

***OVERVIEW OF LEGAL SERVICES AND OPEN  
GOVERNMENT RESPONSIBILITIES OF BOARD  
MEMBERS***

New Trustee Orientation

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# Legal Services to State Agencies

- By law, Attorney General is the legal adviser to state agencies, boards, commissions, and state officials. Defend lawsuits against agency, employees and officials for actions taken in good faith performance of official duties.
- Office is organized into 26 legal divisions. Education Division serves all state level education entities, including K-12 and higher education, except UW and WSU. We assign each college an attorney to act as general counsel to the institution.
- Specialized Divisions – Torts, Labor & Personnel

# AGO

- Mission --to deliver the highest quality, ethical and professional legal services to the colleges while maintaining independent duty to serve public at large
- Advise on interpreting state and federal laws, scope of authority as delegated by the legislature.
- Offer risk continuum. Defend defensible actions
- Try to offer advice that is consistent across time and uniform across the higher education system

# AAG Interactions with the College

- Work with the Board collectively or through the Chair, since individual members do not speak for the whole board
- Mostly work through chain of command from managers, to president, and then the Board
- Role at Board Meetings
- Multi-level hearings—Board in quasi-judicial role

# ***OPEN PUBLIC MEETINGS***

- ◆ Intent that the actions of all public boards and commissions be taken openly and that their deliberations be conducted openly
- ◆ RCW 42.30 Open Public Meetings Act
- ◆ Requirement for maintaining minutes is at RCW 42.32.030

# ***COVERAGE OF THE OPMA***

- ◆ Multi-member governing bodies of state and local agencies
- ◆ Subcommittees, if quorum
- ◆ Any subcommittees delegated final decision-making authority
- ◆ Does not apply to state agencies covered by a single head (e.g. Superintendent of Public Instruction).

# ***What constitutes a meeting ?***

- ◆ A meeting is a gathering where “action” is taken. Any such meeting must be open.
- ◆ “Action” means “the transaction of the official business of a public agency by a governing body including but not limited to:
  - ◆ **Public testimony**
  - ◆ **All deliberations**
  - ◆ **Discussions**
  - ◆ **Reviews**
  - ◆ **Evaluations**
  - ◆ **Final action (collective positive or negative decision or final vote by a majority sitting as a body or entity)**

# Travel & Gathering

- “It shall not be a violation of the requirements of this chapter for a majority of the members of a governing body to travel together or gather for the purposes other than a regular meeting or special meeting...PROVIDED, That they take no action as defined by this chapter.” RCW 42.30.070

# Emails

- An exchange of emails among board members can constitute a deliberation or discussion and thus, a “meeting” subject to the Open Public Meetings Act.

*Wood v. Battle Ground School District (2001).*

- Phone trees also may constitute a meeting

# ***GIVING NOTICE: REGULAR MEETINGS***

- ◆ Recurring meetings of the public body.
- ◆ Colleges must adopt regular scheduled meetings by rule (Washington Administrative Code). (State agencies file yearly prior to January 1st with Code Reviser).
- ◆ No agenda requirement.

# ***GIVING NOTICE: SPECIAL MEETINGS***

- ◆ Written notice must be given to:
  - ◆ Each member of governing body
  - ◆ Each media entity which has requested notice
- ◆ Delivered at least 24 hours in advance
- ◆ Must specify:
  - ◆ Time
  - ◆ Place
  - ◆ Business to be transacted (agenda). Final action limited to those items.

# ***EXECUTIVE SESSIONS***

- ◆ Authorized for limited, specific topics listed in statute -RCW 42.30.110, including:
- ◆ Receive and evaluate complaints or charges against a public officer or employee
- ◆ Review performance; evaluate qualifications of a job applicant
- ◆ Meet with legal counsel relating and potential litigation matters & agency enforcement actions
- ◆ Quasi-judicial actions (exempt)

# Penalties for Violating Open Public Meetings Act

- Individual liability (\$100/penalty)
- Costs and attorneys fees
- Action taken is null and void
- Bad press

## **PUBLIC RECORDS -- RCW 42.56**

- Any writing containing information relating to (a) the conduct of government, or (b) the performance of any governmental or proprietary function
- Prepared, owned, used, or retained by any agency
- Writing can be in any media or format

# Public records definition (cont'd)

- The definition is broad enough to encompass anything you prepare or use for College business
- Includes email messages
- Public has right to review and seek copies

# Public Policy Strongly Favors Disclosure

- The duty to disclose public records is broadly construed. Public policy favors disclosure
- Exemptions are narrowly construed

# Some Exemptions

## RCW 42.56.230-480

- Preliminary drafts in which policies are formulated
- Communications protected by the attorney-client privilege
- Student Education Records under federal law (the Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g)
- Test questions, scoring keys, and other examination data used to administer an academic exam
- Trade secrets
- Private information in employee personnel files/application materials

# Executive Ethics Act

## RCW 42.52

- Aimed at preventing/mitigating conflicts of interest
- Government officials and employees hold a public trust. Paramount in that trust is the principle that public office may not be used for personal gain or private advantage
- Executive Ethics Board – <http://ethics.wa.gov>

# Ethics Law Overview

- No activity in conflict with proper discharge of official duties
- May not use official position or state resources to secure special privileges for yourself or others
- May not receive a gift if it could be reasonably expected to influence performance of official duties -- \$50 aggregate limit on unsolicited gifts per year from a single source.
- May not use state resources for political campaigns

# Ethics (cont'd)

- Ethics violations are personal to the state employee/official rather than the college.
- The Attorney General's Office is not statutorily authorized to defend an official or employee in actions before the Executive Ethics Board

# E-MAIL

- **Compose under the assumption that it will be made publicly available**
- **Don't hit Reply-all to a message sent to multiple board members**
- **If using personal computer, keep Board business in a separate file**

# Faculty Tenure

- Governed by statute –RCW 28B.50.850-873
- Tenure track faculty hired into probationary appointment for a designated period (usually an academic year).
- Probationary appointment shall be one of continuing evaluation by a review committee
- May be terminated without cause upon expiration of the term of employment

# Probationary Faculty Appointment (cont'd)

- Notice of a decision to terminate/non-renew a probationary appointment shall be made as soon as possible, but must be given no later than one complete quarter (excluding summer) prior to expiration of the contract.
- For practical purposes, this usually means a decision is made at the March Board meeting

# Tenure

- The Board “shall” provide for the award of faculty tenure following a probationary period not to exceed 9 consecutive quarters (excluding summer).
- Tenure is a property right that may only be removed for sufficient cause and with due process. Right to a committee hearing with a recommendation to the Board of Trustees for final decision.

# Tenure Dismissal During Financial Emergency

- Triggers by Governor or Legislature
- State Board Declaration
- Local Board Declaration
- Expedited Hearing Process/Limited bases for challenge

# QUESTIONS?

- OR, COMMENTS??