

Government Center
200 East Main Street, Ste. 107
Lexington, KY 40507

Phone: 859.258-3230
Fax: 859.258-3232
Email: citadv@lfucg.com

The Citizens' Advocate Office

"Promoting Fairness and Efficiency in Public Administration"

Lexington-Fayette Urban County Government

"The Horse Capital of the World"



2007 Annual Report

The Value of Apology

Lexington was in the forefront of a national movement changing the way medical malpractice and personal injury disputes are handled. The Veterans Administration hospital here bucked the trend and in 1987 adopted its "honesty policy". From then to 2000 it reportedly settled 170 claims and only went to trial 3 times. In 2000 the average claim at the Lexington VA settled for \$16,000 while the national average that year was \$98,000. Little by little the idea has taken hold in 29 states. That idea is simple: when your actions result in harm to someone, acknowledge it, express empathy and work on a remedy together. A national organization called "Sorry Works" promotes the idea of apology to resolve medical malpractice claims.

In the arena of medical malpractice, those states which have passed such legislation have significantly reduced the number of lawsuits and also the amount of judgments. A similar move is afoot in other areas of law. Australia and Canada have adopted apology legislation that protects all apologies, not just in personal injury or medical malpractice claims. This has allowed provincial and local governments to engage also in earnest dispute resolution, without fear of significant judgments. Apology was the integral component of settled class action lawsuits against the governments of New South Wales, Tasmania, and British Columbia. And in the last few years many U.S. legislatures have passed legislation apologizing for slavery.

Apology is important in another way; it is a significant aspect of an ethical environment. Apology carries with it the concepts of accountability and honesty and fosters trust.



All of these ideas are things we want our government to embody. But we are discouraged from apologizing, from acknowledging our errors and making amends, by an environment based on potential litigation. This government sets aside a large amount of money every year to settle claims and judgments. Imagine if Kentucky had a law that could reduce that pool of money by 25 – 30%.

Such laws have been passed in other locations. Such laws are deceptively simple. They amend state evidence codes to exclude from admissibility statements of apology. Passing such a law would incur no expense. It would not create a new line item in the state budget, or in the local budget. In short, proposing such legislation at the state level would cost Lexington nothing and might save Lexington substantial money in the future. Even if it doesn't result in immediate cost savings, it would support people in doing the right thing, apologizing when appropriate, without fear of repercussions.

I therefore recommend that the Legislative Committee of the Council study apology legislation.

Summary of Recommendations:

- Legislative Committee to study apology legislation.
- Intergovernmental Committee to review and discuss Citizens' Advocate Policy and Procedure Manual.
- Intergovernmental Committee to study Police complaint procedures.
- The Planning Committee revisit the continued use of Engineering Manuals and reliance on consulting engineers for proper design and construction of public improvements.

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Elderly Man Gets a Helping Hand

An elderly gentleman called the Citizen Advocate to inquire about making his street a no parking zone. We began discussing the procedure to follow and in the process examined why he wanted a no parking zone. Due to his driveway configuration, the location of a street tree and his neighbor's car parked on the street, this man had to take his trash can far down the street for pick up. He explained that his health issues made it difficult for him to maneuver the Herbie such a distance. He didn't know of any alternative other than making the street no parking. He knew the request would anger his neighbor, but he saw no other way. We were able to explain to him that Waste Management has a program that enables them to provide special collection service, to enter private property and collect the Herbie when medical reasons prevent a resident from complying with the collection regulations. The gentleman was able to submit an exemption request and now gets the required service, while preserving neighborhood harmony.

The Dirt on Dirt Fill

A multi year project of flood abatement and storm water improvements is underway in the area of Morgan, Shawnee and Meadow Park Streets, off Bryan Avenue. Some houses have been razed in the area to create additional storm water storage or to minimize flood damage. A resident noticed fill being deposited on a vacant lot that had been cleared as part of the project. He wondered if the LFUCG was the source of the fill or if it was deposited surreptitiously. He did not know if that filling would be a problem or what office would be concerned. He was able to describe to us the exact location of the lot. The vigilant neighbor alerted the LFUCG through the Citizens' Advocate of a problem in the making. We were able to pass the information on to the storm water section which, in turn was able to stop the fill activity.

Smoother Traveling

A Lexingtonian who requires a wheelchair had an accident on the sidewalk on Main Street. The front wheel of her chair went into the void of missing bricks, spilling her and her chair onto the walk. She called the LFUCG to report the missing bricks but was unable to remember or to articulate clearly where the accident occurred. Initially, it seemed her complaint would go unanswered because LFUCG thought the accident was in front of private property. We were able to ascertain that the missing bricks were in front of Urban County Government property and that the responsibility for repairs lay with the government. Temporary patches have been placed in the brick sidewalks, enabling safer passage for all citizens on Main Street. Planning for improvements to the downtown streetscape continues, with input from the Commission for People with Disabilities.

Where is That?

A citizen was concerned about the condition of a residential property that she passed each day by bus on a busy street. The property was a double frontage lot, with the back yard visible from the busy street. The front of the house was on a parallel street. She called LexCall to report the poor condition, but was unable to complete the process because she didn't know the address, or even the street on which the house faced. She called the Citizens' Advocate for help. We were able to identify the property and provide the address to Code Enforcement so the property condition standards could be enforced.

2008 USOA CONFERENCE ANNOUNCEMENT:

The Citizens' Advocate Office will host the 2008 Annual Conference of the United States Ombudsman Association, September 29 — October 3 at the Campbell House Crowne Plaza.

A Matter of Trust

Each year the Citizens' Advocate Office receives numerous complaints about police. This is to be expected, because members of the Division of Police interact with the public continuously. Occasionally residents come to the Citizens' Advocate intending to file a complaint about an officer. Most often those complaints have to do with abuse of authority or excessive force. We explain that those complaints are handled exclusively by the Internal Affairs Section. We give a brief description of how to file a complaint and attempt to refer the complainant to the Internal Affairs office. Almost all of these complainants are very reluctant to take the matter to Internal Affairs. If the complainant has just had a negative interaction with an officer he or she is likely to exhibit some fear of further interactions with police officers, creating a chilling effect on complainants. Roughly half of the people who come to the Citizens' Advocate office with this type of complaint do not follow through. The end result is that the Division of Police may not be aware of situations that ought to be monitored or investigated. It is worthwhile to consider alternative methods for the Division of Police to interface with citizens in these situations. Currently the structure is dictated by the collective bargaining agreement and state statute. The system cannot be altered unless the option to do so is allowed under a new agreement. The current collective bargaining agreement expires in March of 2008 and renewal is probably nearly complete. We do not suggest that Internal Affairs does not function well. We emphasize that the issues are whether citizens are reluctant to bring forth issues because of the structure in which they must do so and whether a change in the structure will foster greater trust and better communication between citizens and the Division of Police. ***We therefore recommend that the intergovernmental committee take up a study of police complaint procedures.***

Ensuring the Public Good

Some functions of government are almost paternalistic. This society has decided that, in some areas, we must be protected from ourselves. If I want to rewire my house I must obtain a permit. That is so that an expert can look over my plans and make sure they follow the code. Then an inspector will look at my work to make sure I've done it correctly. The government helps minimize the chances that I hurt myself, my family and guests by verifying that this work is done correctly. There is a code adopted by the government, telling me how to do it. My plans are checked for compliance with the code and then my work is checked to verify compliance with the plans. We have decided that this system is desirable, that it serves the public good and protects the individual and society. But when it comes to the construction of public improvements this government long ago gave up its ability to exercise this oversight. The LFUCG adopted Engineering Manuals to be used by consulting engineers as a benchmark for design and construction standards. The LFUCG thereby removed itself from potential liability for faulty review, improper approval of defective design, etc. In theory that sound like a great boon to government efficiency. But here is the how the problem is made evident to the citizens. A subdivision is designed and construction begins. Neighbors notice that during and after construction surface water begins to misbehave. They attempt to involve the proper officials. The response they receive is that the consulting engineer certified the plans. If you want to challenge that you have to hire your own consulting engineer and take it up with the developer. The LFUCG stays out of the fight. This may be cost effective to the LFUCG but we ask whether this is appropriate, and, more importantly, if it is fair. Typically these complaints concern the design and construction of storm water ditches and ponds. These improvements proximately affect the immediately adjacent properties, but ultimately affect every property within a watershed. Is it fair, then, that the cost of ensuring compliance with the standards falls to the few adjoining property owners? Typically these are the people least likely to be able to afford the cost, least likely to organize a cause of action, with least access to technical data and information, and least able to establish and maintain standing to bring an action. The system is working exactly as planned. Each year, 2007 included, we investigate 4- 10 complaints of this nature. Our findings are almost always the same. The official policy is being followed. The problem is with the policy, not with its implementation. It is not necessarily the policy which best serves the interests of the public or which best protects the majority of Lexingtonians. ***We therefore recommend that the Planning Committee revisit the continued use of Engineering Manuals and reliance on consulting engineers for proper design and construction of public improvements.***

Internal Processes

Policy and Procedure Manual

Two years ago at the USOA annual conference we learned about the utility of procedures manuals, obtained copies of sample manuals and instruction on how to draft a manual. Drawing on that information and the skills of a graduate intern, we drafted a Policy and Procedure Manual for the Citizens' Advocate Office. This exercise was very important, to guarantee continued, uniform performance even during personnel changes. ***We recommend that this manual be referred to the Intergovernmental Committee of the Council for review and discussion.***

Business Planning

Why would a government office have a business plan? For the same reasons that businesses have a plan – to set forth the steps required to reach short- intermediate- and long-range goals. Those goals and the plan then become the framework to evaluate the performance of the office. Is the office doing what it is supposed to do in order to achieve its goals? Establishing a business plan will be the next internal project of the Citizens' Advocate office. With that in place we will be able to analyze our strengths and weaknesses and improve the level of service we provide to the citizens of Lexington-Fayette County.

Did you Know?

During 2007, the Citizens' Advocate made presentations to six civic and neighborhood organizations. Joan Beck is available to speak to your group on many topics related to local government structure, public administration and civic engagement.

Feedback from the 2007 USOA Conference:

KUDOS to Joan Beck for a job well done! "On behalf of the United States Ombudsman Association (USOA), for a spectacular presentation on 'Current Events on the Legal Horizon' playing an important role in the overall success of the USOA's 2007 Annual Conference in Anchorage Alaska. A number of favorable comments from the participants, including 'great discussion, great participation' and 'very helpful' were received."

- Linda Lord Jenkins, President, United States Ombudsman Association

For the Record:

Quarterly Report Recap		Total Intakes
First Quarter		46
Second Quarter		82
Third Quarter		75
Fourth Quarter		30
Total Intakes Received		233

ANNUAL INTAKE PER DISTRICT		
Districts:		Totals:
James	1	24
Blues	2	23
DeCamp	3	10
Beard	4	17
Stevens	5	8
Stinnett	6	14
Crosbie	7	8
Myers	8	10
McChord	9	10
Blevins	10	9
Moloney/Henson	11	6
Lane	12	13
Non-District Related	13	81
TOTAL INTAKE		233

ANNUAL DEPARTMENT INTAKE TOTALS		
Departments:		Totals:
Chief Information Office		1
Council		7
Environmental Quality		18
Finance and Administration		14
General Services		12
Law		10
Mayor's Office		3
Public Safety		65
Public Works & Development		35
Social Services		23
Other:		
	Outreach	7
	Outside Agency	61
TOTAL INTAKES ROUTED:		256
Some intakes may impact several different departments		

Top Department Intakes	Totals
Public Safety	65
Public Works & Development	35
Social Services	23
Outside Agency	61