

# WHY CAN'T WE ALL JUST GET ALONG?

By David L. Church

One disturbing theme of local government is the internal conflict among elected and appointed local government officials. There always seems to be one or two cities with ongoing spats. These conflicts very often appear to an outsider to involve little substance. They often become fodder for the press, and always result in embarrassment to those involved and, by association, to everyone else involved in local government. Very often these disputes are about who's in charge and the proper roles of officials and their duties.

This is about my experience with some of the causes of these disputes and potential ways to avoid them in the future. Neither the causes of the disputes nor the means of avoidance are intended to be the last word on the issue. The examples that I cite are not intended to refer to anyone or any city particularly. If you recognize yourself, your city, or one of your fellow local officials in any of my descriptions, you are mistaken. The facts and names have been changed to protect the guilty.

The most common cause of conflict is misunderstanding the form government that the city or town is operating under. Too many people run for an office without understanding the office they seek. The form and structure of local government are set first by state law and second by local ordinance and policy. The state law establishes the basic form of government for all cities and towns.<sup>1</sup> There are three basic forms of government. They are known as the council-mayor form of government, the six-member council form of government and the five-

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<sup>1</sup> See Utah Code section 10-3b-101 et seq.

member council form of government. Prior to May 4, 2008 there was also a form of government known as the council-manager optional form of government. That form is no longer available under state law but the cities and towns that had previously adopted that form continue to operate under it. The state law also allows voters in all cities and towns to change forms government to any of the three approved forms.<sup>2</sup> Within six-member council and five-member council forms of government there is the flexibility to adopt local rules and procedures.<sup>3</sup>

Not everyone elected to an office of mayor has the same powers. The power and duties of mayor in the six and five member council forms of government is very different from the mayor in the council-mayor form of government under state law, and even within the various six and five member council forms of government there will be differences between mayors in different cities and towns depending on local ordinances. Mayors elected in a city operating under the council-mayor forms of government are the heads of an executive branch of government.<sup>4</sup> The executive branch is separate, independent, and equal to the legislative branch. These mayors are powerful people. A mayor in a city operating under the old council-manager optional form is a figure head mayor only.<sup>5</sup> The mayor is a member of the council and does not have any executive or administrative powers. An appointed city manager holds the executive and administrative powers. Mayors in cities and towns that are operating under the six and five member council forms of government fall somewhere between these extremes. They can be either kings or pawns depending on local ordinances. The state law makes these mayors both

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<sup>2</sup> See Utah Code section 10-3b-501 et seq.

<sup>3</sup> See Utah Code section 10-3b-303(1)(b) and section 10-3b-403(1)(b)

<sup>4</sup> Utah Code section 10-3b-201, 202

<sup>5</sup> See former Utah Code section 10-3-1223 now repealed

members of the legislative body<sup>6</sup> and chief executives,<sup>7</sup> but the law also allows cities and towns to delegate, by ordinance, some or all of the Mayor's executive powers to managers and administrators or even to themselves.<sup>8</sup> The ordinances changing the mayor's power in the five and six- member council forms of government require either a unanimous vote of the council or the consent of the mayor and a majority vote of the council.<sup>9</sup>

If you are a mayor or council member you have a duty to understand the system of government you are operating in and live with the limitations. Disputes are created when elected officials begin to assume authority that they do not have. There are many examples of this including mayors who refuse to carry out policies with which they disagree; council members who try to direct employees in their day to day duties; mayors trying to be the city managers; and council members who try to act like they are mayors.

The solution to these types of conflicts is simple-- learn your position and duties and accept them. If you want to be a mayor, run for mayor. If you think that your form of government is inefficient, take the appropriate steps to change it. These steps will be either taking your proposal to the people or, where appropriate, taking your proposal to the city or town council and see if yours is a majority view.

Another source of conflict is council members who don't work and play well with others.

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<sup>6</sup> See Utah Code sections 10-3b-301 and 10-3b-401

<sup>7</sup> See Utah Code section 10-3b-104

<sup>8</sup> Utah Code section 10-3b-303 and 10-3b-403

<sup>9</sup> Utah Code section 10-3b-303(2) and 10-3b-403(2)

It is my opinion and experience that there are two broad classes of people who run for local office—those that want to be involved and those that want to be in charge. If you get too many of the latter and not enough of the former trouble can occur.

A council member is a member of a committee. He or she has a vote as an individual, but only has power when part of a majority of the group. There will be times when a council member's view prevails and times when the view does not prevail. It is frustrating to believe you are right and not be able to get your way. Personality conflicts can and will arise as council members work together over time. These do not need to become petty public fights. Council members must learn to win without gloating and lose with dignity.

There is no excuse for being rude to each other in public meetings. There is no excuse to being rude to the public. One solution to these types of conflicts is to insist that the chair of the meetings be a strong chair. This requires that council members allow the chair to keep order and that the chair be willing to assume the role of referee and not participant when it appears that the meeting is getting out of control.

Another cause of disagreement, related to the above, involves getting things on council meeting agendas. There have been many fights start over refusals to put things on the agenda or over having things reappear on agendas that the council does not want to discuss. The solution to this is for the council to adopt rules prior to any dispute arising, and live by the rules.<sup>10</sup> In the absence of rules the chair is going to control the agenda. If you don't take the time to adopt rules of procedure, you have no right to complain about how the chair runs the agenda.

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<sup>10</sup> Utah Code section 10-3-606 give councils the authority to adopt rules of procedure not inconsistent with state law.

Misuse of the Municipal Officers and Employees Ethics Act<sup>11</sup> also results in some ugly scenes. Using a public charge of conflict of interest to try to persuade a fellow council member either to vote your way, or to keep the council member from voting is inappropriate. If you care about an issue so much that you are willing to publicly accuse a fellow council member of misconduct to win, then perhaps you have a conflict of interest as well. Real ethics violations and conflicts of interest should be taken care of in the manner provided for in the act.<sup>12</sup> A complaint should be made to the mayor or city manager and an investigation should be undertaken. In this way the person accused has the opportunity to be heard before being pilloried in the public and press.

These are only a few of the sources of conflicts that I have observed and my recommended solutions. There are many others. The following are some general aphorisms that may help avoid and solve these conflicts that I have discussed and other that may arise.

1. All elected officials are worthy of respect, even the ones dumb enough to disagree with you.
2. It is unfair to expect members of the public to know what you know or understand what you tell them.
3. Your job description does not include the phrase “take full credit, no blame.”
4. Win graciously.
5. Accept your losses, and move on.
6. Enjoy correcting your own mistakes as much as you do others’.
7. Praise in public and reprimand in private.

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<sup>11</sup> Utah Code sections 10-3-1301 et seq.

<sup>12</sup> Utah Code section 10-3-1311

8. Do your own job first.
9. Always assume others are acting in good faith.

I guarantee that if you follow the above rules your life as a city or town official will be less stressful.