

Been There, Done That **SDAO** Director Training

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Local Government Law Group

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Welcome to On The Job Training



Congratulations! You are now the proud caretaker of a multi-million dollar corporation and the public trust.

- Learn the lay of the land: tours, orientations, homework, staff.
- Roles of Board, District Administrators, Staff, Attorney.

10,000-Foot View of Government



- Federal Law (Preemption)
- State Law (Preemption and Home Rule)
- County Partners (IGAs)
- City Partners
- District Partners
- Tribal Law

District Authority

Ask Two Questions Before You Act

Question 1: Can we do it?

- Know your statutes, ordinances and policies
- Know your District Rules
- Know your Roles
 - Working with staff?
 - Testifying?
 - Speaking with press?

District Authority

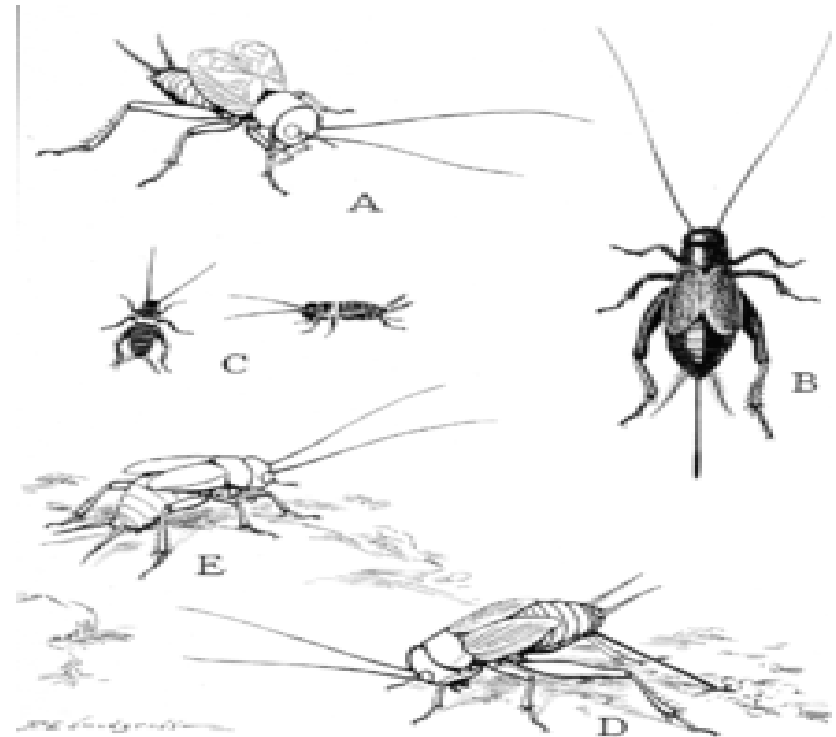
Question 2: Do we have a quorum and a majority?
(Single Board Members are only one cog on the wheel.)



Individual Authority



...sound of crickets chirping



Individual and District Liability

- ORS 294.100: Misexpenditure of Funds
- Scope of Duties/Employment
- Ethics
- Elections: Prohibition on Political Advocacy
- Public Meetings
- Criminal Actions
- Civil Actions

Individual and District Liability

District vs. Individual Liability

- Action against public body, not individual.
ORS 30.255; *but also* 42 USC §1983
- District duty to defend and indemnify.
ORS 30.285
- Exceptions/ **scope of employment**
- Immunities: **Discretionary immunity** --
policy-making vs. managerial decisions

Process and Procedure

Councilor Tools

- **Ordinances.** Legislative power. Permanent in nature.
- **Resolutions.** Administrative/legislative. Policy-oriented. Usually temporary in nature.
- **Policies.** Administrative, temporary in nature, partnership with Manager.
- **Working Rules.** Simple, clear direction, your personal “how to” manual for Board Members.

Use the right tool for the job

Process and Procedure

Public Meetings

Which public bodies are subject to the 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
- *Electronic meetings? Emails, IMs, and Texts.*
- *Serial discussions*

What are the requirements of a public meeting?

- Notice
- Space, Location, Accessibility and Attendance
- Voting
- Records

Process and Procedure

Public Meetings

Executive Sessions

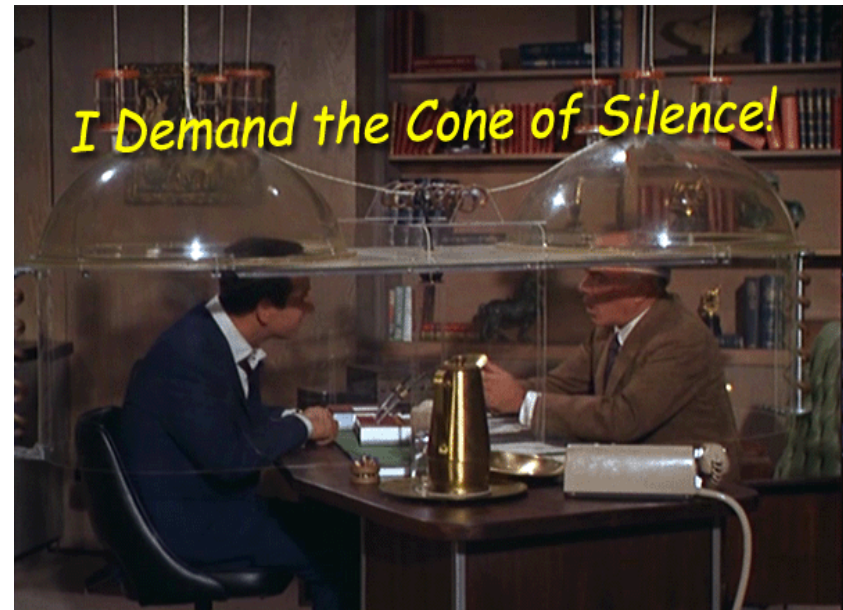
- Must read statutes
- **Examples of misunderstood purposes**
 - The “Employment” Myth. 192.660(2)(a)
 - Discussions with Legal Counsel.
192.660(2)(h)

Process and Procedure

Public Meetings

Executive Sessions

- Limited discussions only
- How to convene. See back of AG's Manual.
- No final decisions
- Media (Definitions and hallway discussions)



Process and Procedure

Public Meetings

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

Process and Procedure

Public Meetings

- Chair must set **realistic agenda**
- Circulate materials/minutes in advance
- **Keep it formal**
- Have simple rules
- **Public participation does not always mean public conversation**
- Consider work sessions
- **Restate vote**, note if staff must follow up

Process and Procedure

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*

Process and Procedure

Public Records

Oregon law favors disclosure.

- Not a confidentiality law. Must disclose unless exempt under the law. See ORS 192
- Even when exempt, often subject to **public interest balancing tests.**

Process and Procedure

Public Records

Some Balancing Test Exemptions.

- 192.501(1) Pertaining to Litigation
- 192.501(12) Personnel Discipline
- 192.501 (22) and (23) Interference with Public Services and Security Measures

Process and Procedure

Public Records

Some Other Exemptions.

- 192.502(2) Personal Privacy
- 192.502(3) Personal Information
- 192.502(4) Confidential Information
- *Documents otherwise protected*

Ethics

Don't Use Your Position for Personal Gain.



Ethics

The “BUT-FOR” Test 244.040(1)

A public official cannot use position

- To get money or to avoid losing money
- For the PO or for a relative or a member of the household or for the PO’s business
- If that opportunity would not be available BUT FOR your position

Ethics

DOES **NOT** INCLUDE

- Compensation or Reimbursement
- Unsolicited awards, or honoraria, or legal expense donations
- Or certain gifts (VERY limited)

Ethics

Gifts are Limited to \$50 per year, per giver with an **interest** in your position or your decisions.



Ethics

“Gift” 244.020(5)

- Something of economic value
- Given to public official, 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

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: Conflicts of Interest

COUNTERTHINK



Ethics

“Actual Conflicts” (Will Happen)

- An action, decision, or recommendation
- By a public official
- Resulting \$ to PO or a relative or business associated with PO or relative

Ethics

“Actual Conflicts” (Will Happen)

- Would result in avoidance of \$ detriment to public official
- Or *relative*
- Or any *business associated* with PO or relative

Ethics

“Potential Conflict” (Could Happen)

- Could result in avoidance of \$ detriment to public official
- Or *relative*
- Or any *business associated* with PO or relative

Ethics

Conflicts Rule: Actual and Potential

When in Doubt: **Shout** it Out!



How to 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
- Send it to the Ethics Commission

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 District cannot act without you (but still no talking)

Ethics

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

- Membership to a group required by law (bar association, medical review board)
- 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)

Ethics

Conflicts of Interest and Nepotism

Rules: ORS 244.177

- **Hiring Family? Think Conflict!** You may not appoint, employ, promote, discharge, fire, or demote a relative or member of your household unless you follow the conflict of interest rules.

Ethics

Conflicts of Interest and Nepotism

Rules: ORS 244.177 (Cont.)

- **You're Not the Boss of Me.** You may not directly supervise a relative or member of your household (but your District may choose to adopt policies allowing for your direct supervision.)

The End

