

Boards / Committees / Commissions

Governance Issues

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Personal Liability

- As a public official in Idaho the it is very unlikely that you will ever be personally liable for your actions on behalf of the City/County as long as your actions are;
Within “course and scope”.

And not intentional or malicious.

Idaho Tort Claims Act –

Idaho Code Title 6 Chapter 9

ICRMP Policy

- Any elected or appointed official serving as a volunteer or employee of the *named insured*, as well as any volunteer or employee of the *named insured* while acting within the scope of their duties as such. This does not include any appointed or elected official or employee who is serving the *named insured* as an independent contractor.

WHAT TO NOT DO

■ Roles & Responsibilities

■ Authority of individual board members.

- The board sets policy and exercises its authority as a single body, operating in public meetings preceded by notice.

- An individual governing board member has no authority to supervise, discipline or fire employees.

Definitions (74-202)

Governing Body - Members of any public agency which consists of two (2) or more members with the authority to make decisions for or recommendations to a public agency regarding any matter

May Include:

- Airport Advisory Board
- Snowmobile
- Waterways
- Weed
- Fair Board** – three types
- Planning and/or Zoning Commission**

May Include:

- Historical Society (mostly funding)
- Hospital Board**
- Translator Board Trustees**
- County Housing Authority**
 - Self appointing??
- Museum Board
- Urban Renewal Agency**

May Include:

- Abatement Districts**
- Study Commission (Alternate Forms)
- Board of Community Guardians
- Recycle committee
- Sewer Board
- Pest Control
- Aquifer Protection District
 - BOCC appoints budget committee (specific)

Regional Includes:

- Animal Damage Control (By 6 districts)
- Regional Detention
- Health Districts Board (and budget)
- Regional Solid Waste
- Fair District
- Regional Dispatch

Staffing

General rule:

No governing body should be turned loose without staffing – either from the County/City or hired by the appointed board

Exceptions:

Those who actually do the hands on work such as Board of Community Guardians and possibly recycle committees.

Reporting

Possibilities:

The minutes are the official record.

Reports from the staff person.

Reports from the chairman.

Some may have a “liaison”.

Communication should be two ways!

Meetings

Open Meeting Law Basics

- Governs all meetings at which a quorum will be present to engage in deliberations
- Types of meetings – regular, special or emergency
- Require agenda, minutes, nondiscriminatory place to meet
- ADA requires accessibility and accommodation for those with special needs

Definitions

- Meeting - Convening of a governing body of a public agency to make a decision or to deliberate toward a decision on any matter.
(shall not include those ministerial or administrative actions necessary to carry out a decision previously adopted in a meeting held in compliance ...)

Effective Meetings

- Organized
- Purposeful
- Respectful
- Expectations understood
 - Participants (EOs and Staff)
 - Public
 - Rules posted?

Purposes of Meetings

- Enable action by governing board
- Carry out statutory obligations
- To reach public agreement on matters of local governance
- To hear from members of the public***
- To explain why local government acts or considers acting or won't act

Conduct of Meetings

- Agenda – who sets?
 - Is the topic – not the person.
 - May indicate when public input is appropriate.
 - Usually general policy decisions.
- Allow (encourage) participants to discuss.
- Motions – need to be succinct, clear, comprehensive.
- Voting?
- Order of business?

Role of the Chairman

- Conducts the meeting.
- Retains rights (obligations) to discuss and vote.
- Controls public input when it is allowed.
- Ideally:
 - Keeps the discussion to the agenda item.
 - Prohibits personal attacks and discussions of issues not before the Board.

Meeting Roles - Staff

- Prepare and disseminate information
- Take minutes
- Record???
- Answer questions
- May provide regular reports on your area
- Other (see last line in JD)

The POLICY:

- Formulation of Public Policy is Public Business and Shall Not Be Conducted in Secret

{Idaho Code § 74-201}



The RULES:

- All meetings of a Government Body shall be open to the Public (unless exception allows)
- No decisions shall be made by secret ballot
- No meeting shall be made where discrimination is practiced on the basis of race, creed, color, sex, age or national origin. {Idaho Code §74-203}

DELIBERATION:

The receipt or exchange of information relating to a decision. **NOT** talk about the weather.

GOVERNING:

- Elected Board
- Appointed Board
- Advisory Group
- Committees
- Sub – Committees
- Study Groups

Definitions:

MEETING:

Convening of the governing board

DECISION:

A public policy action.
Quorum – Don't bet on it!

Meeting Notices

■ Regular Meetings:

Post notice 5 calendar days in advance

Publish annually (post continually)

Ordinance for cities or counties (still post)

■ Special / Executive Meetings:

24-hour notice

Include statutory authority for executive session-only meeting

Requires good faith effort to notify governing board members and media if requested

Emergency Meetings

AGENDAS

An agenda is required for each meeting.

- Posted same as meeting notice
- Posted 48 hours (or 24 hours for “special” meeting)
- Only “good faith” amendments
- Motion and vote required for amendments made within 48 hours of, or during, the meeting to include reason

Voting

- Most issues may be decided by voice vote.
- Certain actions require each member's vote be cast and recorded individually in the minutes:
 - Motions to go into executive session.
 - Cities – Contracts and ordinances.
 - A member can request a roll call vote on any motion.
- No voting by secret ballot.

MINUTES

- (1) All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:
 - (a) All members of the governing body present;
 - (b) All motions, resolutions, orders, or ordinances and their disposition;
 - (c) The results of all votes, and upon the request of a member, the vote of each member, by name.
- Always a record of what happened – not what you wish happened!

MINUTES – EXECUTIVE SESSION

- (2) Minutes pertaining to an executive session shall include a reference to the specific statutory subsection authorizing the executive session and shall also provide sufficient detail to identify the purpose and topic of the executive session but shall not contain information sufficient to compromise the purpose of going into executive session. (2009)

Executive Session Rules

■ Executive Sessions

- May occur during regular or special meetings.
- Require approval of two-thirds of the board by roll call vote & recorded in the minutes.
- Both the motion to go into executive session and the minutes must state the specific statutory authorization for the executive session.
- For example: pursuant to Idaho Code 74-206 (1) (a) to consider hiring a public officer, employee, staff member or individual agent.
- Final actions/decisions must be made in public session??

Executive Session

Most common uses:

I.C. §74-206

- Personnel selection and evaluation (a) and (b)
- Acquire interest in real property (c)
- Consider records exempt from disclosure (d)
- Discuss litigation – with your attorney (f)
- Consider claims or potential claims – with your risk manager or insurer (i)

Executive Session

Who can attend?

- All “Governing Board” members
- Anyone else that Governing Board members wish to attend.
- May have witnesses come and go as needed

Tele - Meetings



- ✓ Specifically allowed - I.C. §74-203(5)
- ✓ One person must be present at site where meeting is advertised
- ✓ System must be set up so that all members can participate and the public can hear

CURING VIOLATIONS

- Either self-recognition or written notice of an alleged violation
- If a violation - determine within 14 days and acknowledge the violation
- Then 14 days to void that action or actions
- A cure acts as a bar to the civil penalty

Violations

- Failure to comply with the provisions of Idaho Code §74-201 through 74-207 renders the action null and void.
- Any member who participates in a meeting that violates these provisions will be subject to a civil penalty.
 - up to \$250
 - up to \$1500 for “knowingly” participating
 - up to \$2500 if subsequent to previous violation within last 12 months

Idaho Code § 74-208

Common Questions

- The committee members are all to be at a conference, should I post as a meeting?
- What if a citizen calls each member individually?
- Can I violate the Open Meeting rules by e-mailing fellow members?
- Site visits?
- Abstaining – Conflict or not?

Public Records

Public Records

(13) "Public record" includes, but is not limited to, any writing containing information relating to the conduct or administration of the public's business -----
----- regardless of physical form or characteristics.

Public Records

(15) "Writing" includes, but is not limited to, handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds or symbols -----

PUBLIC RECORDS

Role of the Board

- Designate a custodian(s)
- Establish a fee schedule (>100pg or 2 hrs)
- Provide access to the District's Attorney
- Response to records request is not a board decision, should be staff and attorney.
- Adopt a records retention policy.

Public Officials and Electronic Communication

- What is public? (definitions)
- Keep private and public records separate or at least able to be viewed easily.
- Open meeting violations?
- What does it look like?
- Rules may be (are) different for discovery.
- Reply or reply all?

Ethics and Conflict of Interest

Ethical Breaches (cont.)

- Failure to disclose and step down when necessary in conflict situations.
- Misuse of public funds – embezzlement and other less obvious issues:
 - Use of public gas/cards
 - Overstatement of expenses
 - Presenteeism

ETHICS/CONFLICT OF INTEREST

- Idaho Ethics in Government Act—Idaho Code Title 74 Ch. 4
 - What is a conflict of interest?
 - Any official action, decision or recommendation by a public official (elected, appointed or staff), which would be to the private financial benefit of the individual or a member of their household, or a business with which the person or a member of their household is associated.

ETHICS/CONFLICT OF INTEREST

■ Prohibition on Contracts with Officers

■ Idaho Code 74-201

“Members of the legislature, state, county, city, district and precinct officers, must not be interested in any contract made by them in their official capacity, or by any body or board of which they are members.”

CRIMINAL ACTIONS

- **Bribery & Corrupt Influence Act—Idaho Code Title 18, Chapter 13**
 - **Prohibited Acts**
 - Bribery, Threats & Improper Influence
 - Compensation/Retaliation for Past Actions
 - Compensating Public Servants
 - Buying/Selling Political Endorsement or Influence
 - Using public funds or property for economic benefit without specific authorization.
 - Using or disclosing confidential information for economic benefit.
 - **No defense: Not in office yet, or lacked jurisdiction.**

Employing Relatives (General)

{I.C. 18-1359 }

- ☞ No public official may:
- ☞ (1)(e) Appoint or vote for the appointment of any person related to him by blood or marriage within the second degree, to any clerkship, office, position, employment or duty, when the salary, wages, pay or compensation of such appointee is to be paid out of public funds ----

Employing Relatives (Specific)

{I.C. 18-1359 }

- (3) No person related to a mayor or member of a city council by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty with the mayor's or city council's city when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds.
- Same for County Commissioners.

Employing Relatives

....continued

If a relative holds a position when the official is elected, that relative retains his/her position and continues getting general and merit pay increases, bonuses and promotions just like all other employees. I.C. § 18-1359(5)

Just don't treat the relative preferentially!

CRIMINAL ACTIONS

- **Bribery & Corrupt Influence Act—Idaho Code Title 18, Chapter 13**
 - **Penalties for Violation**
 - Any public servant violating the Bribery & Corrupt Influence Act is guilty of a misdemeanor and may be punished by a fine up to \$1,000 and incarceration in the county jail for up to 1 year, or both.

18-5702. Punishment for misuse of funds.

- Stealing less than \$300:
 - Not in charge of money -\$1000 fine 1yr in jail.
 - In charge of money – felony, \$5000 and 5yrs.
- More than \$300:
 - felony punishable by a fine up to \$10,000, or by imprisonment in the state prison for not less than one (1) year nor more than fourteen (14) years, or by both.
- And repay including retirement!

Planning & Zoning Conflicts of Interest—Idaho Code 67-6506

- Strict prohibition on participation by commissioners, mayor or council member, p&z commissioners or staff when the individual, their employer, business partner or associate, or any relative within the 2nd degree has an economic interest in the action or proceeding.
- Any actual or potential conflict of interest on a p&z matter must be disclosed at a meeting on the record before the proceedings begin.

- Thanks for your time & attention!
- Please don't hesitate to call ICRMP if you have questions.

