

SDAO Winter Conference

Seaside, Oregon



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Governing in Stormy Times, Civility Despite Conflict



Congratulations! You've been elected
to public office...



Remember: no good deed goes unpunished.

RULE ONE: Conflict Happens





RULE TWO: PROCESS AND FORMALITY CURE CONFLICT



In questions of power, let no more be heard of confidence in man, but bind him down from mischief by the chains of the constitution."

— Thomas Jefferson

RULE NUMBER THREE: KNOW YOUR ROLES

Board Member Job Description



How many hats can you wear at one time? (Answer: One)

Board Member Job Description and Duties

- ▶ Write it Down: Reasons for running vs. duties.
- ▶ Director Duties
 - ▶ Duty of Loyalty to the District
 - ▶ Duty of Honesty and Fair Dealing
 - ▶ Duty to abide by the law
 - ▶ Duty to abide by Board Rules

"Honest disagreement is often a sign of progress." --Mahatma Gandhi

Do Your Homework: Board Member Orientation

You are now a caretaker of a multi-million dollar business.

Learn the lay of the land.

- ▶ Tours, Orientations
- ▶ Homework and history
- ▶ Getting to know staff



Board Duties

- Goal Setting and Policy Making
- Public Participation (and Limits)
- CEO Relationship
- Risk Management
- Intergovernmental Relations



What are your board member expectations:

1. of other Board members?
2. of the public?
3. of your Administrator?

Commitments

1. Agenda Building
2. Committee Work
3. Preparation for meetings
4. Participation in meetings
5. Outside Representation
6. Duty to Participate?

The Board: Special Issues

- Know your Goals
- Develop Working Rules
- Role of the President/Chair
- The Difficult Board Member
- The Fractured Board
- Working with your CEO

"I'm not a lawyer, but I know how to work with a lawyer."

RULE NUMBER FOUR: KNOW YOUR POWER

Board Legal Authority

▶ Compare Federal, State, County, City, and District.

- ▶ Federal Law
- ▶ State Law
- ▶ County Partners
- ▶ City Partners
- ▶ District Partners



District Authority

QUESTION ONE: Can we do it?

- ▶ **Know your Tools:** statutes, charter and ordinances
- ▶ **Know your Rules:** Working Rules of Order
- ▶ **Know your Roles**
 - ▶ Working with staff?
 - ▶ Testifying?
 - ▶ Speaking with press?

District Authority

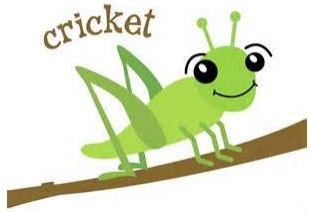


QUESTION 2:

Do we have a quorum and a majority?

(There is only power in numbers.)

RULE 5: KNOW YOUR LIMITS: Individual Authority



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District and Director Liability



TORT
A wrongful act, whether intentional or negligent, which causes an injury and can be remedied at civil law, usually through awarding damages.

OR

A delicious chocolatey dessert.

Individual Director and Staff Liability

- ORS 294.100:
Misexpenditure of funds
- Scope of Duties
- Ethics: Financial Liability
- Criminal Actions
- Civil Actions

(Scared, yet? No need, read on...)

RULE 6: KNOW YOUR PROTECTIONS

District vs. Individual liability

- ▶ ORS 30.255, action against public body, not individual
- ▶ District duty to defend and indemnify.
ORS 30.285
- ▶ Exceptions/scope of employment
- ▶ Discretionary immunity and policy-making vs. managerial decisions
- ▶ Tort Limitations and escalators

RULE 7: KNOW YOUR TOOLS.

- ▶ **Ordinances.** Legislative. Process in statute. Permanent in nature.
- ▶ **Resolutions.** Administrative/legislative. Policy-oriented. Temporary in nature.
- ▶ **Policies.** Administrative, temporary in nature, partnership with CEO.
- ▶ **Working Rules.** Simple, clear direction, “how to” manual.



RULE 8: KNOW YOUR RULES. Process and Procedure

Public Meetings

Resources

- ▶ ORS 192
- ▶ Attorney General’s Public Meetings and Open Records Manual: 1-800-735-2900
- ▶ Add shameless plug for attorneys here

“People who enjoy meetings should not be in charge of anything.” Thomas Sowell, American economist.

Process and Procedure: Public Meetings

Which public bodies are subject to the public meetings law?

“all meetings of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. “

Process and Procedure: Public Meetings

What meetings are subject to the law?

- ▶ Quorum, purpose of meeting
- ▶ Emails and Instant Messaging.

What are the requirements of a public meeting?

- ▶ Notice
- ▶ Space, Location
- ▶ Accessibility
- ▶ Voting
- ▶ Records



Process and Procedure

Public Meetings

Executive Sessions

- ▶ Need a specific statute to call a meeting
- ▶ The most misunderstood ES purposes
 - ▶ The “Employment” Myth 192.660(2)(a)
 - ▶ Discussions with Legal Counsel 192.660(2)(h)
 - ▶ Exempt Public Records 192.660(2)(f)

Process and Procedure: Public Meetings

Executive Sessions

- ▶ Limited discussions only
- ▶ How to convene
(see back of AG’s Manual for forms)
- ▶ No final decisions
- ▶ Media



“Three may keep a secret if two of them are dead.” - Benjamin Franklin

Process and Procedure: Public Meetings



Chris Gardner, Getty Images

The following contains non-legal advice on how you can have a productive meeting, serve the public, stay friends with your District colleagues, maintain satisfying personal relationships, and still get home at a decent hour...

Process and Procedure: Public Meetings

- ▶ Chair must take control. Benevolent leadership.
- ▶ Set realistic agenda
- ▶ Circulate materials/minutes in advance
- ▶ Formalities, formalities, formalities.
- ▶ Simple rules of order
- ▶ Public participation does not mean public conversation
- ▶ Consider work sessions
- ▶ Restate vote, note if staff must follow up

Public Records

- ▶ What is a public record?
 - ▶ *Any writing that contains public business information that is prepared, owned, used, or retained by a public body regardless of physical form or characteristics*
 - ▶ Discuss Electronic Information and emails.
Discuss public meetings law.

Public Records: Oregon Law Favors Disclosure



x16191184 fotosearch.com

- ▶ Not a confidentiality law. Must disclose unless exempt. ORS 192
- ▶ Often subject to public interest balancing tests.
- ▶ Board Members and Public Records

RULE 9: PROTECT YOURSELF

Ethics in Three Simple Rules
**You Can't Use
Your Position
for Personal Gain.**

Ethics

The "BUT-FOR" Test 244.040(1)

A public official cannot use position

- ▶ To get \$ or to avoid losing \$
- ▶ For the Public Official (PO) OR for a relative or a member of the household
- ▶ If that opportunity would not be available BUT FOR your position

Ethics

“Relative” 244.020(15)

- ▶ Spouse
- ▶ Children of the PO or of the PO’s spouse
- ▶ Brother or stepbrother of the PO or of the PO’s spouse
- ▶ Sister or stepsister of the PO or of the PO’s spouse

Ethics

“Relative” (cont.)

- ▶ Parents or stepparents of the PO or of the PO’s spouse
- ▶ Son-in-law or daughter-in-law of the PO or of the PO’s spouse
- ▶ Anyone for whom the public official has a legal support obligation or provides employment benefits

Ethics

DOES **NOT** INCLUDE

- ▶ Compensation or Reimbursement
- ▶ Unsolicited awards, or legal expense donations
- ▶ Or GIFTS and honoraria (within limits)

Ethics

RULE TWO: Gifts are Limited
(\$50 per year, per interested giver)



Ethics

The GIFT RULE

1. You (your relative or a member of household)
2. Cannot ask for, receive, or give
3. Or even hint at getting/giving
4. Gifts over \$50 from any single source in one year
5. IF your source has an interest in your official actions: i.e., a decision or vote

Ethics

“Gift” 244.020(5)

- ▶ Something of economic value
- ▶ Given to PO, the PO’s relative or member of the PO’s household
- ▶ Without receiving value back and
- ▶ **NOT** given to the general public on the same terms

Ethics Rule 3: Avoid or address conflicts of interest



Ethics

“Actual Conflicts” (Will Happen)

- ▶ An action, decision, or recommendation
- ▶ By a *public official*
- ▶ Resulting in a financial benefit or detriment for the PO or a *relative* or *business associated with PO or relative*
- ▶ *Will or would result in a conflict*

Ethics

“Potential Conflict” (Could Happen)

- ▶ **Could** result in financial benefit or detriment to PO
- ▶ Or *relative*
- ▶ Or any *business associated* with PO or relative

Ethics

“Business with which Person is Associated”

- ▶ Any private business in which you or a relative are an owner, director, officer, or employee or in which you or a relative has \$1,000+ worth of interest
- ▶ Any publicly held corporation in which you or a relative has \$100,000 of interest or you or a relative is an officer/director
- ▶ OR if you file a Statement of Economic Interest, if more than 10% of your total annual household income comes from the business

Ethics

Conflicts of Interest Both Actual and Potential

When in Doubt: Shout it Out!

- ▶ State the nature of your conflict
- ▶ Do it before voting or discussing the matter
- ▶ Do it on the record
- ▶ Do it each meeting issue is discussed

Ethics

Actual Conflict **Only**

- ▶ When in Doubt, Shout It Out...and then Shut It Up.
- ▶ Same rules as Potential Conflict, but **no** talking and **no** voting...
- ▶ Unless Council cannot act without you (but still no talking)

Ethics

It is **not** a conflict if the financial benefit happens because of:

- ▶ Membership in a class (any large, distinguishable group of citizens that the Commission determines is a class);
- ▶ Membership in a non-profit (501(c) status).

RULE 10: *Audience participation time!*

