

THE MOUSE THAT ROARED
HOW SMALL TO MEDIUM SIZED CITIES CAN MAKE A
DIFFERENCE
IN THE LEGISLATURE

Jerry James
Director of Environmental Services
City of Victoria
P.O. Box 1758
Victoria, TX 77902-1758

Michael J. Booth
Booth, Ahrens & Werkenthin, P.C.
515 Congress Avenue, Suite 1515
Austin, TX 78701

Because developer, private property, and taxpayer advocates, along with many other anti-city groups, have many more resources to deal with legislative issues in Austin, small and medium sized cities under 100,000 in population face a daunting task in relaying their legislative messages. With tightening budgets and escalating costs to respond to state and federal regulations, it is harder to find the resources and time to have an effective legislative voice. Add to that the sheer number of legislators in the House and Senate from larger urban areas, as well as the economic interests from those areas, having an effective voice in the State legislative process may seem to be an overwhelming task. As a

result of these issues, smaller cities are looking for innovative ways to make their voices heard.

On larger issues where cities have common interests, there is no question that the Texas Municipal League is an extremely effective voice. Similarly, on water and solid waste issues, for example, more targeted associations, such as the Texas Water Conservation Association, Texas Public Works Association, and Texas Chapter of the American Water Works Association, play important roles. But, small and medium sized cities need to understand that the trade association by their nature can only be involved in matters where there is a commonality of interest of their membership. Additionally, these groups, in certain sessions, are faced with such a barrage of significant legislation affecting all cities that even their resources become tasked. This happened last session when cities were faced with fighting the issues of eminent domain, appraisal caps, limits to water quality ordinances, and significant changes to the law of water and wastewater certificates of convenience and necessity, all at the same time.

As will be discussed below, sometimes regional coalitions are the solution to a city's problem with being impacted by issues that are not of the type that would involve the trade associations or when there might be differences between cities or classes of cities. Additionally, however, there may come a time in the future, if it has not already occurred, where small and medium sized cities have to either dedicate staff or retain legislative consultants merely to assist the associations in their efforts to protect city powers and municipal tax bases. Some of this assistance can simply be in the form of making sure each city's representative(s) and senator(s) know of the specific impact that a piece of legislation will have in the senator'(s) or representative'(s) district.

THE MOUSE

In the South Texas area, a regional concern that has received a lot of legislative attention over many years is the Edwards Aquifer, how it interacts with and contributes to flows in the Guadalupe River Basin, and its relationship to the endangered species at San Marcos and Comal Springs. There has been great effort from all sides to reach a regional solution to the problem. However, there remains tension between the

competing economic and water supply interests of a large metropolitan area versus the small to medium sized cities at the springs and downstream of those springs in the Guadalupe River Basin. The problem has been how these cities can have an adequate voice in the legislative solution. The answer has been to combine their efforts in the form of the Guadalupe Basin Coalition.

The Guadalupe Basin Coalition is an association of businesses, Chambers of Commerce, and governmental entities, which represent cities and counties along the Guadalupe and San Marcos Rivers. They are bonded by the concern for the viability of the Guadalupe and San Marcos Rivers, as well as the economic and environmental concerns associated with the effect Edwards Aquifer Authority regulation has on the springflows of the San Marcos and Comal Springs. By combining their efforts, they were able to have a united voice before the Legislature and focus their efforts in the negotiation process with interests in the San Antonio area. They were also able to combine financial resources in order to have effective representation in the Legislature on the issue.

In forming the Coalition, we had to recognize the diversity of the entities we gathered. There were simply going to be issues on which we did not agree. We were, therefore, careful to limit the issues we would address as a group and agree that we would pursue other issues on our own and specifically state in our testimony and when meeting with legislative staff who we were representing at that particular time. Limiting our range of issues also helped us to concentrate our resources more effectively and gave clearer direction to the firm that represents us. There is a fair amount of creativity in the legislative process, but your firm needs to have a clear understanding of the bounds of that creative process.

We also had to understand that you do not just hire a law firm or lobbyist and sit back and watch it happen and hope for the best. Just as you expect your lobbyist to work long and hard into the night, expect the same for yourself. Seeing your smiling, although tired, face makes a world of difference. This is especially true if you can bring a local elected official along on occasion. For example, getting our Mayor involved in the process added credibility and opened doors much easier

and sometimes much faster. We also discovered that the doors are not just opened easier with a particular city's senator or house member, but all members. Elected officials are also important when presenting committee testimony. Legislators see lobbyists on a constant basis and want to hear from constituents, rather than the lobby, when it comes to testimony.

One of the advantages of a "coalition" approach to lobbying is the effectiveness of multiple testimonies under a group name at committee hearing. While it is certainly effective to have an appointed face that is recognizable to legislators, when testifying before committees it is very helpful to show a unified front with multiple entities on a bill. It is *essential*, however, to plan testimony ahead so that each member is testifying on a different aspect of the bill. There is nothing committee members loathe more than having to listen to repetitive testimony. There also is nothing they respect more than concise and informative testimony. A unified message and a plan for dissemination is also important, as will be discussed below, when meeting with members and their legislative staff.

Obtaining effective representation is a two-part problem. One, of course, is finding a quality firm to represent you. A key concern is obtaining a firm that already has credibility in the Legislature in the particular area where you need representation. The credibility of the firm comes from both relationships built over time with the legislators and their staffs and the quality and reliability of the information the firms have provided those legislators over time. Many firms or individuals have good legislative relationships, but do not have the capability to provide information or draft legislation. Credibility is also established by a firm's ability and willingness to work with the legislators to craft language for the bills. That ability comes from an understanding of the law or issue and an understanding of the context of the law or issues in relation to other issues that are being debated. You, and the firm that you employ, should understand that, especially towards the end of the session, effective representation becomes an around the clock process. If the firm you are considering using does not understand this, it is a red flag that you need to keep on looking. While there is an abundance of firms and individuals in the State that represent entities in

the Legislature, there are actually very few that are recognized by the members of the Legislature as being expert in a certain area.

The second problem, and one that is often overlooked or not really understood, is having adequate resources for the firm to be able to devote the time necessary to get the job done. This will be a time consuming and, therefore, expensive process. That is where collaborating with other entities for funding can be an advantage. It also is important that the selected firm has a proven track record of working well with others. The Legislature is processing over 5,000 bills in a five-month period and is working substantially around the clock to do it. While your bill will be assigned to one committee in the Senate and one committee in the House, it may well be a part of a negotiation process to pass bills totally unrelated to your concern. Being able to work with other groups in these other areas can become critical at the end of the session. This can greatly increase the scope of work of your representative, and yourself, well beyond what you might imagine going into the process.

It is imperative to work out, on a contractual basis, an agreement between your group and your lobbyist on cost and scope of work. Cost can be worked out on an hourly, monthly, session or annual retainer basis. The advantage of a retainer versus per hourly basis is that both you and the firm you hire have an expected performance for a specific fee as long as you have a good scope of work. With a per hour fee basis you may be in for some real surprises when your bill takes some unexpected twists and turns toward the end of the session. Retainers can cover just the session or the session and interim, or whatever meets the association's or city's needs. Two-year retainers are the most popular. These retainers allow the lobby firm and the association, group, or city to better budget for this significant fee. Such a term also provides the funds and establishes the expectation that your lobbyist/law firm will attend events and be on the job throughout the interim when the groundwork for successful results are laid. In general, without the budgeting security that retainers provide, the client can expect little interim work to be done or, if the work is done, as really is required, very significant hourly bills from time to time.

In order to raise funds to hire a firm, the Coalition used a tiered system of membership to allow those who put up the majority of the funds to have more of a say in policy decisions, but allow those who wanted to participate, but could not afford as much, to have a part in the discussions. There are three classes of membership: associate, regular and voting members. Voting members contribute \$5000 or more per session. Associate and regular members can contractually pool their resources to become a voting member. For instance, in a county, the county government, a municipality, and chamber of commerce may pool their resources to gain one voting member spot. This encourages some flexibility in how entities can participate and a wider range of membership.

HOW THE MOUSE WON

As you approach a legislative session and enter into a relationship with a firm to represent your interests in the session, you must set definite goals and define the term “win”. The policy of the Texas Municipal League on legislative issues is that it is easier to kill a bad bill than to pass a good one. This bit of wisdom has held true through the

ages. While the Coalition has been an active participant in helping draft amendment language on bills concerning the management of the Edwards Aquifer that would, hopefully, reach some regional resolution on the issue, more often than not over the years we have had to be satisfied with just making sure what we considered a bad bill did not make it through the legislative process.

Many hours were spent before and during the last session working on the Edwards section of Senate Bill 3 with all of the interested parties attempting to come to agreement on language that would amend the management of the pumping cap on the Edwards and other issues that could carry the region forward into the future with some form of resolution on the issues. The activity included meetings of the Coalition to define and redefine our position as negotiations moved forward, meetings with the other interested parties to try to come to terms with the language of the bill, and meetings with the legislators and their staffs to attempt to move that language forward. We finally ended up with language that no one was completely happy with, but where all parties felt their biggest concerns were taken care of. We had a “win” up to that

point. Unfortunately, other sections of bill were not resolved and the inability of the Legislature to resolve the school finance issue bled over into other issues to cause several major pieces of legislation, including SB3 to not make it out of both houses for final passage. We can expect the Edwards' issue not to go away.

MANY STAGES OF REPRESENTATION

Many issues that involve the legislative process are not just limited to the legislative venue. Administrative proceedings, judicial proceedings, and sometimes federal governmental proceedings are involved. The potential for these activities need to be identified and efforts coordinated with your lobby firm. There also should be recognition that success or failure in one forum may cause pushback or problems in another forum.

Work on issues related to the management of the Edwards Aquifer that the association worked on during the session, for example, did not begin at the start of last regular session or come to a halt on Sine Die, the last day of the session. In December of 2003, the Edwards Aquifer Authority, in an attempt to temporarily resolve the pumping cap issue on

the Edwards Aquifer, passed a system of rules that set in place bifurcated permits that would allow a permit holder to exceed statutory pumping limits on the aquifer during times when the aquifer levels were above a specified elevation. The South Central Texas Water Advisory Committee (“SCTWAC”), an advisory committee to the Edwards Aquifer Authority Board of Directors, determined that the bifurcated rule system would adversely affect water rights on the Guadalupe River downstream of the springs that flow out of the aquifer and would have an adverse effect on the Texas Commission on Environmental Quality’s (“TCEQ”) ability to administer water rights on the Guadalupe River. After the Edwards Aquifer Authority Board of Directors refused to reconsider the permitting process, SCTWAC appealed to the TCEQ commissioners to review the process, as provided for in the Edwards Aquifer Authority enabling legislation. Since SCTWAC does not have any funding, Coalition members joined the fight on their behalf.

The TCEQ initially ruled in the fall of 2004 that the TCEQ would study the effects of the permitting process on Guadalupe River permits and expressed hope that, in the meantime, the region could develop a

legislative solution. As stated earlier, that did not happen. In January of 2006, the TCEQ took the matter up again. In the meantime, the TCEQ and the Texas Water Development Board had performed a study showing that the permit system did, in fact, have an adverse effect on downstream water rights. The TCEQ Executive Director recommended to the TCEQ commissioners, however, that it did not adversely impact the Commission's ability to administer those water rights.

The Edwards Aquifer Authority had their attorneys compile an extensive brief and hired an engineering firm to do a study refuting the TCEQ's findings. The "Mouse" prepared a very persuasive letter from the Mayor of Victoria and a brief from the Chairman of SCTWAC outlining for the commissioners that the permit system did, in fact, adversely affect the downstream water rights and, as a result of that, impacted the Commission's ability to administer those rights. The Commission ruled in favor of the Mouse.

building with other cities, districts, etc., with like interests. In recurring issues, or issues of major regional importance, the form can be creation of a coalition to pool resources. The pooling of resources not only includes manpower and finances, it includes expanding the universe of senators and representatives whose districts may be impacted.

Keys for legislative initiatives that must be remembered are early involvement, meaning before the session starts, selection of quality outside legislative representation that are experienced and credible in this field of endeavor, involve local elected issues early and often, and involvement from beginning to end of the legislative process, which includes until the last day the Governor can veto legislation. And, of course, remember that many issues do not go away once the session is over or are exclusively a legislative dispute.

SELECTED RESOURCES

Texas Legislature Online:

<http://www.capitol.state.tx.us/capitol.htm>

Legislative Process (also handed out at Speaker's Session):

<http://www.capitol.state.tx.us/capitol/legproc/summary.htm>

How to Follow a Bill through the Legislative Process:

http://www.capitol.state.tx.us/tlo/help/legislative_process.htm

Legislative Dates of Interest:

<http://www.capitol.state.tx.us/tlo/resources/legdates.htm>

Texas Legislative Council Drafting Manual:

<http://www.tlc.state.tx.us/pubslegref/pubslegref.html>

Guide to Texas Legislative Information:

<http://www.tlc.state.tx.us/pubslegref/pubslegref.html>

The Mouse that Roared How Small to Medium Sized Cities can Make a Difference in the Legislature

Jerry James
Director of Environmental Services
City of Victoria

Michael J. Booth
Booth, Ahrens & Werkenthin, P.C.
Texas Water 2006
April 5-7, 2006

- Small and medium sized cities under 100,000 in population face a daunting task in relaying their legislative needs:

- tightening budgets
- escalating costs
- number of legislators in House and Senate from larger urban areas
- economic interests from larger urban interests

Regional Coalitions

- Coalitions can be a solution for cities impacted by issues that are not of the type that would involve the trade associations or when there might be differences between cities or classes of cities

Guadalupe Basin Coalition

- Association of businesses, Chambers of Commerce, and governmental entities
- Represents cities and counties along Guadalupe and San Marcos Rivers
- By combining efforts, able to have a united voice before the Legislature
- Able to combine financial resources in order to have effective representation in the Legislature

Obtaining Effective Representation

- Quality Firm
 - Credibility in Legislature where you need representation
 - Capability to provide information and draft legislation
 - Ability to work with legislators to craft language for bills
 - Adequate resources for the firm to be able to devote the time necessary

Obtaining Effective Representation

(cont'd)

- Adequate Resources
 - Imperative to work out an agreement between your group and your lobbyist on cost and scope of work
 - Adequate resources for the firm to be able to devote the time necessary

Legislative Session

- Set definite goals
- Define the term “win”
- Easier to kill a bad bill than to pass a good one

Many Stages of Representation

- Not limited to legislative venue
- Administrative, judicial, and sometimes federal governmental proceedings are involved

- If your issue requires going up against a trade group, meet with the group to understand the group's problem and let them know your problem.
- If administrative agencies are involved, it is important to meet with them to ensure they understand your issues and you know whether they have position on your issue and, if so, whether it is in support or opposition. Be aware that state agencies, by law, cannot lobby. This does not mean that if the agency is against you that the agency will not be able to let the Legislature know about it. It just means that agency support or opposition is more subtle, but still very effective.
- As the session evolves, draft legislation and a bill analysis will be needed for distribution to your legislative contact group.
- If you are sponsoring legislation in a bill or in amendment form, selecting legislative sponsors is very important. Your lobby firm can provide a good source of advice on this subject.
- Stay involved with evaluation of bills in the first part of session and work with your lobbyist to add amendments at the end, if necessary.

CONCLUSION

By combining resources, small to medium sized cities can have a positive effect during a legislative session and can take several forms. This effort can take the form of having city staff work with the Texas Municipal League legislative staff at the Capitol to extend the Texas Municipal League's resources. The effort can take the form of coalition

Today's attack on lobbyist for cities

TIPS FOR BEING EFFECTIVE IN THE LEGISLATIVE PROCESS

An exhaustive list of things to do or how to do it is beyond the scope of this paper, but below are some points to remember once the decision is made to develop a coalition or to become more actively involved in the legislative process:

- If retaining outside assistance, make sure the firm hired is the right one for the job on hand. The rest of the paper details some considerations in hiring such a firm.
- Begin work early in the process. It is impossible to educate members and staff during the five-month session.
- Develop a legislative agenda as soon as possible and work closely with your lobby firm in developing that agenda. Your lobby firm should know issues that are boiling in both houses now and what needs to be put on the burner.
- The legislative agenda needs to be refined and as concise as possible.
- A core group of persons needs to be identified to be in charge of the day-to-day decisions that need to be made, particularly the ones at the end where it is not always possible to get council or coalition input.
- Develop key documents as early as possible that provide the core message as concisely as possible. The documents need to describe who you are and what you need, and how your issue does or does not impact a member or the member's district. These materials also should contain what in the law needs to be changed, who

supports, and who is against the change. If a fiscal note will be required, a funding source other than general revenue funds needs to be included. As part of this background, if prior failed legislation is being presented, then the reason for the failure needs to be addressed. The written materials need to have two, maybe three parts. The first part should be one page, at a maximum, is for the member and the second part can be longer, but not longer than 2 or 3 pages for the member's staff to additionally explain the issue. An appendix containing legal memos, etc., can be included as a third part of your handout on more complicated issues, as necessary. These materials should contain a point of contact, as well as contact information.

- Testify in interim hearings and work with committee staff and others on your issues throughout the interim. Try to be invited testimony if a hearing is going to be held in your region. At the end of the interim, both the House and Senate standing committees develop reports that may frame the legislation that is seen when the session starts.
- Besides testifying at interim hearings and during the session, individual member visits are needed to deliver the written message and put a face on your problem. What is going to be said by the delegation that will be visiting members and what is going to be left with them should be decided in advance of the meeting.
- Encourage political contributions from key community leaders. Contributions are important and can help area efforts to get to know the members and the members to know the area issues.
- As the time for the beginning of new session nears, along with the Interim Committee Reports, evaluate other trade or interest groups legislative agenda, as well as the regulatory agencies that are involved in the area that you are concerned. Reading these documents provides good insight on what type of issues will be in the upcoming legislative session.

Trade
Groups
Agencies

Some Tips for Effectiveness

- Begin work early
- Develop a legislative agenda
- Identify core group of persons
- Develop key documents
- Testify in interim hearings and during the session
- Encourage political contributions
- Stay involved

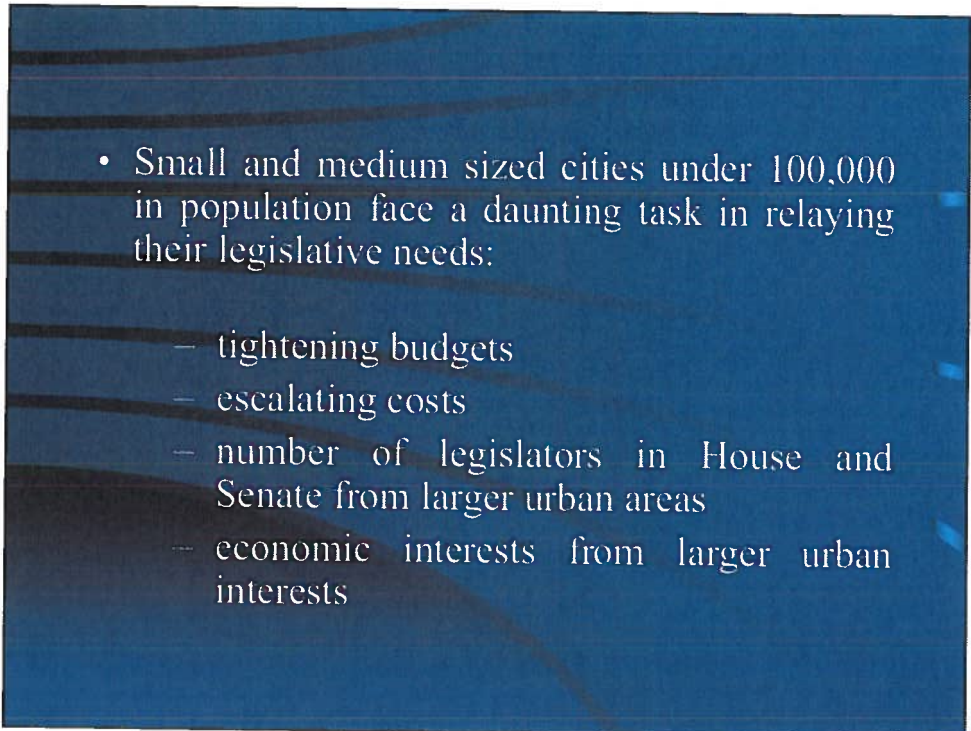
Conclusion

- By combining resources, small to medium sized cities can have a positive effect during a legislative session
- Pooling of resources not only includes manpower and finances, it includes expanding the universe of senators and representatives whose district may be impacted
- Early involvement
- Selection of quality outside legislative representation

The Mouse that Roared How Small to Medium Sized Cities can Make a Difference in the Legislature

Jerry James
Director of Environmental Services
City of Victoria

Michael J. Booth
Booth, Ahrens & Werkenthin, P.C.
Texas Water 2006
April 5-7, 2006

- 
- Small and medium sized cities under 100,000 in population face a daunting task in relaying their legislative needs:
 - tightening budgets
 - escalating costs
 - number of legislators in House and Senate from larger urban areas
 - economic interests from larger urban interests

Paper describes the SMRF Application and provides a detailed basis for why the TWCA believes the SMRF Application should be dismissed or, if heard on the merits, denied.

I am not going to bore you with a statute-by-statute argument why the TWCA is correct and the TNRCC, who has accepted this application, and the SMRF is wrong. But to summarize the essential position that the TWCA believes the law in Texas requires that:

Before a permit can be granted, there must be a physical act—diversion or storage and beneficial use. TWCA believes that both requirements are not met.

In other prior appropriation states, some courts have agreed with this, some have said standards evolved, some state legislatures have said that physical act required for a water right, but established a reservation process and required new water rights to protect the environment. TWCA believes Texas statutory environment establishes a framework for environmental flow protection but not through a water right grant.

Regional Coalitions

- Coalitions can be a solution for cities impacted by issues that are not of the type that would involve the trade associations or when there might be differences between cities or classes of cities

It is important to remember that the State holds all water in trust and the water can only be used, with minor exception, through a water right. New water rights require protection of environmental flows.

Guadalupe Basin Coalition

- Association of businesses, Chambers of Commerce, and governmental entities
- Represents cities and counties along Guadalupe and San Marcos Rivers
- By combining efforts, able to have a united voice before the Legislature
- Able to combine financial resources in order to have effective representation in the Legislature

Obtaining Effective Representation

- Quality Firm
 - Credibility in Legislature where you need representation
 - Capability to provide information and draft legislation
 - Ability to work with legislators to craft language for bills
 - Adequate resources for the firm to be able to devote the time necessary

SMRF application is clearly designed to stop the development of some of the few existing reservoir sites outside of East Texas that are found in the San Antonio and Guadalupe River Basins.

Obtaining Effective Representation (cont'd)

- Adequate Resources
 - Imperative to work out an agreement between your group and your lobbyist on cost and scope of work
 - Adequate resources for the firm to be able to devote the time necessary

SMRF application is clearly designed to stop the development of some of the few existing reservoir sites outside of East Texas that are found in the San Antonio and Guadalupe River Basins.

Legislative Session

- Set definite goals
- Define the term “win”
- Easier to kill a bad bill than to pass a good one

Snowmelt trout stream models not good

Productivity models not based on a lot of data

Not good showing of correlation between higher flow and higher productivity

Interpretation of the model results in an art and not a science. Discuss Paluxy example.

Many Stages of Representation

- Not limited to legislative venue
- Administrative, judicial, and sometimes federal governmental proceedings are involved

New permits that honor reservations can go forward with minimal environmental review

Reservations can be Modified if Situations Warrant

.

Some Tips for Effectiveness

- Begin work early
- Develop a legislative agenda
- Identify core group of persons
- Develop key documents
- Testify in interim hearings and during the session
- Encourage political contributions
- Stay involved

Private Ownership

Minimum Levels

Critters vs. People

Conclusion

- By combining resources, small to medium sized cities can have a positive effect during a legislative session
- Pooling of resources not only includes manpower and finances, it includes expanding the universe of senators and representatives whose district may be impacted
- Early involvement
- Selection of quality outside legislative representation