



# ALABAMA MUNICIPAL INSURANCE CORPORATION MUNICIPAL WORKERS COMPENSATION FUND, INC.



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## *Loss Control Division*

### **Risk Management: Avoiding and Reducing Municipal Tort**

#### **Liability. What is Risk Management?**

Risk management is the identification, analysis and evaluation of potential losses in order to develop methods to reduce or eliminate them. Risks are identified and then steps are taken to avoid them. This may be as simple as continuing to operate as usual or as complicated as restructuring or abolishing an entire department. Employing risk management principles will not always prevent a city or town from being sued or from suffering some other loss. But the resulting financial burdens can be reduced.

#### **Risk Identification**

The first step in the risk management process is to identify all potential losses facing a municipality. Risk identification is an on-going process that changes with each new situation.

Risk identification, or exposure identification, requires the development of an inventory of all municipal operations, knowledge of the potential liabilities that may be imposed by either statute or common law, and knowledge of the worth of all municipal assets and sources of revenue. This step must include an evaluation of all potential events that might adversely affect the finances of a municipality. Contracts should be reviewed thoroughly, prior to being signed, to ensure that the municipality is obtaining the best deal possible. In some cases, risks can be transferred to the contracting party.

Potential losses of income and extra expenses that a municipality might incur are two areas often overlooked in risk identification. These risks must be considered even though they tend to be speculative.

Other areas where risk management principles should be applied include vehicle usage, maintenance of property and facilities, public use of facilities, use of independent contractors and consultants, personnel questions and personal injury and property injury exposure. All municipal activities should be evaluated and facilities inspected.

Court decisions and legislation that affect municipalities must be reviewed. Insurance and risk management publications should be studied for the latest information on loss avoidance. Attending courses on risk management may prove beneficial.

The importance of the human element *cannot be* overemphasized when identifying risks. Ask employees and supervisors for their input. They are usually in the best position to identify risks. It is also important to communicate with people in other municipalities who are involved in risk management. They may have faced and solved a similar problem in the past.

Obviously, a great amount of guesswork is involved in risk identification, and some potential losses may be overlooked. However, by making a conscientious effort, the most common losses can be reduced or perhaps totally avoided.

## **Analysis**

The next step is to calculate the potential severity and frequency of losses facing the municipality in each of the identified risk areas. A review of the past experience of the municipality, as well as statistical information and probability analysis, is necessary.

Obviously, the impact of a particular risk on a municipality is difficult to determine. The use of statistics and probability analysis involves guesswork. To determine where a municipality should concentrate its risk management efforts, the risk analysis should be performed carefully. Some risks may involve such a small amount or probability of loss

that the municipality will decide to simply absorb any losses which occur. Or the potential loss may be so large and difficult to avoid that insurance might be the only recourse.

### **Risk Control**

Once the risk areas are identified and analyzed, the next step is to eliminate, reduce or transfer the risk. This process is called risk control. Steps toward risk control are taken prior to suffering a loss, with the primary goal being loss prevention. However, when a loss cannot be prevented, risk control principles may help reduce the financial liability suffered by a municipality.

Elimination of a risk is the most desirable goal. If a municipality discovers a way to eliminate a risk, there is no need to worry about its future effect or to insure against it but risks cannot always be eliminated. For instance, abolishing the police force will eliminate all loss exposure in that area, but in most cases, that action is not desirable. After an analysis, a municipality may decide to stop performing some activities or to transfer the risk to a private operator.

If a risk cannot be eliminated, the next choice is to attempt to reduce the risk. Risk reduction primarily involves safety. Some common techniques for reducing risks include adoption of policies for, and proper training of, personnel, particularly for the police and fire protection services, and proper inspection and maintenance of equipment and facilities. Segregation of equipment may also help avoid the loss of all equipment at one time during a disaster such as a fire at a storage site. A more complete list for reducing risk in specific municipal activities is included in the chart accompanying this article.

If the risk cannot be eliminated or reduced, two last options are available. First, if the risk is not large, a municipality may decide that the best option is to retain the risk and fund it itself. The municipality must be aware of its financial condition, its cash flow and the availability of additional funds before deciding to assume a risk.

Retaining the risk is the appropriate action in many cases. Studies have shown that municipalities retain far fewer risks than they are financially able to. By deciding to retain a risk rather than purchasing insurance, a municipality may save money in the long run. Again, this decision can only be made after the financial condition of the municipality has been analyzed in detail.

Second, a municipality may be able to transfer the risk to another party. This does not always mean obtaining insurance. The most common form of risk transference is probably the "hold-harmless agreement," in which a supplier or contractor agrees in the contract to assume risks for which the municipality would normally be responsible. Of course, the added cost to the supplier or contractor of obtaining insurance or otherwise guarding against loss may be passed on to the municipality. In such case, a municipality must calculate costs to determine if transferring the risk in this manner is the best option.

In some instances, insurance remains the ultimate solution to a risk management problem. A municipality may want to retain some of the risk of an activity and transfer another part to an insurance carrier. Insurance, however, is a last resort to be used only after all attempts to reduce or eliminate the risk have failed.

Developing a Risk Management Program

On a practical level, the first step in developing a municipal risk management plan is to define the scope of the program. This definition should be in writing and should set out the objectives or reasons for establishing the program.

Second, it is important to delineate the responsibilities of all persons involved in the risk management function. All persons engaged in identifying and analyzing the risk and implementing the risk management program should be included in this step. Cooperation is one of the keys to successful risk management.

Third, a municipality must develop a formal risk retention policy. Once the retention limits are established after a thorough survey of the financial strength of the community, the working policy should be drawn up as a formal policy and approved by the city council.

A municipality or board may want to form a safety committee which will be responsible for the conduct of a mandatory safety program for employees. This committee should recommend safety policies to be carried out by administrative personnel and should review all accidents and claims against the municipality. Most of fee accidents and claims are usually found to result from the performance of a relatively few activities. Concentrated efforts can be devoted to the correction of procedures in these areas, thereby minimizing possible losses.

The second principal duty of the committee should be that of inspection of municipal procedures and installations, concentrating the search on possible defects which might cause injury and liability. Finally, the committee should confer with insurance carriers and their representatives for the cost of insurance coverage in areas where liability dangers are greatest.

Beyond this point, professional input and guidance become necessary. A professional consultant is best suited to help a municipality determine what steps should be taken to protect itself.

## **Common Losses and Risk Management Recommendations**

### **Personnel/Employee.**

#### **1. Workers Compensation**

- \* Establish a formal safety program.
- \* Require pre-employment physicals.
- \* Inspect the workplace and observe work being performed.
- \* Require reporting and investigation of all accidents.
- \* Implement aggressive claims management.
- \* Regularly compile reports for top management on the frequency and severity of accidents.

#### **2. Discrimination**

- \* Require and document training for all personnel with hiring and firing authority.
- \* Follow policies to the letter.
- \* Develop and follow a well-defined grievance procedure.
- \* Refrain from stigmatizing employees.

#### **3. Employee Screening**

- \* Thoroughly investigate the background of all job applicants.
- \* Be aware of "known" criminals in certain areas.

#### **4. Release of Data and Job References**

- \* Maintain a central source for the release of all data concerning employees.

- \* If requested to send a recommendation, send it directly to file employee and let him or her distribute.

- \* Report only *facts*. Refrain from using adjectives or statements of opinion.

## **5. Volunteers.**

- \* Determine where volunteers are needed.
- \* Define duties to avoid hazardous activities.
- \* Develop an application procedure for prospective volunteers.
- \* Train volunteers as to their duties.
- \* Properly supervise volunteers at all times.
- \* Keep records of work performed by volunteers.
- \* Verify workers compensation coverage.

## **Fleet Liability**

- \* Establish license criteria for all drivers.
- \* Check the three-year history of all drivers.
- \* Require vision and blood pressure testing for all drivers.
- \* Have another agency investigate your accidents.
- \* Establish driver training specific to equipment.
- \* Enforce and document disciplinary actions.
- \* Require the use of seatbelts.
- \* Establish a policy for maintenance of all fleet equipment and document that

maintenance

## **Law Enforcement.**

- \* Thoroughly investigate the background of all job applicants.

- \* Ascertain that all approved applicants meet *minimum* standards established by the Peace Officers Standards and Training Commission.

- \* Develop written policies and disseminate to all law enforcement personnel.

- \* Instruct all supervisors as to the contents of the policy and train them to follow the policy in all situations.

- \* Require regular re-training of all personnel to update them on changing methods.

- \* Require qualification and periodic re-qualification on all weapons including information on when to use a weapon.

- \* Develop a policy governing off-duty employment and instruct personnel about what is permitted.

- \* Implement a "hot pursuit" driving policy that addresses when to pursue, what to do during the pursuit, and when to abandon the chase.

- \* Train and update officers on federal and state court decisions affecting search and seizure, false arrest, use of weapons, use of excessive force, etc

### **Actions of Elected Officials and Employees.**

#### **1. Zoning**

- \* Provide applicants with rules governing meeting procedures and the appeals process.

- \* Transcribe all meetings.

- \* Mail all rulings in a timely manner by registered mail.

- \* Eliminate decisions based on politics,

- \* If possible, have separate legal counsel *for all* hearing boards.

#### **2. Bids, Contracts, Leases**

- \* Establish a structured contract review process.

- \* Have risk manager review all contracts, leases and bid requests.

- \* Insure proper identification and transfer of risk in all contracts.
- \* Carefully review all leases to know the responsibilities of each party.
- \* Watch for co-insurance clauses.
- \* Be certain that state bid law is complied with.
- \* Require proofs of performance.

Pollution:

- \* Monitor underground tanks and place above ground if possible.
- \* Limit and monitor local dumping.
- \* Ensure transformer program complies with PCS regulations.
- \* Monitor asbestos abatement seeds.
- \* Implement proper public air (smoking) policies.
- \* Maintain effective water quality testing.
- \* Analyze pollutant levels on all property acquisitions, especially property used as an industrial site.
- \* Be aware that no commercial insurance coverage at reasonable rates is available in this high-risk area

Permits and Licenses:

- \* Comply with all state licensing requirements and limitations.
- \* Reject license applications only where clear justification is present

**Public Works.**

**1. Streets and Sidewalks**

- \* Systematically inspect all streets and sidewalks for hazards and deterioration.
- \* Mark and warn until hazards are repaired.
- \* Establish priorities. Correct serious hazards first.
- \* Don't assume liability of another jurisdiction.

- \* Respond promptly to reports of hazards.

## **2. Traffic Controls and Markings**

- \* Implement an inventory system.
- \* Use only approved signs and colors.
- \* Maintain an inspection and maintenance system, using off-hours police patrols if possible.

- \* Respond promptly to reports of damage.

## **3. Drainage and Flooding**

- \* Properly maintain drainage and storage areas.
- \* Make drainage a top priority in new development plans.

### **Utilities.**

#### **1. Downed Power Lines**

- \* Maintain good right-of-way clearance.

#### **2. Sewer Backup**

- \* Adopt a local policy.
- \* Delineate your responsibilities.
- \* Be sensitive. This is a very emotional claim.

#### **3. Cut-Offs**

- \* Review internal process for service requests.

#### **4. Voltage Fluctuations**

- \* Maintain adequate system failure reports.
- \* Separate human error from natural causes.

#### **5. Right-of-Way Maintenance**

- \* Install discharge protection on mowers.

- \* Pay particular attention when mowing around parking lots.

### ***Parks and Recreation.***

#### **1. Playgrounds and Fields**

- \* Keep well-maintained.
- \* Regularly inspect grounds and equipment.
- \* Immediately replace worn or damaged parts.
- \* Post "at risk" signs at ball fields and playgrounds.
- \* Keep user-group age in mind.

#### **2. Pools**

- \* Employ only trained and certified personnel.
- \* Anticipate and prepare a plan for handling emergencies,
- \* Post clear and easy-to-read rules.
- \* Pay special attention to the use of chlorine.
- \* Consider removing diving boards and slides.

#### **3. Training Staff and Volunteers**

- \* Recognize the exposure.
  - \* Inform all volunteers of duties and responsibilities.\* Protect volunteers and isolate them as much as possible from acting in high-liability activities.

### **Rent and Lease Facilities.**

- \* Require proper transfer of risk through insurance.
- \* Establish a user application process.
- \* Do not waive insurance requirements. This decision should only be made by elected officials.

## **Accidents.**

- \* Protect the scene. Get out of traffic and turn on emergency flashers. Put out any needed warning devices or flares.
- \* Summon medical and law enforcement assistance. Offer first aid if you are qualified and able to do so,
- \* Don't argue with the other drivers. Don't make statements about the accident except pursuant to municipal policies or as needed to supervisors or the police, give objective answers to questions—don't speculate or guess. Don't offer settlements.
- \* Get Names and Addresses of other drivers and passengers, vehicle information such as vehicle identification numbers, license plate numbers and insurance companies, the name of the investigating officer and his or her department, and try to learn where injured parties are being taken.
- \* Locate any witnesses.
- \* Complete any required reports, inform the appropriate municipal officials and inform your insurance company.

### **Alabama Municipal Insurance Corporation**

The Alabama Municipal Insurance Corporation has been formed to provide liability insurance coverage for municipalities and their agencies. For more information, contact Steve Wells, President, P. O. Box 1270, Montgomery, AL 36102 or phone 334-262-2566.