

Asking Legal Counsel to Save the Day?

Involving lawyers early on can help minimize costs and prevent chaos



BY MICHAEL F. YOSHIBA

Attorneys play an integral part in the construction of public projects. Larger public agencies have legal staff on speed dial. Small agencies may only call them in a crisis. Everyone else is somewhere in between. But in these times of limited funding for public projects, compliance with the applicable rules and regulations must be the practice and not the exception. Still, legal advice is expensive. So when is the right time to ask for it?

Get that Truck off My Bridge!

In 1994, the Southern California basin was rocked by a 6.7 magnitude earthquake now commonly referred to as the Northridge Earthquake. In the aftermath of that major event, the State Department of Transportation was charged with emergency retrofitting of California's freeway system to prevent further catastrophic structure failures. The retrofitting project included a freeway construction project in Downtown Los Angeles and the removal of a retired railroad-spur bridge structure that spanned the width of an eight-lane freeway. The unused bridge could not be independently developed, and the state determined that it was an unattractive nuisance and an ongoing liability. The state's Right of Way Department confirmed that the bridge's railroad use was discontinued, and discovered that the railroad company had removed the tracks almost 40 years earlier.

In the three years prior to the start of the state's construction project, a catering food truck began

to park on the bridge to sell food to people waiting in line to enter a nearby federal office building. It soon became a daily fixture on the bridge until the state realized that the truck was trespassing.

The state first tried to physically block the food truck from entering the bridge by putting up a chain, installing fencing, and even placing concrete barriers across the entrance, but with no success. Next, several letters were sent to the food truck owners citing the trespass and threatening legal action, but the letters were ignored. To make matters worse, the truck operators anchored the vehicle to the bridge. If the impending bridge demolition project was delayed or canceled because of the failure to clear the truck from the bridge, the state would be subject to significant contract change-order damage claims. Having run out of other options, the state placed an urgent call to their legal department to start the eviction process.

Not So Fast

The food truck operators remained unconcerned by the state's notices of trespass and threats of legal action. Instead, the operators replied with their own cease and desist letters. Unbeknownst to the state, the operators had negotiated and completed a purchase and sale agreement with the railroad company, acquiring ownership rights to the bridge. The truck operators would not be leaving quietly, and the project's clock was now ringing critical.



Michael is a shareholder in the Eminent Domain and Litigation Departments of the Los Angeles law firm, Richards, Watson & Gershon. Email myoshiba@rwglaw.com

As the state's attorney assigned to this matter, I reviewed the purchase and sale agreement and the transfer documents, which indicated that the railroad company's land ownership history dated back to the 1800s. In the 1930s, the state negotiated with the railroad company to purchase the property for a new freeway project, with the railroad company reserving easement rights for their ongoing railroad uses. The state proceeded to build the subsurface freeway and a bridge over the freeway for the railroad tracks. In conjunction with the urbanization of the area in the 1960's, the railroad company ended its railroad use of the bridge and removed its facilities and tracks. The railroad company then sent the state a confirmation letter disclaiming any further and future obligations concerning security, bridge maintenance and debris clearance and further declaring that those obligations were left to the state going forward.

Left Empty-Handed

The transaction between the railroad company and the food truck operators had been facilitated by a quitclaim deed.

Apparently, it transferred all rights to the food truck operators. But unbeknownst to the truck operators, the railroad company had previously abandoned all of their rights to the bridge over 40 years before the execution of the quitclaim deed.

The matter was eventually resolved, but only after the court granted injunctive relief to the state to forcibly evict the food truck from the bridge and a court order allowed the state to demolish the bridge structure as scheduled.

What's at Stake

For this case, I worked extended hours, reassigned all of my other responsibilities, reviewed volumes of documents, interviewed and inconvenienced many witnesses, paid premium costs for expedited ancillary expert services, and all with little or no margin of error for setbacks or unfavorable rulings by the court. Fortunately, I was part of a large in-house legal staff, pre-assigned to assist with right of way issues, and was available to provide legal assistance at the eleventh hour. By contrast, a smaller agency might not have

had expertise or the resources to effectively respond to this problem. If this issue had been identified and referred to an attorney sooner, the concern over the potential dire financial and legal consequences could have been avoided.

Attorneys are sometimes referred to as legal counsel or counselor. They are called upon to use the law to assist and advise others in either achieving or avoiding certain outcomes, and thus can also be called outcome managers. Before seeking legal advice, you should have a good grasp of the facts and a clear proposed outcome in mind. Attorneys can help with cost-consequence assessments, particularly when there are unacceptable outcomes. Also, consider and identify how much time is realistically available to solve a problem. The more time you have, the less costly the legal services will be. Last, if you are unsure as to how an issue may be decided, interpreted or defined, ask for legal advice early in the decision-making process. Clients typically call attorneys only after a problem becomes seemingly irreparable. On behalf of all attorneys, we look forward to hearing from you, hopefully sooner rather than later. ☘

