

WHO IS MY CLIENT?:
Ethical Obligations to Boards, Committees, and Other
Municipal Bodies

by Jonathan T. Koury

Senior Assistant City Attorney
City of Bryan, Texas

Texas City Attorney's Association
Summer Conference 2026, Galveston, Texas

I. ABOUT THE AUTHOR

After graduating with a degree in Political Science/French from Austin College, Jonathan studied law at SMU Dedman School of Law in Dallas. Jonathan has worked and represented governmental entities all over the state since 2005 and since 2010, Jonathan has been with the City Attorney's Office of the City of Bryan, Texas. His areas of expertise include real estate, economic development, dangerous structures, animal law, and of course, other duties as assigned.

Jonathan's municipal law practice has included a number of advisory boards, commissions, local government corporations, economic development corporations, and related entities. It has also included a number of precautions to avoid creating conflicts of interest that would prevent continued representation of his primary client, the City of Bryan.

Jonathan is a frequent speaker at TCAA and also a member of the Animal Law Section and the Real Estate, Probate and Trust Law Section of the State Bar of Texas. He is almost as much of a Star Wars nerd as Ryan Henry and almost as good of a poker player as Laura Mueller. He lives in Bryan with his family, including but not limited to his saint of a wife who tolerates is day to day insanity.

Contact Information:

- Phone: 979-209-5154 / Fax: 979-209-5160
- Email: jkoury@bryantx.gov
- Address: P.O. Box 1000
Bryan, Texas 77805

II. INTRODUCTION

As city attorneys, we represent organizations governed and staffed by individuals. We are frequently reminded during CLE that while we work with individuals, our obligations are to the city as a whole.¹ We have ethical obligations to make the relationship clear when communicating with client constituent representatives and avoid misunderstandings. And unlike relationships with individual clients, if a conflict arises between an employee or elected official and the city, we can continue to represent the city. But that is not what this paper is about. This paper focuses on the ethical obligations and potential for conflict when the constituent representative is itself a group of individuals.

Cities frequently work through appointed boards, commissions, committees, and even corporations created by/for the city. As with employees, our ultimate obligation is to the city, not the representatives, and we must make that relationship clear. But boards, commissions, and corporations have varying degrees of independence from the city. So, while it is clear that one can avoid a conflict of interest with a city employee by not representing them individually on private matters, that is a more difficult line to draw when advising boards and commissions doing the work for which they were created. Some boards and commissions are so thoroughly entwined with the city, they don't have enough independence to be a problem. But that is not always the case. Taking a look at the formation, function, and financing of these groups will aid us in identifying whether there are potential conflicts to avoid. Knowing what level of autonomy the group has will help determine whether they are simply a department of the city, or an independent agent working for the city. Understanding the city attorney's role in the organization will shed further light on our ethical obligations to the city and to the groups who serve it.

¹ As used in this paper, the term "city" is synonymous with "municipality" under Texas statutes. "City Council" means the governing body of a municipality.

III. WHOM DO YOU SERVE?²

We are all city attorneys, so, our client is clearly the city. Ethics rules are clear that when representing a city, we need to be clear with our client representatives that we serve the organization, not the individual members.³ That means the interests of the constituent client representatives may be adverse to the interests of the city, in which case our relationship comes to a sudden crashing halt. When the constituent representative is a group, there are several factors that will determine whether the group even has interests that can differ from the parent city. Factors include the statutory authority for the group and/or formative documents. How the group members are appointed will play a large part in determining the level of independence it has. Whether the group has spending authority is another factor. Ultimately the question we are asking is this: at what point does the city attorney have a conflict of interest that would prevent us from giving the members of that group legal advice.

1. Types of Groups used by cities.

Cities appoint various groups to provide advice and support. Some groups advise over a specific area of municipal government. Other groups are delegated authority to make decisions. Some are created to oversee a particular project or serve a specific purpose. The three types are advisory boards/commissions, quasi-judicial boards/commissions, and corporations. Because they are created by the city, city attorneys are often tasked with preparing the paperwork for their creation, providing legal guidance to the group, and advising staff liaisons to the group. Each group has unique characteristics that make them more or less autonomous from the city that created the group. The more autonomous, the more likely the interests of the group may be different from the interests of the city, creating a conflict of interest for us to avoid

² Spoiler alert, not Saruman.

³ Texas Disciplinary Rules of Professional Conduct Rule 1.13; Cmt 13.

Advisory boards and commissions are groups appointed by the city council to provide recommendations and advice regarding a subject matter or area of interest. Parks, cemeteries, and libraries for example. These groups are typically only authorized to make recommendations to city council regarding their area of interest. Some advisory groups are required by law.⁴ Others are created at the discretion of the city council.⁵ In some cases, an advisory board is able to make a “final” decision, i.e. granting a permit, issuing a license, etc. But even in those cases, those decisions can be appealed to the city council.⁶

Quasi-judicial boards and commissions are created by the city to exercise specific authority and to act as an administrative check on the authority of city staff. Quasi-judicial groups are empowered to hear appeals of city staff decisions. In some cases, staff brings cases to the board for their review and judgment in the first instance. In those cases, the boards serve in an adjudicatory capacity, hearing evidence and argument, interpreting city ordinances and applying the law to the facts, and sometimes taking oaths and subpoenaing witnesses. Quasi-judicial commissions can also be empowered to grant permissions or designations that staff is unwilling or unable to grant. While similar to advisory boards in their creation, appointment, and function, they are more independent from both staff and the city council. Decisions of quasi-judicial boards are typically appealed to district court and not council. Additionally, in order to be a genuine reflection of due process, they must be independent of the staff whose decisions they are reviewing.

Corporations are the third kind of group created by cities to serve a public function, and they are the only one that maintains a separate corporate existence. Examples include economic development corporations, Transportation Code local government corporations, or non-profits

⁴ See e.g. Tex. Health & S. Code § 823.005 (requiring the governing body of a city with an animal shelter in its city limits to appoint an advisory committee).

⁵ E.g. a Parks and Recreation advisory board.

⁶ See e.g. Tex. Loc. Gov't Code § 211.007(b) zoning commission makes a final report to governing body.

created at the behest of, or for the benefit of, the city. Because they have a separate corporate existence, they are not the city and if anything would be an additional separate client. But like a corporate subsidiary in a private practice, there are a number of factors that will play into whether the interests of the subsidiary are so closely aligned with the parent that there is no conflict in representing both.

2. Membership and Autonomy.

How groups are appointed and the authority they are given are two key factors in evaluating a potential point of conflict. If the members of the group, or the governing body of same, are appointed by the city council and serve at the city council's pleasure, that is a major factor. Like an employee of the organization, if the interests of the group are ever not in line with the interest of the city, we are simply obligated to let them know that our primary duty of loyalty is to the organization as a whole. If members of a group become opposed to the policies or plans of the city council, those members can be replaced. Even if they constitute a majority of the group, they are appointed to serve the city council. The unique ethical obligation that government lawyers have, which distinguishes us from private practice lawyers, is that we may have an obligation to a constituent that did not even hire us. The ethics rules indicate that attorneys hired to represent a department or agency of government, may owe a duty to the organization as a whole if the department or agency is about to take an action that would be detrimental to the organization. Even in the case of a corporation that maintains a separate corporate identity, if the membership of the governing body is appointed by the city council and serves at their pleasure, the corporation's interests are unlikely to conflict with the city's interests, at least not for long.

The authority granted to the group, whether by ordinance or by statute, may create a situation where there is a potential for conflict. In the case of quasi-judicial boards and commissions, their

decisions are appealable to district court, not the city council. Their authority is derived as much from state law that authorized the board to be created as it is from the act of council creating the board and appointing its members. In the event that a board makes a decision the city council or city staff does not agree with, if it is within their purview and statutory authority, that may create a conflict. Additionally, if a corporation is empowered to serve some purpose, but given independence from city council oversight, there could be potential for conflict. In any situation where the corporate body is empowered to take some action that the city does not have clear authority to overrule or control, the body has the ability to create a situation where the city and the body are no longer aligned and an ethical conflict has arisen.

3. Financing.

The last factor to consider is the ability to spend and make money. The ability of a group to exercise spending authority independent of direction from the city council means they can make decisions that matter. The ability to generate revenue that is not dependent upon annual appropriation by the city council gives a group the independence to make those decisions that matter without direct oversight by city council.

IV. ETHICAL STANDARDS

The Texas Disciplinary Rules of Professional Conduct contain the nuts and bolts of our legal obligations as attorneys. The following is a restatement of the rules that will come into play when the identity of your client, or rather the client constituents, becomes murky.

1. Confidentiality

One of the core principles of legal representation is protecting the confidentiality of information that came from your client. Rule 1.05 says that confidential information includes both privileged and unprivileged client information. You are required to protect any information gained from the client or during the course, or by reason, of the representation. It does not matter that

your client is subject to the Public Information Act, it nevertheless means that if you learned information in the scope of your representation you should not be the reason the information becomes public (unless authorized to do so). There are general exceptions for the release of All confidential information including but not limited to having express authorization from the client, to client representatives and members (unless otherwise prohibited), to comply with the rules or avoid violation of the law. Additionally, unprivileged information can be released when implicitly authorized or otherwise reasonably necessary for the representation. Government lawyers are bound to confidentiality even if they disagree with the policy goals their representation is designed to advance.⁷

2. *Conflict of Interest*

A lawyer cannot represent opposing sides in the same litigation.⁸ Ever. A lawyer cannot represent a client in a substantially related matter in which that client's interest are directly adverse to the interest of another client. This also imputes to the firm. A lawyer cannot represent a client if it reasonably appears to be or become adversely limited i) by the lawyer's or law firm's responsibilities to another client or to a third person, or ii) by the lawyer's or law firm's own interests.⁹ It is an exception to the foregoing if the lawyer feels the representation will not be affected and each client gives informed consent.¹⁰ If the situation changes and the representation no longer meets the criteria of the exception, the lawyer must withdraw.¹¹

3. *Lawyer as Intermediary*

⁷ Rule 1.05 Cmt 5.

⁸ Rule 1.06 and of course, common sense.

⁹ *Id* at (b).

¹⁰ *Id* at (c).

¹¹ *Id* at (e).

A lawyer shall not act as intermediary between clients unless each client gives knowing written consent, litigation is reasonably unexpected, both clients can be adequately informed, and the lawyer can treat both clients equally.¹² This applies to potential conflicts as well.¹³ The lawyer must withdraw upon request by one or both parties, or if the representation no longer complies with the rule, and may not represent either of the parties any longer.¹⁴

4. *Former Clients*

A lawyer, or firm, may not represent a person in the same or substantially related matter in which the person's interests are materially adverse to a former client, unless the former client give written consent.¹⁵ A lawyer shall not use information relating to a matter to the disadvantage of a former client, unless otherwise permitted by the Rules or information has become generally known.¹⁶ A lawyer cannot disclose client information from a former client unless the Rules would allow such disclosure for a current client.¹⁷

5. *Organization as a Client*

A lawyer employed or retained by an organization represents the entity. While the lawyer in the ordinary course of working relationships may report to, and accept direction from, an entity's duly authorized constituents.¹⁸ If circumstances arise compelling the lawyer to oppose some action of a client representative, the lawyer shall proceed as reasonably necessary in the best interest of the organization, without involving unreasonable risks of i) disrupting the organization and/or ii) revealing client information to outside parties.¹⁹ A lawyer must oppose a client representative if

¹² Rule 1.07(a)

¹³ *Id* at (d).

¹⁴ *Id* at (c)

¹⁵ Rule 1.09.

¹⁶ *Id* at (c).

¹⁷ *Id*.

¹⁸ Rule 1.13.

¹⁹ *Id*.

they committed, or intend to commit, a violation of a legal obligation to the entity or a violation of law that could be reasonably imputed to the entity.²⁰ This only applies if the violation is likely to result in substantial injury to the entity and it is related to a matter within the scope of the lawyer's representation.²¹ Before taking any action, you need to try asking for reconsideration, getting a separate legal opinion, and/or referring the matter to a higher authority.²²

6. *Impartiality of Tribunal*

A lawyer shall not seek to influence a tribunal concerning a pending matter by means prohibited by law or applicable rules of practice or procedure.²³ Except as otherwise permitted by law and not prohibited by applicable rules of practice or procedure, a lawyer may not communicate or cause another to communicate *ex parte* with a tribunal for the purpose of influencing that entity or person concerning a pending matter other than: (1) in the course of official proceedings in the cause; (2) in writing if he promptly delivers a copy of the writing to opposing counsel or the adverse party if he is not represented by a lawyer; (3) orally upon adequate notice to opposing counsel or to the adverse party if he is not represented by a lawyer.²⁴

V. APPLIED ETHICS: EXAMPLE SCENARIOS

Applying the foregoing rules to the types of constituent entities that city attorneys frequently deal with, the following examples will highlight the ethical concerns we face on a daily basis. In some cases, these examples are based on real life situations. The details, names, and locations have been changed to preserve confidentiality. This is by no means a comprehensive treatment of constituent entities or of the ethical questions that may arise.

²⁰ *Id.*

²¹ *Id.* at (b)

²² *Id.* at (c).

²³ Rule 3.05(a).

²⁴ *Id.* at (b).

1. Library Board

The City of Winterfell Library Advisory Board is appointed by the city council to provide recommendations and guidance on operation of the Winterfell Public Library. The City Council adopts a budget that does not include funds for improvements to the library. Arya, a member of the library board, posts some scathing comments on social media, criticizing the city council and their decision. City Manager Littlefinger files a complaint under the city ethics policy and at a regular meeting of the city council, they vote to remove Arya from the library board. Sansa, the chairperson, calls for a meeting, and at the meeting board member Brandon criticizes the city council and claims replacing Arya is a First Amendment violation and is against the law. Abruptly, everyone looks at you. Sansa announces the board is going into executive session and the doors are closed. Sansa asks you to confirm that removing Arya was illegal and advise the Board on what to do next. Can they reject the appointment of a replacement? Can Arya be brought back and allowed to vote on board business? Rickon, the lawyer on the board, asks that the contents of these discussions not be disclosed with City Council.

What do you do? First and foremost, start off by explaining your role as the city's attorney, and not the attorney for the board or any of its members.²⁵ They need to understand that they serve at the pleasure of the city council, and therefore do not have any vested right to their position.²⁶ Additionally, you cannot contradict the city council's decision. Your duty of loyalty to the client's highest authority would prevent you from openly criticizing the position.²⁷ It is also important for you to make sure they are aware that they cannot invoke the privilege of confidentiality against

²⁵ Rule 1.13.

²⁶ Rule 3.01 a lawyer shall not assert an issue unless the lawyer reasonably believes there is a basis for doing so that is not frivolous.

²⁷ Rule 1.02 a lawyer shall abide by a client's decisions concerning the objectives and general methods of representation.

the city council. As the ultimate authority for the city, they have access to any information in the city's possession.²⁸ Like any individual who works for the city, you can continue to advise the board until their interests are no longer the same as the City. Should the board take formal action, it would not be an action you would take part in or otherwise support.

2. Board of Adjustment and Appeals

The Village of Riverrun appointed a board of adjustment and to hear appeals of city staff decisions, requests for variances, and any other matters related to the zoning ordinance.²⁹ As village attorney, you are a liaison to the board during meetings and you advise planning staff on zoning matters as well. J. Lannister has applied for a variance from the Riverrun zoning ordinance. He has a meeting with E. Tully, staff planner, and you are asked to attend. At the meeting, it is determined that, in staff's opinion, Lannister does not qualify for a variance. His application is denied and he files an appeal to the board. At the hearing, the department head Brynden is presenting the Village's decision. He says that the applicant was given an opportunity to amend the application during an in person meeting but chose not to. The applicant's attorney, Tyrion, disputes the claim. He points to you and says you were at the meeting and can confirm.

The board is an agent of your client, the same as staff. If anything, they are a higher authority as they are empowered to overrule the staff's decisions. But in addition to being an agent of the village, it is a quasi-judicial tribunal adjudicating a dispute between a citizen and staff. You have a duty of candor with a tribunal.³⁰ You can take Brynden aside and let him know of his error and allow him to walk it back. But the Blackfish is stubborn, so you may diplomatically correct

²⁸ Rule 1.05(c).

²⁹ Tex. Loc. Gov't Code 211.008.

³⁰ Rule 3.03.

his error. But you owe the board the truth, especially because if there is an appeal, the board is the party being sued.

3. Building and Standards Commission

A commercial building called Harrenhal is in a substandard, unsafe condition. The owner, Janos Slynt, has done very little to keep it maintained. City staff have scheduled a hearing before the Building and Standards Commission. Proper notices are sent out, an agenda is posted, but Slynt provides nothing of note to support his claim that he can bring Harrenhal up to code. Before the meeting, Slynt warns you “I have powerful friends!” At the hearing, he puts forward a repair plan staff has not seen, makes some claims staff has not heard, and generally is an unlikable person. The commission explicitly finds him to be dishonest and they dismiss his plans as inadequate and unlikely. The commission orders demolition. Slynt files an appeal in District court styled Janos Slynt v. Riverlands Building and Standards Commission. The return on the writ of certiorari is supported by a statement from the chair of the Commission. The structure is clearly unsound and in need of repair and in the opinion of the Commission, the owner did not appear ready, willing, or able to take on the task. Slynt goes on a public relations campaign, invoking the historic significance of the structure and the callous inflexibility of the city. The mayor, Tywin, always one to latch onto an underdog, throws his support behind Slynt. He calls you and asks if the City can withdraw its support for the Commission’s decision.

Pursuant to state law, the appeal of a Commission decision is a petition for writ of certiorari, that is a higher court’s review of a lower tribunal’s decision. The lawsuit is against the Commission panel that issued the decision, and the result of the suit is to affirm, or reverse, in

whole or in part, the decision.³¹ The city is not the party to the suit.³² The mayor alone does not have authority to direct the city attorney to take action. But if the City Council meets in a posted meeting to discuss the pending appeal, if the City Council directs you to dismiss the suit, does this create a conflict between the Commission and the City. Can you represent both?

Ultimately yes. The City Council can replace the Commission at will. Even if the ordinance provides some obstacle, ordinances can be re-written. The Commission was never a separate client. The Commission may be the proper party to the suit, but it is still a part of the City. It would be the same as if a mayor were sued under writ of mandamus, requiring the mayor to perform a ministerial act. The Commission may be the agent from whom the city attorney takes direction when defending the appeal, but ultimately the Commission is a constituent answerable to the higher authority within the organization.

4. *Jointly Controlled Non-profit*

Your client, City of Meereen, enters into an interlocal agreement with the City of Yunkai, and their respective school districts, to construct a sports facility for the benefit of all parties, in exchange for reimbursement of the hard costs. Pursuant to the interlocal cooperation act, such an agreement is permissible because this is a shared governmental function.³³ A non-profit corporation (“NPC”) will be created to manage, operate, and maintain the facility. Each member entity will appoint a member of the NPC governing board. The board may adopt by-laws and can expand its membership. On an annual basis, the NPC board will create a budget for review and approval by the respective entities. While the NPC sets rates for facility use, markets the facility,

³¹ Tex. Loc. Gov’t Code § 54.039.

³² See *Tellez v. City of Socorro*, 226 S.W.3d 413, 414 (Tex. 2007) (holding that the zoning board of adjustment is the proper party to an appeal); *LIT HW I, L.P v. Town of Flower Mound*, 2013 Tex. App. LEXIS 944, *12, 2013 WL 362760 (Tex. App.—Ft Worth 2013, no pet. h.) (holding that a city is not a proper party if no separate relief is being sought other than review of a board’s decision).

³³ Tex. Gov’t Code § 791.011(c).

and collects revenue, the NPC is also obligated, by virtue of the interlocal agreement, to repay Meereen on an annual basis sufficient to cover debt payments. On an annual basis, Yunkai, MISD, and YISD are required by the interlocal agreement to contribute to NPC's budget, covering any shortfall not covered by NPC's revenue. At the first board meeting, the board asks if you can prepare the by-laws and serve as the general counsel for the NPC.

Can you accept the appointment? Not as City Attorney for Meereen. Non-profits are governed by Business Organizations Code which gives them the power to sue and be sued³⁴, buy and sell property³⁵, and elect or appoint officers and agents of the company (setting terms, duties, and compensation).³⁶ As a corporate body, it exists independent of the entities that created it. Meereen appoints some of the leadership, which gives it influence, but not control. Additionally, the NPC is not just doing work for Meereen. This means the NPC is not simply a constituent entity of the city, but a separate entity with which the city is working.

Because the non-profit owes a significant annual debt to Meereen, does that prevent you from taking on the nonprofit as a separate client? In theory, no, because even if you have two clients with potentially conflicting interests you can act as an intermediary.³⁷ To act as intermediary, Meereen and NPC must be advised about the implications, advantages, and risks of the joint representation, the chance of any conflict going to litigation must be small, and you must reasonably believe you can represent both parties equally.³⁸ However, in the event any of those conditions change, or either party decides the representation must end, it must end for both parties.³⁹ So the question becomes one of the risk of adversity; the risk that you will have to take

³⁴ Tex. Bus. Org. Code § 2.101(1).

³⁵ *Id* at § 2.101(3).

³⁶ *Id* at § 2.101(14).

³⁷ Rule 1.07(d)

³⁸ *Id* at (a)

³⁹ *Id* at (c).

a position for the benefit of one client that is to the detriment of the other. As city attorney, your duty of loyalty to your existing client means you have an obligation to ensure that Meereen gets paid. You can only take on the NPC as a client if that duty will not conflict. But NPC is a separate entity with its own obligations, staff, etc. It gets funding from three other entities who have different interests than Meereen. It may need to declare bankruptcy, insolvency, breach of contract by Meereen, or any other myriad positions that do not benefit Meereen. You cannot advise the NPC on how, when, and whether to take any such action without impacting Meereen.

However, there is a work around. A member of a city council can even serve on the board of a non-profit that is contracting with the city.⁴⁰ So in the alternative, you could give legal advice to your client city's representative on the NPC board, provided that you do not give legal advice to the NPC Board as a whole.

⁴⁰ Tex. Atty Gen. Op. No. JM-1065 (June 26, 1989)