
Commissioner Training – Open Government and Governance/Management

San Juan Island Public Hospital Dist. No. 1

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Open Government Training – Why are We Here?



- RCW 42.30.205 and 42.56.152 require members of governing bodies to receive training on Open Public Meetings Act and Public Records Act
 - Refresher training must occur no later than every 4 years
 - Training can be taken online, in person, or by other means
- Training resources, videos, and more information about the Act (a “Q & A”) are available on the Attorney General's Office Open Government Training Web Page:
<http://www.atg.wa.gov/OpenGovernmentTraining.aspx>

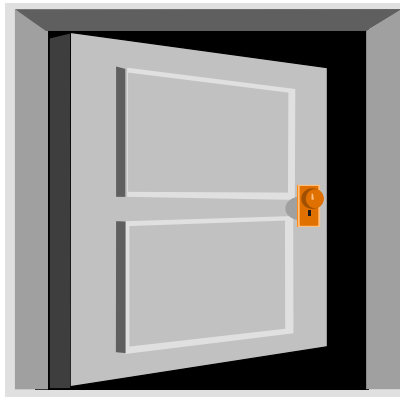


OPEN PUBLIC MEETINGS ACT

Washington's Open Public Meetings Act (OPMA)

- Requires meetings to be open to the public, gavel to gavel

~ *RCW 42.30*



Purpose

- “The people, in delegating authority, do not give public servants the right to decide what is good for the people to know and what is not good for them to know.”
- “The people insist on remaining informed so they may retain control over the instruments they have created.”

~ RCW 42.30.010



OPMA Applies To:

- Any time a quorum of elected officials discuss Agency business, whether or not they are in the same room.
 - Example: Telephone conference, video conference, email

OPMA Does Not Apply To:



- Social gatherings at which a quorum may be present as long as business is not conducted. For example:
 - Awards banquet
 - Attendance at seminar
- Discussions regarding labor negotiations (closed session)

Governing Body

- All *meetings* of the *governing body* of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in RCW 42.30.

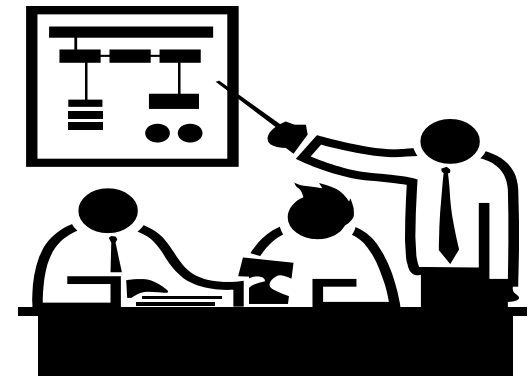
~ RCW 42.30.030



What is a Governing Body?

- Board of Commissioners OR
- Any **committee** of such public agency *when*:
 - the committee acts on behalf of the governing body (i.e., *exercises actual or de facto decision-making authority*); or
 - takes testimony or public comment

~ RCW 42.30.020



What is a Meeting?



- “**Meeting**” means meetings at which the public agency takes “**action**” ~ *RCW 42.30.020*
- Physical presence not required—
can occur by phone or email
 - An exchange of email could constitute a meeting if, for example, a quorum of the members participate in the email exchange & discuss agency business. Simply receiving information without comment is not a meeting. *Citizens Alliance v. San Juan County*
- Does not need to be titled “meeting” – OPMA also applies to “retreats,” “workshops,” “study sessions,” etc.
- No meeting occurs if the governing body lacks a quorum



Action

- “**Action**” means the transaction of the official business of the public agency and includes, but is not limited to:
 - Public testimony
 - All deliberations
 - Discussions
 - Reviews
 - Evaluations



The requirements of the OPMA are triggered whether or not “final” action is taken. ~ RCW 42.30.020

Final Action

- **“Final action”** is a collective positive or negative decision, or an actual vote, by a majority of the governing body, or by the “committee thereof”
 - Motions, Resolutions, etc.
- Must be taken in public, even if deliberations were in closed session
- Secret ballots are not allowed

~ RCW 42.30.060, RCW 42.30.020



Travel and Gathering

- A majority of the members of a governing body may travel together or gather for purposes other than a regular meeting or a special meeting, so long as no action is taken
- Discussion or consideration of official business would be considered action, triggering the requirements of the OPMA
- Practical Consideration:
Consider the optics.

~ RCW 42.30.070



“Regular” Meetings

- “**Regular meetings**” are recurring meetings held in accordance with a periodic schedule established by motion or resolution
 - Should pass a motion or resolution at the beginning of each calendar year

~ *RCW 42.30.070, RCW 42.30.075*



Regular Meeting Notice Requirements

- Governing bodies must make the agenda of each regular meeting of the governing body available online no later than 24 hours in advance of the published start time of the meeting.
- **EXEMPTIONS:**
 - *agencies without websites or*
 - *agencies that employ fewer than 10 full-time employees*
- The law does not:
 - Prohibit agencies from later modifying an agenda
 - Invalidate otherwise legal actions taken at a regular meeting where an agenda was not posted 24 hours in advance
 - Provide a basis for a person to recover their attorney's fees or to seek a court order against the agency if an agenda is not posted in accordance with the new law





“Special” Meetings

- A “**special meeting**” is *any* meeting that is not a regular meeting
- Called by presiding officer or majority of the members
- **Notice / Timing: 24 hours before the special meeting, written notice must be:**
 - Given to each **member** of the governing body (unless waived)
 - Given to each **local newspaper of general circulation, radio, and TV station** which has a notice request on file
 - Prominently **displayed at the main entrance** of the District's principal location and the meeting site, if different
 - Posted on the **District's website unless:**
 - (i) District does not have a website;
 - (ii) employs fewer than ten full-time equivalent employees; **or**
 - (iii) does not employ personnel whose duty, as defined by a job description or existing contract, is to maintain or update the website

“Special” Meetings (cont’d)

- **Notice - Contents**: The special meeting notice must specify:
 - Time
 - Place
 - Business to be transacted (agenda)
 - Final disposition cannot be taken on any other matter not listed on the agenda
 - While other matters not on agenda *may* be discussed...
 - Should be the exception, not the rule.



Emergency Special Meetings



- Notice is not required when a special meeting is called to deal with an emergency
 - Emergency involves injury or damage to persons or property or the likelihood of such injury or damage
 - Where time requirements of notice make notice impractical and increases likelihood of such injury or damage

~ RCW 42.30.080(4)



Commission Meetings in the 21st Century

- Commissioner - remote participation - allowed
 - No specific statute but generally accepted - provided:
 - All of the commissioners can hear each other
 - The public can hear all commissioners
 - Technology has made this much easier
- Streaming video or broadcast of commission meetings
 - Increasingly popular but it changes the meeting

Public Attendance

- An agency may not impose conditions on the public to attend meetings subject to OPMA:
 - For example, it cannot require people to register their names or other information, complete a questionnaire, or otherwise fulfill any condition precedent to attendance
~ *RCW 42.30.040*
 - What about sign up sheets for public comment?



Public Involvement

- Public comment is not required by law.
 - At agency's sole discretion
 - But many elected officials believe it is useful to receive input
- Public comment period need not be a “discussion”
 - No requirement to answer questions



Reasonable Rules of Conduct

- An agency can establish reasonable rules of conduct for its meetings
 - These rules can be for the Commission and the Public
 - Examples:
 - Procedural Rules: Robert's Rules of Order
 - Limitations on public comment, e.g.:
 - Length of time
 - Speak only once
 - Comments limited to certain issues
 - All public comments must be respectful



Interruptions and Disruptions

- Cameras and tape recorders are allowable unless disruptive ~ *AGO 1998 No. 15*
- What if the meeting is disrupted by disorderly persons?
 - Have the disruptive persons removed
 - Clear the meeting room and continue the meeting
 - Move the meeting to another location (but in this case final disposition can occur only on matters appearing on the agenda)
- Must allow press to remain
- May allow non-disruptive individuals to be readmitted

Executive Session

- Part of a regular or special meeting that is closed to the public
- Limited to specific purposes set out in the OPMA
- Purpose of the executive session and the time it will end must be announced by the presiding officer before it begins; time may be extended by further announcement
- Practice Tip: Be precise about the purpose and the statutory exemption

~ RCW 42.30.110



Executive Session Do's and Dont's

- No minutes are taken
- No voting or “straw polls”
- Limited to statutory bases identified in open session
- Discussion is confidential, and Commissioners have an ethical, statutory duty to maintain confidentiality
- Third parties who can facilitate discussion are permitted, e.g., attorney, consultant, staff, etc.



Executive Session – Common Mistakes

- Executive Sessions cannot be used for:
 - General “personnel” issues
 - Conference with Attorney *unless* there is actual or threatened litigation being discussed
 - Discussion of interlocal agreement negotiation strategy or other contract negotiation strategy with third parties
 - Interview potential Board candidates (evaluation MAY be done in executive session)
- Discussion veers into other matters not covered by articulated basis for executive session

Common Executive Session Purposes

- Buying or selling real estate and public knowledge would likely adversely affect the price from the agency's perspective
- To review negotiations on the performance of publicly bid contracts where public knowledge would likely increase the agency's costs
- Review performance of current employees
- Evaluate qualifications of applicant for public employment
- Meet with legal counsel regarding litigation or potential litigation



Executive Session to Discuss Litigation or Potential Litigation: Three Requirements

1. Legal counsel representing the agency must be present in person or by phone.
 - Practice Tip: Minutes should reflect presence of attorney
2. Purpose is to discuss litigation or potential litigation to which the agency, governing body, or a member acting in official capacity is, or is likely to become, a party; or
3. Public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency

~ RCW 42.30.110



Executive Session – FAQs

- What should you do if you believe an Executive Session violates the law?
- Can you give “direction” to the Chief or Superintendent in executive session without taking a formal vote in the open portion of the meeting?



Minutes – RCW 42.32.030

- Minutes of public meetings must be promptly recorded and open to public inspection
- Minutes do not include executive session discussion
- No format specified in law
- Practical Issues:
 - How detailed should minutes be?
 - Tape recording issues
 - “Draft” minutes



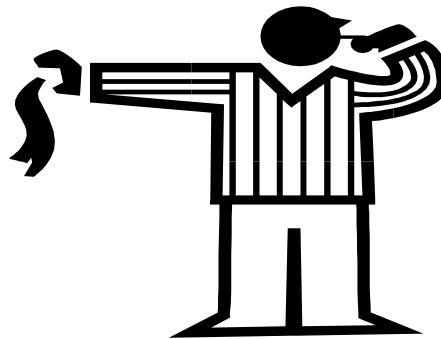
Special Risks: “Meetings” outside of Open Public Meeting

- Email exchanges can constitute a meeting
 - These provide clear evidence of violation because they are documented
- Serial meetings
 - How do these occur?
 - What is the appropriate role of the manager and staff to transmit information to commissioners in advance of a public meeting?

Penalties for Violating the OPMA

- A court can impose a \$500 civil penalty against each member (personal liability). Subsequent penalties \$1,000
- Court will award costs and attorneys' fees to a successful party seeking the remedy
- Action taken at meeting can be declared null and void

~ *RCW 42.30.120; RCW 42.30.130; RCW 42.30.060*



Public Records Act Chapter 42.56 RCW

Public Records Act Violations Can Be Expensive

- Most claims against agencies are successful
- PRA Claims are not insured
- The penalty can be up to \$100/day/record withheld
- Plaintiff (but not the agency) is entitled to an award of attorneys' fees if successful
- PRA penalties and attorneys' fees continue to accrue through each level of appeal (Risk of reversal on appeal)
- Plaintiffs' attorneys sometimes accept representation on contingency basis: no cost to plaintiff unless successful

What are Public Records?

- “Any writing
 - containing information
 - relating to
 - the conduct of government or
 - the performance of any governmental or proprietary function
 - prepared, owned, used, or retained
 - by any state or local agency
 - regardless of physical form or characteristics.”

“**Writing**” is broadly defined and includes
“handwriting, typewriting, printing, photostating,
photographing, and **every other means of recording
any form of communication or representation**
including, but not limited to, letters, words, pictures,
sounds, symbols, or combination thereof, and all
papers, maps, magnetic or paper tapes, photographic
films and prints, motion picture, film and video
recordings, magnetic or punched cards, discs, drums,
diskettes, sound recordings, and other documents
including existing data compilations from which
information may be obtained or translated.”

~ RCW 42.56.010

Public Records Can Include...

- Records stored on home computers, laptops or in non-agency email accounts e.g., Gmail, Comcast, Hotmail
- Practice Tips:
 - Use District email account
 - Consider using District-issued devices for District business rather than home computer. **Note:** Less important in face of *Nissen* case
 - Agencies should create an email retention policy so that it meets the intent of the law without overburdening Agency resources

Public Records Procedural Requirements

- Under the Act, agencies must:
 - Appoint a **public records officer**
 - Publish **procedures** describing certain agency organizations, operations, rules of procedure, and other items listed in PRA
 - Adopt **rules/procedures** to:
 - Provide full public access to public records
 - Protect public records from damage/disorganization
 - Prevent excessive interference with other agency functions
 - Provide fullest assistance to requesters
 - Provide most timely possible action on requests

Additional Public Records Procedural Requirements

- If charging actual costs of copies of records, **publish fee schedule**
- Maintain a **list of laws** the agency believes exempts or prohibits disclosure
- Make non-exempt records **available for inspection and copying** during **customary business hours** for a minimum of 30 hours per week, excluding holidays
 - Post customary business hours on the agency's website and make hours known by other public means

RCW 42.56.120

ACTUAL COSTS	STATUTORY DEFAULT FEES	ALTERNATIVE FLAT FEE
<p>Agency can charge its actual costs directly incident to copying including:</p> <ul style="list-style-type: none"> • Paper and per page cost for use of agency copying equipment; • Electronic production or file transfer of the record; • Use of any cloud-based data storage and processing service; • Costs directly incident to shipping including postage or delivery charges and cost of container or envelope; and • Cost of transmitting the records in electronic format including the cost of any transmission charge and use of any physical media device provided by agency. 	<p>Agency can assess costs per the statutory fee schedule:</p> <ul style="list-style-type: none"> • 15 cents/page paper; • 10 cents/page scanned into electronic format; • 5 cents/4 files or attachments and provided by electronic delivery; • 10 cents/gigabyte of electronic records transmission; • Actual cost of storage media, container, envelope; • postage/delivery charge; and • Charges can be combined if more than one type of charge applies. 	<p>Agency can charge alternative flat fee of up to \$2 for a request (rather than actual costs or default fees).</p>
<p><u>REQUIREMENTS:</u> (1) Agency must have a statement of the factors and manner it used to determine actual cost.</p>	<p><u>REQUIREMENTS:</u> (1) Agency must have a rule or regulation declaring the reasons calculating the actual costs would be unduly burdensome.</p>	<p><u>REQUIREMENTS:</u> (1) Agency must reasonably estimate and document that the costs are clearly equal to or more than \$2.</p>

Requests for Public Records

- Persons can request **identifiable public records** from public agencies
 - Requester cannot be compelled to use agency public records request form
 - If agency request form is not used, requester must provide “fair notice” that he/she is seeking public records
 - Request can be emailed, faxed, or verbal
 - A request for “information” is not a request for “records” under the Public Records Act
- Requesters can ask to **inspect** records, or request **copies** of records
- Agencies can adopt procedures explaining where requests must be submitted and other procedures

District Response to Request

- The District has five *business days* to respond to a public records request
- The District can:
 - 1. Acknowledge receipt of the request and provide a reasonable estimate for a further response; or**
 - 2. Fulfill the request; or**
 - 3. Provide an internet address and link to the records on the agency's website (which fulfills part or all of the request); or**
 - 4. Seek clarification; or**
 - 5. Deny the request with an accompanying written statement of the specific reasons**

Estimate of Time for Further Response

- An agency can provide an **estimate of time for further response**
 - Must be **reasonable**
- Practice Tip: **Explain why** more time is needed to process a request. If challenged in court, it is an agency's burden to show why an estimate of time is reasonable
- **Factors** may include, for example, that time is needed to:
 - Get clarification from requester
 - Notify third parties
 - Search may be complex and require more time

Estimate of Time for Further Response (cont'd)

- Assemble and review records
- Prepare an exemption log if necessary
- Perform other essential agency functions, considering agency resources, including staff availability
- May extend the time for production as often as necessary. But agency should explain reasons for extension.
- Practice Tip: For large requests, an agency should provide records in installments rather than wait for all records to be compiled before producing them.

Overbroad Requests

- A request for all or substantially all public records of an agency is not a valid request for identifiable public records. *RCW 42.56.080 (1)*.
- A request for all records regarding a particular topic or containing a keyword is not considered a request for all agency records. *RCW 42.56.080 (1)*.
- An agency may deny a “bot request” that is one of multiple request from the requestor to the agency within a 24-hour period if the agency establishes that the responding to the requests would cause excessive interference with other essential functions of the agency. *RCW 42.56.080 (3)*.
 - A “bot request” is a request for public records that the agency reasonably believes was automatically generated by a computer program or script. ~ *RCW 42.56.080 (3)*.

Searches for Responsive Records

- Before search begins, make sure you know what to look for:
 - Clarify the request if needed
- Conduct a **reasonable search** for responsive records
 - Consider all formats (paper, electronic, etc.)
 - Consider records of current staff/officials, and former staff/officials, if potentially responsive
 - Consider possible locations (e.g., file cabinets, agency website, audio files, etc.)

Searches for Responsive Records (cont'd)

- The search must be **reasonably calculated to uncover responsive records**
 - Follow **obvious leads** to possible locations where records are likely to be found
- Practice Tip: **Document** search efforts (locations, search terms used, etc.). The agency bears the **burden of proof** to show the adequacy of the search

The Future of Tracking Requests and Records

- Some agencies are currently using software systems to track requests, track time spent on requests and preserve the history of the request
- Online systems are also used for tracking of previously-disclosed records – requester can do a keyword search
- Consider: all records being uploaded to an online platform with only exempt records being held back by agency



Exemptions

- All public records are presumed open
 - Exemptions are “narrowly construed”
- Must provide an exemption log if a record is withheld or redacted to identify:
 - Date of record
 - Type of record
 - Author and recipient(s)
 - Total number of pages withheld
 - The exemption and a brief explanation

Common Exemptions

- Attorney-client privilege
- Protected health information
- Pending investigation records (in certain investigations)
- Certain records / information contained in personnel files
- Deliberative process exemption
- Note: There is no stand-alone “privacy” exemption

Enforcement & Penalties



- Public records violations are enforced by courts for those claims listed in the Act
- A court can impose **civil penalties up to \$100/day/record** (court can group records for penalty purposes)
- No proof of “damages” required
- A court is to consider certain factors in assessing a penalty
- A court will award the requester's **attorneys' fees and costs**

~ *RCW 42.56.550, RCW 42.56.565; Yousoufian v. Sims*

Penalty Factors



- **Mitigating factors (factors that can reduce a penalty):**
 - A lack of clarity in the PRA request
 - The agency's prompt response or legitimate follow-up inquiry for clarification
 - The agency's good faith, honest, timely, & strict compliance with all PRA procedural requirements & exceptions
 - Proper training & supervision of the agency's personnel
 - The reasonableness of any explanation for noncompliance by the agency
 - The helpfulness of the agency to the requester
 - The existence of agency systems to track and retrieve public records

Penalty Factors (cont'd)

- **Aggravating factors (factors that can increase a penalty):**
 - Delayed response
 - Failure to comply with PRA procedural requirements
 - Lack of proper training & supervision of the agency's personnel
 - Negligence, bad faith, or intentional noncompliance

Public Records Officer

- Each agency must designate a PRO
 - May appoint an employee or official of another agency to serve in this role
- **Duties of PRO:**
 - Serve as a point of contact for members of the public in requesting disclosure of public records
 - Oversee the agency's compliance with the public records disclosure requirements of this chapter
- Agency Duties:
 - Provide name and contact information of the agency's PRO, including posting at the local agency's place of business, posting on its internet site, or including in its publications

New Public Records Data Reporting Requirement

- All agencies must log:
 - Identity of requestor (if provided);
 - Date and text of request;
 - Description of records produced in response to request;
 - Description of records redacted or withheld and reasons for redaction/withholding; and
 - Date of final disposition of the request.
- Agencies with \$100,000 or more in annual staff and legal costs associated with records requests must take tracking several steps further.

Recent Decisions

- *Wash Public Emps Ass'n v. Wash State Center for Childhood Deafness & Hearing Loss* (10/24/2019)
 - Employee's full name and date of birth are not exempted from disclosure, either by the Public Records Act or the state constitution.
- *Gipson v. Snohomish County*, (10/10/19)
 - Exemptions are applied at the time a public records request is made. If records are provided in installments, there is no requirement for the agency to provide records exempted at the time of the initial request even though they are no longer exempt at the time an installment is later provided.

Recent Decisions

- *Service Employees International Union v. Univ. of WA*, (9/5/2019)
 - Not all records on an agency server are public records just because they are on an agency's server. Record must relate to conduct of government.
- *Freedom Foundation v. DSHS*, (8/6/19)
 - State law does not establish the factors to consider in determining a reasonable time for providing records. Providing records to the requesting party can be delayed allowing an affected party to determine whether to seek an injunction against the records release.

A Great Opportunity For Public Service

- Think of the Public Records Act responses as what the District does as opposed to an interference with what the District does.
 - Important and time-consuming District function.
- Opportunity to provide great customer service.
- Built into the budget.
- Create a culture of openness and build trust



Summary – Practice Tips

- Leadership-led effort
- Use District email account
- Avoid using home computer or personal device (if do, copy District email)
- District should create an email retention policy so that it meets the intent of the law without overburdening District resources
- Explain why additional time is needed
- Use installments as needed
- Mark deliberative process records as such

Summary – Practice Tips

- Policy on how to capture records of retired and other former employees
- When a request is received:
 - Pull relevant staff together to review request, set deadline to search, develop common search terms, stress importance and priority, etc. (leadership-led)
 - Each member should do a search log

The Role of the Commissioners and the Commission

Assumptions and Ground Rules

- Everyone is here to serve the public
- All Commissioners are interested in a well-run Hospital District
- All senior staff members are interested in a well-run Hospital District
- There is room for improvement from each Commissioner, the Commission, and each staff member

Assumptions and Ground Rules (cont'd)

- Understand that being a member of a Commission is not intuitive – it requires thought as to process
- Understand that each Commissioner approaches the job from a different perspective
- Some non-legal thoughts on successful commissions

The Role of The Commission

- The commission (not individual commissioners) has the legal authority and the legal responsibility to operate the District
 - Elect a president and secretary
 - Adopt rules governing the transaction of business – this includes the commission meetings
 - Set the budgets
 - Hire, supervise, review (and sometimes terminate) the Superintendent [and Chief]. ~ RCW 70.44.070(1)

The Individual Commissioner's Authority

- None, nada, nothing, nyet
- Must act together as a unit to govern the affairs of the District.
RCW 42.30.020.
- No authority to act alone *unless* the authority is delegated by the commission
 - The commission should discuss this amongst themselves
 - Meeting with the Superintendent and Chief
 - Seeking information from staff
 - Speaking for the District

The Superintendent

- The commission's principal employee: the Chief Administrative Officer.
- Duties are set forth by statute. ~ RCW 70.44.090
 - Responsible to the commission for the administration of all affairs.
 - Responsible for compliance with laws
 - Keep Commission advised about financial condition and needs
 - Prepare draft budget
 - Certify to the board all bills, payrolls, etc.
- Fair and honest provider of information to all commissioners
- Accepts, follows and supports commission direction

Other Direct Reports

- Chief
 - Manages EMS
 - Regular reports to Board
- Fire District Attorney
 - Represents the commission but works with staff at the direction of the commission – the attorney works to get to a legal “Yes”
 - Speaks honestly and plainly to the commission
 - Is an honest broker of information
 - Reports illegal conduct to the commission

The Role of the Fire District Attorney

- Works directly for and at the pleasure of the commission – the whole commission
 - Provides legal advice to the commission and staff
 - Is solution-driven – “How can we get this done?”
 - Provides a “risk analysis” to the commission
 - Knows the difference between legal advice and business advice and lets you know
 - Understands that the commission decisions are by definition “correct”
 - Tends to be the “paid paranoid”

RCW 42.23 Code of Ethics for Municipal Employees

- Commissioner interest in contracts prohibited
 - Direct or indirect interests included
 - Temporal analysis
 - The issue can be raised a lot by the public
 - Exception for “remote interests” listed in the statute
 - No participation
- Disclosure of confidential information for personal gain prohibited (think Executive Session)

Thoughts On The Ethics Act

- For “appearance” issues consider:
 - Disclosure of even a perception of a conflict
 - Seeking attorney advice on the record
 - Recusal on the record for “appearance” issues

Public Funds and Public Stuff

- Each District Commissioner is the “steward” of public assets and public funds
 - The public cares now more than ever
 - The public is watching and they have cell phone cameras and video
 - Misuse of District assets or funds is the fast track to a bad event
- RCW 42.24.080 requires payment only after services rendered or goods received
 - Must be certified by District Auditor

Some Non-Legal Thoughts on Successful Commissions

Why Look At Governance and Management?

- It will make each of you more effective
- It will make the Commission much more effective
- Today, public agencies cannot afford mistakes – the taxpayers won't bail you out
- It allows the District to hire and retain better Manager officers (and maybe employees)
- It makes everyone's service much more rewarding

Commissioners' Time – A Scarce Resource

A Very Limited Resource

1 – 5 Hours
Per Month

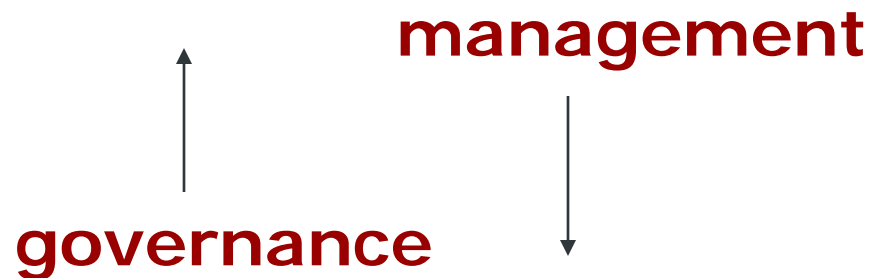
5 – 10 Hours
Per Month

10 – 15 Hours
Per Month

15+ Hours
Per Month

A Very Valuable Asset

- Commissioners have very limited time - it is an expensive and precious resource of the District that should not be squandered
- The Commissioner role should be focused on governance



The Law of Triviality

- The Law of Triviality...briefly stated:

The time spent on any item of the agenda will be in inverse proportion to the (dollar) sum involved

- C. Northcote Parkinson

What is Governance?

Governance – “I Know it When I See it!”

- “Governance is a lot harder than management” but it is what the Commissioner is elected to do
 - The big decisions don’t go away
 - There are no guidelines
 - There are no measures of success - at least today

The Commission and the Manager

- The Commission thinks primarily about the larger long-term issues – governance
 - The Manager thinks primarily about the day-to-day operations management
- The Commission wants to provide the overall direction – governance
 - The Manager needs overall direction - Management
- The Commission wants to make the District a success – governance
 - The Manager wants to make the District a success - management

Elements of Commission Governance

- The Commission articulates a vision of where you want to be, a year from now, and in five years, ten years, and twenty years
 - Suggestion: Each year at the first meeting, make a list of five to ten items that, if accomplished, would make a successful year
- Establish the strategic plan - it is the roadmap for reaching the vision
 - Suggestion: Review, revise, and measure the strategic plan

Elements of Commission Governance (cont'd)

- Hire, supervise, and evaluate (and sometimes fire) management
 - Suggestion: Provide constant strategic direction and feedback (set management priorities)
- Approve and govern through the budget
 - Focus your management attention here

Elements of Commission Governance (cont'd)

- Create, evaluate, and modify the Commission's culture
 - All organizations have one, by default or intention
- Build the team with your senior staff and employees – they are always listening
- Set clear pathways for control and information
 - A very important point
 - Must be observed by the Commissioners and the Manager
- Resist the temptation to become the direct pipeline on information

Elements of Commission Governance (cont'd)

- Make sure delegation to Manager is clear and understood
 - “Delegation of Powers” resolution
 - Annual review with changes, if necessary
 - This is a primary management tool
 - This is different than the Manager’s employment contract

The Role of an Individual Commissioner in Governance

- Be informed – read the materials provided by the Manager
 - Allows effective participation
 - Good public perception of well-informed officials
 - Allows the meeting to stay on track and to run efficiently
- Leave things in better shape than when you arrived
- Govern before you manage a problem

The Role of an Individual Commissioner in Governance (cont'd)

- Govern slowly and deliberately – almost nothing is that urgent
- Realize your responsibility – you are key to the success of the organization
- Watch what you say – the citizens are listening
- Set philosophy, policy, and culture
 - Culture is the most important thing

The Role of an Individual Commissioner in Governance (cont'd)

- Recognize that you cannot and will not make everyone happy
- Protect and enhance the District's political bank account
 - “How will this read in the morning paper?”

The “Team Approach” to Governance





Exercise: Recognize Priority Areas of Governance

- List 3 or more significant governance issues facing the Hospital District over the next five years

How to Be a Team Player on the Board of Fire Commissioners

- State your views – diplomatically – but state your views
 - Suggestion: Look for decisions that are important to you; they all can't be important
- Let people know when you compromise or “trust their judgment”
 - Suggestion: Reciprocate

How to Be a Team Player on the Board of Fire Commissioners (cont'd)

- Respect and support the decisions of the Board of Commissioners
 - Once the debate is done it is a Commission decision and deserves your support
 - This also applies to Managers, lawyers, board secretaries, and any other manager
- Recognize that no (or at least very rarely) decision is so important that you would allow it to fracture the Commission

Damaging the Team Approach – Things to Avoid

- Do not “freelance”: Resist the urge to “take the initiative” to do things that are really within the province of the Board
 - Examples:
 - Independent research on matters delegated to manager
 - Interacting with Agencies regarding a potential ILA
 - Interacting with the Union on issues of Union business

Why Avoid Freelancing?

- Diminishes the authority of the Manager and ultimately the Commission
- Frustrating for staff
- Impairs ability of Commission to conduct business

Damaging the Team Approach – Things to Avoid (cont'd)

- Meeting “off-line” and making decisions
- Attending a meeting unprepared
- Divisive communication practices
 - faulty assumptions
 - attacking other commissioners vs. challenging ideas

Effective Commission Meeting Tips

- Meeting time considerations
- Establish the appropriate tone for a Government Meeting at the outset
 - Begin on time
 - Commissioners and staff are in their seats ready to begin
 - Pledge of Allegiance
 - Remind audience members (other than on-duty personnel) to turn off cell phones
- Agenda Items
 - Consent Agenda
 - Use PowerPoint presentations for work sessions or items that require background information
 - Read the Motion followed by discussion
 - Stick to the Agenda

Effective Commission Meeting Tips

- Limit Board discussion to agenda items currently being discussed
- Agenda Item for Report from Local
- Public comment
 - Open meetings vs. open participation
 - Purpose of public comment period
 - Rules and limitations clearly stated
 - Stick to the rules

The Commission Chair's Role

- The chair should govern meetings of the board
 - Open and free discussion, draw out opinions, and seek consensus
 - The umpire has a hard job, particularly when he/she wants to bat
- The principal contact between management and the board
 - Regular meetings with the Manager
 - Help set the meeting agenda and consent agenda
 - Is there really a decision to be made?
- Supervise meeting packet preparation

Building an Effective Commission Meeting “Toolbox”

- The relationship between the Commissioners is more important than any issue
 - Treat each other with respect
 - The chair must protect the Commissioners and the staff from personalized comments
- The staff wants to assist the Commission in its job
 - No pop quizzes
 - Pop quizzes may demonstrate lack of commissioner preparation
 - No grandstanding
- Seek a balance between consensus and dissension

The Importance of Budget-Based Governance

- Very important job. Only opportunity to make decisions in perspective.
- Budget establishes broad priorities
- Streamline meetings
 - “Is this in the budget?”
- Create accountability and authority with the budget
 - Any acts within the budget are afforded the presumption of good management and anything outside the budget needs a solid explanation

Role of Staff at Public Meetings

- Staff must be present to introduce agenda items and offer explanations
- What can staff be expected to know?
 - The items on the agenda

Role of Staff at Public Meetings

- What should be off-limits?
 - Personal critiques
 - Things not pertinent to what is on the agenda
- How should staff respond?
 - I will get you a complete answer
 - We should schedule this for a work study session
- Get your questions in early. Preparation!

The Manager: The Interface Between Governance and Management

Understanding the Manager

- The Manager is a paid employee of a municipal government
 - Exempt from overtime laws
 - Acts as the contact between the employees and the Commission

Understanding the Manager

- Supports the Commission's decisions
- Supports the culture of the Commission
- Implements budget-based management
- Is an information source to the Board of Commissioners – honest broker of information
- Keeps the Commissioners' confidence
- Does not speak out of school
- Has a very tough job
 - Union employees
 - Volunteers
 - The “Public”

Understanding the Manager

- The Manager implements Commission direction
- The Manager is where the Commission “manages”
 - Plenty of time for input by the Manager
 - Board of Commissioners must speak clearly and with one voice whenever possible
 - Manager must “march off smartly” after he has a full and fair opportunity for input

Manager Formal Evaluations

- Key indicator of a successful team
 - Most frequent complaint of Managers is no evaluation
 - Most frequent comment of Commissioners is,
 - “He’s doing a great job, it’s a waste of time”

Preserving the District's Political Capital – You Will Need It

- “Political capital” is the positive impression your community members have about the District which is deposited in the District’s political bank account
- Preserve the political capital for:
 - Capital facilities bonding
 - The “benefit of the doubt”
 - Gaining support for District projects or initiatives

Preserving the District's Political Capital – You Will Need It (cont'd)

- Do not squander the District's political capital:
 - Bad Commission meetings or bad Commissioner acts
 - Violations of Open Government laws
 - Bad employment practices that lead to costly lawsuits and settlements
 - Bad customer service
 - Misusing District resources

The Key Points

- A Commission that understands its governance role, performs that role well
- There is no single decision or issue that is worth destroying the Commission's effectiveness
- Set the appropriate culture
- Manage the Manager but not the District
- It is important to preserve the "Political Capital" - your District will need it

QUESTIONS?

CHMELIK SITKIN & DAVIS P.S.

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