

“The Recorder’s Role in Risk Management”

presentation to the

Utah Municipal Clerks Association

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**Bryce D. McEuen, J.D.
Risk Manager
Logan City
801.809.0840**

Fundamental/preliminary questions:

- 1. Why are we talking about “risk management”?**
- 2. What is “risk management”?**
- 3. Why is anyone talking about it?**
- 4. Why does it matter to me?**

Risk Management Process

- 1. What can go wrong?**
- 2. What can we do about it?**
- 3. What should we do about it?**
- 4. Who will/should pay for it?**

Some statutory duties of the clerk/recorder

Utah Code Section 10-6-138. City recorder to countersign contracts -- Indexed record of contracts.

The city recorder shall countersign all contracts made on behalf of the city and shall maintain a properly indexed record of all such contracts.

Utah Code Section 10-3-506. How the vote is taken.

A roll call vote shall be taken and recorded for all ordinances, resolutions, and any action which would create a liability against the municipality and in any other case at the request of any member of the governing body by a "yes" or a "no" vote and shall be recorded. Every resolution or ordinance shall be in writing before the vote is taken.

Service as Notary Public

Section 46-1-18. Liability.

(1) A notary may be liable to any person for any damage to that person proximately caused by the notary's misconduct in performing a notarization.

(2) (a) A surety for a notary's bond may be liable to any person for damages proximately caused to that person by the notary's misconduct in performing a notarization, but the surety's liability may not exceed the penalty of the bond or of any remaining bond funds that have not been expended to other claimants.

(b) Regardless of the number of claimants under Subsection (2)(a), a surety's total liability may not exceed the penalty of the bond.

(3) It is a class B misdemeanor, if not otherwise a criminal offense under this code, for:

(a) a notary to perform an act in violation of Section **46-1-9** or Section **46-1-11**; or

(b) the employer of a notary to solicit the notary to perform a notarial act in violation of this chapter.

46-1-4. Bond.

(1) A notarial commission may not become effective until a constitutional oath of office and a \$5,000 bond has been filed with and approved by the lieutenant governor. The bond shall be executed by a licensed surety for a term of four years commencing on the commission's effective date and terminating on its expiration date, with payment of bond funds to any person conditioned upon the notary's misconduct while acting in the scope of his commission.

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10-6-139. City auditor or recorder -- Bookkeeping duties -- Duties with respect to payment of claims.

(1) The city auditor in each city of the first and second class, and the city recorder in each city of the third, fourth, or fifth class shall maintain the general books for each fund of the city and all subsidiary records relating thereto, including a list of the outstanding bonds, their purpose, amount, terms, date, and place payable.

(2) (a) The city auditor or city recorder, as appropriate, shall keep accounts with all receiving and disbursing officers of the city, shall preaudit all claims and demands against the city before they are allowed, and shall prepare the necessary checks in payment.

(b) Those checks shall include an appropriate certification pursuant to Section **11-1-1**, examples of which shall be presented in the Uniform Accounting Manual for Utah Cities.

(c) The city auditor or city recorder shall also certify on the voucher or check copy, as appropriate, that:

(i) the claim has been preaudited and documented;

(ii) the claim has been approved in one of the following ways:

(A) purchase order directly approved by the mayor in the council-mayor optional form of government, or the governing body or its delegate in other cities;

(B) claim directly approved by the governing body; or

(C) claim approved by the financial officer;

(iii) the claim is within the lawful debt limit of the city; and

(iv) the claim does not overexpend the appropriate departmental budget established by the governing body.

Note of caution: The *Fraud Triangle*

Opportunity

Rationalization

Pressure

Service of claims and lawsuits

Claims under the Utah Governmental Immunity Act

Utah Code Section 63G-7-401. Claim for injury -- Notice -- Contents -- Service -- Legal disability -- Appointment of guardian ad litem.

. . . .

(2) Any person having a claim against a governmental entity, or against its employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority shall file a written notice of claim with the entity before maintaining an action, regardless of whether or not the function giving rise to the claim is characterized as governmental.

. . . .

(3)

(b) The notice of claim shall be:

(i) signed by the person making the claim or that person's agent, attorney, parent, or legal guardian; and

(ii) directed and delivered by hand or by mail according to the requirements of Section **68-3-8.5** to the office of:

(A) the city or town clerk, when the claim is against an incorporated city or town;

Service of lawsuits that have been filed in Utah State courts

Utah Rules of Civil Procedure

Rule 4. Process.

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(d) Method of Service. Unless waived in writing, service of the summons and complaint shall be by one of the following methods:

. . . .

(d)(1)(F) Upon an incorporated city or town, by delivering a copy of the summons and the complaint to the recorder;

Other functions and issues

Vehicle operation

Other