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## League Of California City Attorneys President On Lessons Learned By Public Lawyers From South Gate

*As political scandals have rocked **South Gate** and other cities in the **L.A. Basin**, city officials statewide seek sound legal and ethical advice from their city attorneys. **MIR** is pleased to present this interview with **Michael Colantuono**, **President of the California League of Cities' City Attorneys Department**, in which he discusses the unique role of city attorneys, the **League's** legislative agenda & his Presidency's focus on ethics, and his views on Prop. 13.*



**You recently assumed the role of president of the California League of Cities' City Attorneys Department. Give our readers an insight into what responsibilities you have assumed, and what you would like to accomplish during your tenure.** *Michael Colantuono*

The City Attorneys Department of the League is the professional organization for city attorneys in California. We provide education and professional networking opportunities for city attorneys. We also provide advocacy for the benefit of the League of Cities as a whole, and provide our legal talent to the League's effort to advance the cause of municipal government in California.

My signature effort of the year is an ethics project that will undertake four missions. One is developing a technical statement of the ethical obligations of public sector lawyers as a resource for lawyers, and for their clients, to know what a lawyer is supposed to do in the public sector. Most of the resources out there in the marketplace talk about roles of private sector attorneys, and those of us who work in the public sector have a different set of obligations to which we need to be sensitive. Second, we're going to try to develop a set of ethical guidelines for public sector lawyers. To make that a grassroots, broad consensus of expression is going to be a real challenge. Third, we want to provide leadership on ethical education within the city attorney community. Finally, we hope, and expect, to establish a network of peer counselors. So that when city attorneys and other public lawyers are confronted with some of these ethical dilemmas, we have someone to turn to who can help us think it through in a sophisticated way.

**Not only the citizens of SouthGate, but the general public and public lawyers throughout the state were embarrassed by scandalous public official behavior in the city of South Gate this past year. Could you elaborate on the reaction of the City Attorneys' Association to reports of official action there? What went wrong? What are the lessons to be learned?**

The city managers community has told the city attorneys community loud and clear that they feel that some of what went wrong in the South Los Angeles County communities, of which South Gate is only one, lie at attorneys' doors. They felt very clearly that lawyers played a role in the disintegration of the forms of government that we expect to work in our society. I don't know whether there's a consensus among city attorneys that that's true or not, but I do think that there's a consensus among city attorneys that when we do our job right, we promote compliance with the law, we facilitate representative democracy, and we create transparency in government. So by trying to provide these tools to help city attorneys do the right thing when they're under pressure, in some small way we hope to contribute to cities doing the right thing when they're under pressure.

**The development of a set of ethical guidelines for the state's City Attorneys clearly is your top priority as Association President. Clarify for our readers why this focus and what we might expect from the Association concentrating on public ethics.**

There are two reasons why a focus on ethical standards for public lawyers is important right now. One is that, for better or worse, lawyers tend to think of ethics as just another body of law. We are trying to frame these questions in terms of right and wrong, as well as legal and illegal. One of the mantras you'll hear out of the local government community is that the law provides an ethical floor; it does not provide an ethical ceiling. Many of us in this post-1960s society with the moral relativism that prevails in our day are uncomfortable talking about right and wrong. I've discovered in my own practice that my clients feel a sense of relief when I pose the question, "What do you think is the right thing to do here?"; I license them to invite their own sense of right and wrong--their own morality, their own set of ethical commitments--into the conversation. There is a sense that they felt some sort of social expectation that they make decisions based only on the tactical needs of the institution, and not on their own sense of right and wrong. So I think lawyers can help a lot in not only getting the technical law stuff right, but also in creating a framework for decision making that promotes the underlying values of democracy.

**Mike, I'm not sure the general public has a clear idea of the role and contribution that city attorneys make. Insiders probably do, but the general public doesn't.**

City attorneys rationalize governments, in the best sense of that word. We make it make sense, we explain it to people. Ultimately, we should be making it possible for governments to be effective.

**What issues should appropriately dominate public campaigns for city attorney? And, where city attorneys are appointed, how should city councils choose city attorneys? What are the appropriate criteria?**

There are only 11 out of 478 elected city attorneys. As to those few, the electoral decision is fairly easy. You need to choose somebody not only with the ethics and the professional skills necessary to do the job effectively, but somebody who has a vision for that office that's consistent with what you, as a voter, think should be happening in your community. So if you think that quality of life crimes are important to your community, then you probably want to elect a city attorney who's going to put resources into quality of life crimes.

For an appointed city attorney, city councils should be looking for ability, a commitment to the democratic process, and someone who has the strength of character to tell you what you need to hear, not what you want to hear.

In my experience, when a city attorney has profoundly failed to protect an institution from itself, it was because he or she found it impossible to tell a client what they needed to hear. Either they weren't heard, or they didn't have the courage. One of the things that you hear very early in your training as a city attorney is: ";There will come a time when you get a choice: You can do the right thing, or you can be the city attorney."; One of the virtues of my position is I that I have four clients. I can lose any one of those contracts today and not miss a mortgage payment. I have a lot of sympathy for my colleagues who have one client making it possible for them to send their kids to college. Occasionally people will lean on you and ask you to do the wrong thing. I pray that I'll never be in a position where it's hard for me to do the right thing. So far, that's never happened to me.

**Michael, no interview with the president of the City Attorneys Department of League of California Cities should conclude without your assessing the impact of the recall election and what's likely to happen in terms of state/local fiscal policy. Is there a role that you intend to play as a city attorney or as the president of the League to protect the interests of local government vis a vis the state?**

Absolutely. The broader League has established, as one of the three major goals for the year, getting an initiative passed to get the state's hand out of local government's back pocket. Our aim is to separate local and state finances in a meaningful way, because it will always be easier for them to spend our money than theirs. The city attorney community is going to be called upon to help elected and other city officials figure out how to push that initiative forward without violating any rules about using public resources for political campaigning, and the other issues that come up in the public sector.

**Will it only be a defensive measure?**

The League's initiative is really just defensive. It's not establishing new revenues for cities, it's making the

existing revenues reliable.

### **Why is the League only defensive regarding the state?**

I think it's a realistic appraisal of what the game in Sacramento looks like right now. If one wrote an initiative that shifted meaningful amounts of general fund revenue back to local governments, you immediately would be toe-to-toe with the California Teachers Association, the Correctional Peace Officers Association, and the unions that represent the rank and file workers of the state of California. The League decided, I think prudently, not to take on those vested interests.

### **Michael, does the League of Cities or the City Attorneys Department have a position yet on supporting a split role initiative?**

The city attorneys don't really take policy positions. The League as a whole does take positions through its board of directors, which is a fifty-plus member body with a majority of elected officials, and I'm sure they will eventually take a position.

My own thought, not speaking for the League or any of my clients, but just as a student of public finance, is that it's worth observing that Prop. 13 has a seriously distorting affect on commercial real estate. Unlike an individual homeowner or property owner, when a corporation sells land it, it very often doesn't get reassessed. A corporation can sell land by selling shares in the corporation, and through a variety of other devices that are available to the business community, but are not available to individuals. As a result, you get very distorted assessed valuations. You can have two hotels competing against each other, one of which is paying \$10,000 a year in taxes, and one of which is paying \$1,000,000 a year in taxes. The result is pieces of your downtown that are economically blighted by their property taxes as compared to other pieces, and those distortions are very destructive.

I participated in a very interesting conversation in the city of LA about trying to revitalize the Crenshaw corridor. The community activists, who are pretty sophisticated people about how to do non-profit redevelopment projects and how to put deal together, found that there were a number of people sitting on blighted properties. These property owners would not move, or put any use on those properties, because as soon as they did they found themselves in an adverse tax situation. So rethinking Prop. 13 as it applies to commercial property is a very good thing for California. My fear is that it will just turn in to a series of well-funded competing sound bites, and that we'll never get through the process of thinking of what really has to happen.

### **What choices do the governor and Legislature actually have vis a vis the budget deficit and structural reform?**

Obviously they have a lot of choices. None of them are especially good at the moment. I was in a meeting with the Attorney General talking about a lawsuit that some cities want to bring to undo the "triple flip," which was a piece of last year's budget and involves a take-away of a part of the local sales tax. He said that creating public policy in California at this time reminded him of Spain in 1937--in the midst of civil war, all of the options are no good, and the only choice available is how little or how much blood there is to be spilled.

**If we conduct a return interview with you in a year, what are we likely to celebrate?**

That we're very pleased that November 4, 2004 went well and that our initiative passed! You will hear that we'll finally have some breathing room to know that we can budget for programs and know that the money to implement those programs is not going to disappear with a great sucking sound to the North.

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<http://www.ablinc.net/mir/>

[editor@ablinc.net](mailto:editor@ablinc.net)

David Abel, Publisher

ABL, Inc.

811 West Seventh Street, Suite 900

Los Angeles, CA 90017

Telephone (213) 629-9019

Facsimile (213) 623-9207