaluate the inclinations and desires of the governing body members. Reporting will likely be geared to those members who want most details.

There are a great variety of reporting methods. The secretary's choice is limited by factors such as available time, personnel and equipment. The nature of the subject matter, the complexity of the problem and the extent of citizen interest are three crucial factors determining whether the report should be an oral summary, a comprehensive formal or brief written report, a simple memo or a concise and terse situation statement in the agenda. Most reporting is oral, perhaps because most secretaries lack the time, skills or equipment to prepare numerous written reports.

Oral reports have advantages. Some board/council members prefer oral reports as long as relevant issues and facts are not confused by digressions and ramblings. Oral reports are especially useful in calling issues to the attention of board/council members at the proper time, and are probably the best way to answer questions not requiring a written reply. They do have the disadvantages of unintentional omissions, errors, lack of clarity and unity and the possibility of emotionalism.

Written reports tend to prevent misunderstanding of what is said or intended, facilitate getting information in detailed form to members, permit explanation of complex problems involving alternative solutions and provide an accurate permanent record. But written reports, particularly long ones, are frequently not read at all or are only read in a cursory manner. If a report cannot be written concisely and clearly, perhaps accompanied by appropriate graphs, charts, tables or illustrations, it had best be submitted orally. The secretary should formulate a short, clear summary sentence or two for inclusion in the minutes.

Relations with the Solicitor

The municipal codes require the governing body appoint a solicitor. The broad and general definition of a solicitor's duties is basically identical for all classes. The codes also specify certain responsibilities of the solicitor to the governing body, its committees, elected officers and department heads.

Strangely, in view of the key position of the secretary in many municipalities, there is no reference in the codes to the secretary's relationship with the solicitor. Consequently, it varies from place to place as determined by local factors, such as administrative organization and regulations, policies of the governing body, extent of the secretary's duties, agreements or understandings with the solicitor and the personal relationship between the secretary and the solicitor.

The crucial question is whether the secretary feels free to consult with the solicitor when confronted with situations requiring legal advice or assistance. Some secretaries enjoy a full and free relationship with the solicitor, including complete freedom to ask for legal assistance on a direct basis at all times. Others deal with the solicitor through the presiding officer or governing body, with direct contact only in special circumstances.

The secretary/solicitor relationship varies with the status of the secretary in each municipality. Particularly in small boroughs and townships where the secretary's duties are part-time and confined to routine minute taking and record keeping, the two officials are in contact only at meeting time. In many of these communities, even the publication of notices, advertisements and specifications are handled by the solicitor.

Each municipality should have a definite and preferably written policy going beyond the broad statutory statements to define the relationship to fit local conditions. Such an understanding is especially essential where either or both the secretary or solicitor have little or no previous experience.

Public Relations

A number of Pennsylvania municipalities have developed well-planned and well-executed public relations programs. Common elements usually include newsletters; annual financial and service reports; leaflets and brochures explaining tax systems, bond issues, proposed projects, general or specific services; use of radio and

television; public exhibits or open houses; municipal websites; appointment of citizen advisory committees student government days or brief student internship programs; and direct involvement of individual citizens or local groups in municipal programs. As a general rule, the broader and more sophisticated the public relations program, the less the secretary is involved.

Every secretary comes into contact with the public on a daily basis, and in a fair number of instances the secretary is the most important link between the municipality and its citizens. The secretary projects the image of the municipality and should attempt to make that image a positive one. Several common sources causing citizen interaction that have been identified by experienced secretaries as being determined to good public relations are referenced below.

The first is the difficulty a citizen with a problem has in finding an official who can provide authoritative assistance at a convenient time and place for the citizen. This poses no problem in municipalities with full-time secretaries who have regular business hours in a municipal building, but it does in the case of part-time secretaries working out of their businesses or their homes. The public should be aware of the secretary's availability to citizens. If the secretary cannot or is not authorized to assist the citizen in particular circumstances, the citizen should be directed to the local government official who can.

Citizens react negatively to dingy and disorganized offices. Municipal offices need not be showcases, but a secretary who must deal with a citizen in an unpleasant setting is at a disadvantage. Secretaries can provide services in fire halls, maintenance buildings, rented private buildings and even in private homes or places of business. Whatever the case, clean, well-lighted and ventilated quarters that are easily and safely accessible and reflect an orderly and businesslike atmosphere promote effective communication. Some citizens would rather endure their problems until they become real burdens rather than seek help in a setting that is dim and dank, piled high with unfiled letters, papers and other eyesores and where regular hangers-on make privacy impossible.

Difficulty in getting a definite answer gives citizens the feeling of getting the runaround, especially if it becomes necessary for them to contact a number of individuals or offices for assistance or direction. In most communities, the citizens look first to the secretary either for a solution to their problems or for direction to the correct and authoritative source. A secretary should be honest and responsive. If an answer is not immediately available, the secretary should say so. Citizens would rather be told their problems will be checked out and that someone will get back to them rather than be confronted with bureaucratic jargon intended to cover up, leaving them bewildered, frustrated or even angry.

A secretary's reluctance or refusal to make public records available is inexcusable and may arouse suspicions and tempers. Every citizen has a legal right to examine any public record under reasonable conditions. Secretaries who refuse requests under order or are compelled to seek approval of a designated official can also further irritate the citizen by the delay. Municipalities are required to adopt written policies governing the release of public records. In many cases, the secretary may be the designated point of contact for public records requests.

The word "complaint" is one of the most common in the municipal vocabulary. It is almost universally used in reference to a citizen's statement of a problem and has even found its regular place on municipal agendas under the heading "Hearing Complaints." The term has been used so long that officials are no longer aware that it has an unpleasant connotation and tends to make citizens feel they are considered as complainers. A few are not, but most complaints are simple, honest requests of citizens for information, a specific service or correction of a problem. It should be called a request, not a complaint. Avoiding that word helps establish a friendly rapport with taxpayers.

News Media

The secretary's involvement with newspapers, television or radio in matters concerning municipal government depends on the scale of municipal operations and organizational arrangements. In some cases, the secretary's contact with the media consists only of occasionally providing routine information. In other instances, the governing body relies heavily on the secretary to take the initiative to provide public information in a positive manner.

Good performance in municipal government is not enough. The public must know about it, and the news media are the usual channel of information. There is a negative and a positive approach to reaching good relations with the media. On the negative side, existing municipal/media frictions must be reduced or eliminated as a prior condition for productive relations. Once this is accomplished, the stage is set for developing positive techniques to help the reporter keep the public informed.

Officials and reporters alike sometimes are unaware or forget that they are both responsible to the public. They have no inherent responsibility to each other. Friction may arise in interpreting the public interest, when an official withholds information or the reporter writes a story reflecting negatively on actions of the officials. Or information that is considered important by officials may be ignored by the reporter or relegated to back pages by the editor. Reporters often resent official pressure to print information they consider dull or one-sided. An unfavorable story or persistence in getting at the facts can brand the reporter as a troublemaker. An official who is unavailable for comment or restricts information invokes suspicions of secrecy.

Reporters want to release a story when it is hot, while officials may want the release timed. Exclusive release of public information through a single designated official can bring charges of control or suppression, but in the absence of a single reliable source, reporters might have to contact numerous officials and feel they are getting the runaround. Alteration or omission in information releases subject reporters to accusations of bias or slanting the news, but reporters may feel a particular release has been tailored to present an unduly favorable image.

Legitimate "no comment" statements can be played up as arrogant and disdainful silence. Timing the release of stories in communities with more than one media source can intensify existing frictions if a reporter feels shut out. Potentially productive and amicable relations between a secretary and reporter may be thwarted by restrictions on the release of information. Secretaries are sometimes accused of clamming up, when they are merely acting under orders.

The tendency of newspapers and citizens to emphasize the how and why of public actions, rather than the traditional and factual who, what, where and when, may not be appreciated by some officials who interpret the how and why comments as cynicism and obstructionism. Reporters who ask the secretary to phone them when there is a story sometimes chastise the secretary who inadvertently fails to do so. Extensive news coverage that is given to the activities of aggressive taxpayer associations may tend to lead some officials to regard the reporter as an opponent.

These and other sources of friction may not be based on facts, but they do exist and must be reduced if the media are to serve their potential purpose in a community. Since circumstances and personalities vary from place to place, so must the methods used to eliminate frictions. Where the secretary plays a key role in public information, the following suggestions give basic guidelines for congenial and mutually productive municipal/media relations.

The secretary should encourage and assist the board/council in formulating a public information policy. The media representatives should participate in the process. Existing sources of friction are a starting point.

The secretary's role should be made absolutely clear to both officials and reporters.

The secretary should personally discuss with the assigned reporter any specific problem or condition interfering with the smooth and open flow of information from the municipal office, as well as conditions that affect the reporters performance. The secretary should keep the reporter posted on background on developments that may become news to insure a more accurate and balanced story.

Any signs of friction should be resolved by direct and friendly discussion between the secretary and reporter, not with the reporter's editor. The secretary must have patience when educating the reporter about municipal affairs. The secretary should prepare public reports and releases in simple, understandable English - without governmental jargon.

Informal contacts between secretary and reporter, especially when no story is involved, establish a congenial personal rapport that contributes to honest and fair reporting. Where competing media serve a community, the secretary should consult, individually and collectively, with the reporters to establish a suitable agreement for releasing information. Municipal officials and reporters should understand and respect that each other's responsibility is to the public, not to each other. They should conduct their respective jobs, keeping their respect for each other even when in opposition.

Citizen Service

A complaint is an expressed reaction of an individual or group to anything involving the municipal government. The term should be eliminated from municipal usage and should be replaced by the more psychologically effective suggestion of "request for service". But, in the interest of better understanding, this discussion uses the word complaint with all the shades of meaning attached to it by local officials.

Although complaints are made to a variety of officials and employees, the office of the secretary is the primary recipient in most municipalities. Complaints of the arrogant, insulting, unjustified or unreasonable variety may be unpleasant to handle, but they are really a minor aspect of the problem. Even the most legitimate and well-intentioned complaints can often present difficult, frustrating and even upsetting situations.

Anonymous complaints are those where citizens refuse to identify themselves. These are extremely irksome, and there is a tendency to automatically ignore them. It is dangerous to assume all anonymous complaints are either groundless or motivated by personal vendetta. Desire for anonymity may be perfectly justified under certain circumstances. Therefore, while every attempt should be made to persuade citizens to identify themselves, all complaints should be investigated and appropriately handled. If a complaint primarily involves another citizen and is not a violation of law, ordinance or regulation, nor a municipal activity, the complaint might best be ignored. That is, unless there is a possibility of immediate danger to life or property.

Most people identify themselves when they register a complaint, whether in person, by letter or telephone. This is nearly always true if the complaint only involves the municipality. It is usually the case, too, when the complaint involves another citizen. For reasons of their own, some citizens request their names not be disclosed in the investigation of a complaint, especially when another citizen is involved. Wherever possible, the request for anonymity should be respected in order not to discourage citizens from helping local officials uncover conditions which might otherwise continue undetected.

When a citizen who makes a complaint about another citizen requests anonymity, it should be judged on the basis of the need for personal testimony to verify the allegation. If the complaint involves a direct violation that is easily proven by investigation, it appears reasonable to protect the complainant's anonymity. In borderline circumstances, where facts resulting from an investigation would be unsupportable without personal testimony, it is advisable to move only if the complainant signs a statement and is willing to support it by personal testimony before a magistrate. Borderline cases should be investigated, but action should not be taken against the alleged violator without proper evidence.

Complaints concerning trivial acts of a neighbor are particularly hard to evaluate. The complaint, though trivial, may be made by a sincere citizen who is inconvenienced by the neighbor's act, or it may be an act of malice resulting from a neighborhood feud. In such a case, the secretary is justified in not pressing the matter without a written complaint signed by the complainant.

Almost every secretary has one or more chronic complainers that can make life miserable. The practice to ignore them is understandable, but not wise. The individual may be placed in this category by the secretary because of a personality clash or personal feud, not because the complaints are unreasonable or made with malice.

The chronic complainer is a citizen who is entitled to the rights and privileges of all other citizens. This type person should not be pampered, nor treated with open contempt. The secretary is justified in ignoring any malicious or unfounded complaints, and should give appropriate attention only if the complainant is willing to submit a signed, written statement.

Some chronic complainers retaliate against an uncooperative secretary by vocal charges and abuse at governing body meetings. Presiding officers know how difficult it is to prevent this situation. The secretary can prepare to counter such an attack by keeping a written record of the individual's complaints, including dates, nature of complaint and action taken, if any. The secretary need not charge the individual publicly as a chronic complainer, because a reading of the record speaks for itself, deflating the attack.

XI. Filing and Certifications

The image of the municipal secretary both as a clerk and as an expediter is brought out in the range of contacts with state and county offices. The municipality sometimes acts as an agent of the state. State laws and regulations impose certain clerical duties upon the secretary specifically, or on a municipality generally which are then delegated to the secretary. When the secretary comes into such relationships with state agencies on a more or less impersonal basis, the concern is whether or not a required duty has been properly discharged.

The relationship between secretaries and the state can, and frequently does, reach far beyond the mechanical clerical relationships required as part of their mandatory duties. State/municipal relations comprise a two-way street. Not only does the municipality and its secretary act as agents of the state, but the state and its agencies provide a host of services intended to help municipal officials accomplish local objectives. A well-informed secretary may be the decisive contact between the state and the municipality in implementing services locally. The area beyond clerical duties includes a wide range of state services and opens for the secretary challenging and rewarding relationships with state officials and agencies affording both status and satisfaction.

The municipal/county relationship is becoming closer as evidenced by the trend away from mere routine requirements into the area of mutual or joint services. Many duties to the county are mandated, but potentially productive opportunities could result from a close relationship. The secretary is assigned only a few very specific duties to county agencies by statute. Legal matters are handled by the solicitor, but most other municipal responsibilities are assigned to the secretary by local practice. These duties generally include routine matters such as filing reports, petitions, notice applications and other papers.

This chapter identifies some of the more common points of contact with state and county agencies. Depending on the scope of municipal functions, other areas of contact are likely, and may go far beyond this list.

Department of Community and Economic Development

DCED has a primary responsibility for state/local relations in Pennsylvania. DCED is not only the main repository of municipal reports and certifications, but also offers many services, programs and activities pertaining to local government. All municipalities are required to perform specific duties through the DCED. In some instances, the duties are specifically imposed upon the municipal secretary, while in others the duty may be imposed on the municipality generally or on another municipal official. Frequently, some of the latter type are passed along to the secretary for implementation by local practice, or because the experienced secretary is most qualified to get the job done. Some of the most significant mandated duties usually delegated to the secretary are listed below.

Annual Audits and Financial Reports. Annual audit reports must be filed by all municipalities with the Department within sixty days after the close of the fiscal year for cities and within ninety days for boroughs and townships.³ It is quite common for secretaries to perform this duty after the auditors have completed and signed the audit report.

Survey of Financial Condition. On or before March 15 of each year, the municipality must submit a completed survey of financial condition on a form that DCED provides. The report applies to the municipality's prior fiscal year. The survey form must be signed by the presiding officer of the municipal governing body.⁴ Submission of the completed form is often assigned to the secretary.

Tax-Levying Ordinances. Secretaries are required to file with the Department copies of all tax-levying ordinances or resolutions within fifteen days after they become effective.⁵ Within fifteen days after adoption of an ordinance levying a tax under the Local Tax Enabling Act, secretaries must file an exact printed or typewritten copy by certified mail with the Department.⁶

DCED is responsible for maintaining an annual register listing municipalities and school districts levying the earned income tax and the occupational privilege tax under the Local Tax Enabling Act. The annual register is to be available not later than July 1 of each year. Employers are required to withhold only those earned income and occupational privilege taxes listed in the register. The secretary of the taxing authority must notify DCED not later than May 31 each year of any new tax enactments, repeals or changes. This is done on tax information forms that DCED mails out annually. Failure to return the form with changes to DCED is construed to mean the previous information remains in effect.⁷

Boundary Change Actions. The secretary is required to report the action to DCED within ten days after the effective date of any municipal boundary change. The report must include a plot or plots of the territory affected and copies of petitions and certified election results of questions approved by the voters.⁸

Municipal Borrowing. Before issuing any bonds or notes in excess of \$125,000.00, or 30 percent of the borrowing base, whichever is less, all local government units must file for approval of proceedings with the DCED.⁹ DCED examines the proceedings for compliance with the debt limit and required procedures. The governing body of any local government may cancel wholly or in part the authorization to incur electoral debt. A certified copy of the resolution and proof of publication must be filed with DCED.¹⁰

Department of Transportation

The Pennsylvania Department of Transportation (PennDOT), through its Bureau of Municipal Services, maintains a close and continuous relationship with all municipalities in the specialized area of highways, bridges and traffic control. Contacts are normally made by the municipal secretary, a township supervisor or the head of the street department. The state/local relationship is more direct and extensive in townships than in cities and boroughs. In cities and boroughs, most of the contacts pertain to the projects financed in whole or in part by state funds.¹¹ The Bureau of Municipal Services also advises municipalities on construction, alteration and maintenance of bridges and highways, and provides municipalities information on legislation and regulations in this field.

Municipalities are eligible to receive an annual share of the state's tax on liquid fuels for construction and maintenance of local roads, streets and bridges. All contracts for construction are subject to review and continual inspection by the PennDOT, but maintenance projects do not require specific approval. Liquid fuels funds must be maintained in separate and special accounts. Funds may be transferred to other accounts for payment, provided the transaction is properly recorded. Municipalities must comply with several basic requirements to qualify for liquid fuels allocations.

Roster of Officials. In January, after the reorganization meeting of the municipal governing body, the secretary must report to DCED, the names and official addresses of elected and appointed officials. This roster must be filed on paper forms provided by DCED or electronically no later than January 31. Changes in officeholders must be reported to the DCED as vacancies are filled. Failure to submit this form may result in a delay of receipt of the next liquid fuels allocation.

Bond Certification. Each municipality must certify its treasurer is bonded on or before January 31. If a bank is treasurer, it must furnish a letter on bank stationery signed by a bank official indicating the bank accepts the responsibility of the office and identify bank employees authorized to sign municipal checks.

Report of Liquid Fuels Expenditures. Municipalities must annually submit both a summary accounting of state fund expenditures and a record of checks drawn on the state fund in the previous year. Forms are mailed to the municipal secretary prior to the first of the year and should be returned before January 31. Delay in submitting the reports results in delays in receiving the next liquid fuels allocation.

The report shows the amount expended in both construction and nonconstruction for wages, materials, equipment rentals and supplies according to designated classes of work. In order to verify liquid fuels funds have been spent for authorized purposes, the report must be completed to show for each check issued the date, check number, budget item number, payee, amount and purpose.

Survey of Financial Condition. On or before March 15 of each year, each municipality must submit a completed survey of financial condition form to DCED. Failure to submit the form results in a suspension of the municipality's liquid fuels allocation check under the terms of Act 47 of 1987.

Certification of Street Mileage. Annual local allocations are determined by a formula based 50 percent on the mileage of official streets and roads and 50 percent on population. Streets and roads having a right-of-way width of at least 16 feet in cities, boroughs and townships of the first class or 33 feet in townships of the second class qualify for mileage; alleys, courts or ways are excluded. PennDOT recognizes only those streets or roads officially adopted, as evidenced by ordinances, resolutions, plot plans or survey plans submitted to PennDOT, that certify that the street or road has been recorded in the ordinance book. Secretaries are responsible for notifying PennDOT when streets or roads are added or deleted. These reports may be submitted any time during the year, but will be included in the mileage for the following year's allocation only if PennDOT receives the reports by September 1.

Department of Environmental Protection

Secretaries frequently interact with the Department of Environmental Protection (DEP) as a result of state laws or regulations requiring actions by the municipality. These cover issuance of a waterworks permit, permits for sewage discharge, municipal waste planning and recycling, sewage plan revisions and subdivision approvals.

DEP administers a number of technical and financial assistance programs and makes available a variety of other services that are designed to improve the level of community health. Informed secretaries are in a position to advise their governing bodies of these services should a local problem exist.

DEP administers planning grants for preparing and administering sewage facility plans, enforces reimbursements for permitting of on-lot individual sewage disposal systems and makes annual grants amounting to two percent of the construction cost of eligible sewage treatment plants. DEP also administers grants for the construction of sewage treatment plants, provides grants and technical assistance for preparing solid waste management plans and operating recycling programs, as well as provides technical assistance in environmental health administration.

Other State Agencies

Secretaries will have contacts with other state agencies from time to time. The Department of Health provides annual grants to eligible municipal health departments to operate public health programs. The Department of Labor and Industry administers the workers' compensation program, administers the state Fire and Panic Act and the unemployment compensation program. The State Municipal Retirement System is run by the Municipal Retirement Board. The Pennsylvania Historical and Museum Commission administers the municipal records retention schedule and certifies historic district ordinances before enactment by the municipal governing body. The Auditor General's Office distributes general state aid pension funds and volunteer firefighter's

relief funds. Certain municipal public employees and public officials are required by the Ethics Act to file an annual Statement of Financial Interest with their political subdivision. Candidates for elected office and former elected officials the year following their departure from office are also required to file. In many municipalities, the secretary is expected to distribute, receive and file these report forms.

County Government

Municipal secretaries are required to file certain documents with the board of county commissioners, some on a regular basis and others as a situation may arise. In addition, there are many miscellaneous contacts between the municipality and the county. Most of them are routed through the secretary's office.

Municipal Officials. Immediately following the organization meeting in January, the secretary must file a list of all sworn elected and appointed officials with the county commissioners. All appointments to fill vacancies in elective or appointive office must also be filed immediately after the appointment is made.

County Highway Aid. Counties can apportion some or all of their liquid fuels tax allocations to their municipal subdivisions. Secretaries submit applications for this assistance to the county commissioners on forms provided by the Department of Transportation.

Election Office. The relationship between municipal secretaries and the board of elections relates to those matters involving election procedures. Prior to the primary election in a municipal election year, the municipal secretary is required to notify the election board of all local offices to be filled.¹² This includes elections to fill vacancies for short terms.

The secretary is required to file resolutions or ordinances of the governing body placing questions before the voters with the county board of elections. The range of authorized questions and applicable filing requirements are listed in the *Referendum Handbook* which can be obtained from DCED.

Court-Related Offices. Most contacts between the municipality and the courts and their offices are handled through the municipal solicitor, but in some places the secretary plays an important role.

Auditors must file a copy of the annual financial report with the clerk of courts. The reports must be filed not later than 90 days after the close of the fiscal year.¹³ Although this is a duty of the auditors, in many instances the actual filing is performed by the secretary. Municipal claims for unpaid assessments for improvements to streets, sidewalks, sewers or water lines are filed in the prothonotary's office.¹⁴ Any municipality that has municipal claims against any property returned to the county tax claim bureau must certify the claim by August 30 of the year of the sale.¹⁵ The amount is then included in the upset price. If the municipal claim is not certified and the property is sold, the claim will be divested by the sale.

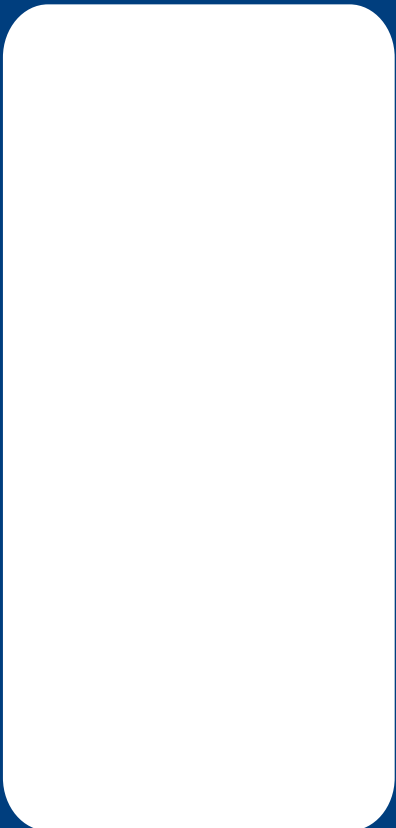
Municipalities do business with the recorder of deeds that is similar to that of private property owners. Secretaries or solicitors contact the recorder of deeds in relation to municipal properties owned, bought or sold. Often the recorder of deeds office is used to identify local property owners in matters concerning taxes, abandoned land, street, curb and sidewalk improvements and eminent domain proceedings. Private development plans finally approved by the local governing body must be certified by the secretary before filing with the recorder of deeds.¹⁶

References

1. 53 P.S. 46310; Borough Code, Section 1310; 53 P.S. 56701; First Class Township Code, Section 1701(e); 53 P.S. 65902; Second Class Township Code, Section 902(3).
2. 53 P.S. 36809; Third Class City Code, Section 1809.
3. 53 P.S. 36812; Third Class City Code, Section 1812; 53 P.S. 46041; Borough Code, Section 1041(d); 53 P.S. 56003; First Class Township Code, Section 1003; 53 P.S. 65547; Second Class Township Code, Section 547.
4. 53 P.S. 11701.123(a); Municipalities Financial Recovery Act, Section 123.
5. 71 P.S. 965; 1966 P.L. 1902.
6. 53 P.S. 6907; Local Tax Enabling Act, Section 7.
7. 53 P.S. 6909; Local Tax Enabling Act, Section 9.
8. 71 P.S. 966.5; 1967 P.L. 351, Section 5.
9. 53 P.S. 6780-351; Local Government Unit Debt Act, Section 801.
10. 53 P.S. 6780-107; Local Government Unit Debt Act, Section 307.
11. 71 P.S. 516; Administrative Code, Section 2006.
12. 25 P.S. 2864; Election Code, Section 904.
13. 53 P.S. 36705; Third Class City Code, Section 1705; 53 P.S. 46041; Borough Code, Section 1041(d); 53 P.S. 56003; First Class Township Code, Section 1003; 53 P.S. 65547; Second Class Township Code, Section 547.
14. 53 P.S. 7106; Municipal Claims and Liens Act, Section 3.
15. 72 P.S. 5860.605; Real Estate Tax Sale Law, Section 605.
16. 53 P.S. 10711; Pennsylvania Municipalities Planning Code, Section 711.

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