

School Boards: Roles, Responsibilities, Organization and Ethical Considerations

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Three Roles of School Board Members

- ▶ Legislator
- ▶ Adjudicator
- ▶ Executive

I. CONSTITUTIONAL AUTHORITY

Article XI, § 3, S.C. Constitution provides:



The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable.

II. SCHOOL DISTRICTS



School districts, as bodies politic and corporate.

Every school district is and shall be a body politic and corporate, by the name and style of _____ (a descriptive name may be designated by the county board of education or legislative act). School District No. _____ (such number may be designated by the county board of education or legislative act), of _____ County (the name of the county in which the district is situated), the State of South Carolina. In that name it may sue and be sued and be capable of contracting and being contracted with to the extent of its school fund and holding such real and personal estate as it may have or come into possession of, by will or otherwise, or as is authorized by law to be purchased, all of which shall be used exclusively for school purposes. (S.C. Code Ann. § 59-17-10)

“CORPORATE”

1. The aggregate body of officers of the entity.



III. SCHOOL DISTRICTS SHALL BE UNDER MANAGEMENT OF BOARDS OF TRUSTEES

Each school district shall be under the management and control of the board of trustees. (S.C. Code Ann. § 59-19-10)

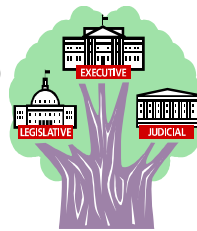


IV. BOARDS OF TRUSTEES SERVE
THREE PRIMARY FUNCTIONS:

A. Legislative

B. Judicial (Adjudicator)

C. Executive



A. Legislative



The legislative authority of the board is found at S.C. Code Ann. § 59-19-90(3), 1976, as amended. Here, the school board has the responsibility of adopting policies to provide for the orderly operations of the school district.


“Due diligence”

**IMMUNITIES – Legislative
(Policy)**




- ▶ Local bodies are immune from civil liability stemming from regulations they enact.
- ▶ School Boards have quasi-legislative power, and are generally immune from liability for rule-making.

B. Judicial



Boards sit in a judicial role when they hear student expulsion cases, teacher dismissal cases, or what are referred to as proceedings of record. This means that the record for any of the three is subject to review by courts all the way up to the U.S. Supreme Court. For this reason, board members should never use due diligence when it must sit in the judicial capacity and afford "due process."

IMMUNITIES – Judicial (hearings)



- ▶ Courts cannot be sued
- ▶ To qualify for "Judicial Immunity" School Boards must show that immunity is "essential to performing the judicial function."


The due diligence which is necessary in policy making is contrary to the constraints required by due process.

1. **Student Expulsion** – The board may expel a student for the remainder of the school year. If procedures for expulsion are initiated, the parent(s) or legal guardian(s) of the pupil shall be notified in writing of the time and place of the hearing, either before the board or a person or committee designated by the board so long as the student is able to appeal to the full board. The action of the board may be appealed to the proper court. See S.C. Code Ann. § 59-63-240, *et seq.*

2. **Teacher Dismissal** – Within 15 days after receipt of notice of suspension or dismissal, a teacher may serve upon the chairman of the board or the superintendent a written request for a hearing before the board. See S.C. Code Ann. § 59-25-470, *et seq.*


The decision of the district board of trustees shall be final, unless within 30 days thereafter an appeal is made with the court of common pleas of any county in which the major portion of such district lies. See S.C. Code Ann. § 59-25-480, *et seq.*

3. **Proceedings of Record** – Any decision of the board in any matter of local controversy in reference to the construction or administration of school laws or the placement of any pupil in any school within the district can be appealed by written petition within 10 days from the day of the formal order or directive of the board. See S.C. Code Ann § 59-19-510, *et seq.*



Judicial Recusal


In circumstances in which a board member determines that due diligence has been exercised or has otherwise engaged in conduct that compromises his/her role in the judicial process, that member should recuse him/herself.



C. Executive

The board has the authority to enter certain contracts, approve purchases and employ persons. These are all done within the board's executive authority and also can be done using the board's power of due diligence. See S.C. Code Ann. § 59-19-80.

1. No teacher or other employee shall be employed or any purchase made except in a duly called meeting of the board, of which meeting each member has been notified in writing by the clerk of the board at least three days in advance thereof See S.C. Code Ann. § 59-19-80.



Boards have limited executive functions.
Protection found in administrative
recommendations.



IMMUNITIES - Qualified




- ▶ Officials are not liable when they act within the scope of office.
- ▶ No immunity if a school official knew or should have known that his action or inaction would violate a person's lawful right.




Due diligence necessary for policy making often
invites trouble on executive items.
"Micromanagement"



Problem Areas


- ▶ Personnel –
 - Hiring and Promotion 
 - Discipline 
- ▶ Procurement
 - Contracts 

Staying on the Straight and Narrow



Objectives:

- ▶ Learning to recognize and appreciate the difference between the types of decisions that come before school boards, and
- ▶ Learning to recognize and appreciate the roles of different decision makers involved with school boards.



What was that about a “body politic and corporate” again? 

- ▶ School Boards in South Carolina govern districts created under S.C. Code Ann. § 59-17-10, which provides, in pertinent part:
- ▶ “Every school district is and shall be a body politic and corporate. . . .”



▶ “Body politic and corporate” means that the entity must be in session in order to make decisions or take actions.

- ▶ In other words, the board can only act as a group in a duly called meeting.
- ▶ Due to the formalities which must be observed, board meetings are not the preferred management model.

▶ In South Carolina:



“Each school district is under the management and control of the board of trustees. . . .”

See S.C. Code Ann. § 59-19-10

- ▶ Even though school districts are under the management and control of boards of trustees, boards are not designed to make all decisions necessary for an effective school district.



- ▶ “Under the management and control” as provided in the statute can be confusing in that school districts are complicated organizations.
- ▶ In South Carolina, there are three types of decisions which are routinely made in order to govern or operate school districts:

Decisions, Decisions . . .

- ▶ Strategic



- ▶ Organizational



- ▶ Operational



Decision Makers


- ▶ Community 
- ▶ Board of Trustees 
- ▶ Administration 

More on Decisions

▶ **Strategic** decisions are those long term decisions commonly identified in Strategic Plans or made on a long term basis such as:

- Building schools
- Closing schools
- Drawing school attendance lines, and
- Finding funding sources for education.

yes
 no
 maybe



These decisions are commonly reached with input from the community, Board, and administration.

▶ **Organizational** decisions are normally made on such things as:

- Policy formulation
- Development of regulations
- Development of goals for the superintendent and the district, and
- Development of programs to meet the educational needs of the community.



These decisions are normally made by the board with recommendations from the administration.

▶ **Operational** decisions are those that most directly influence the routine, day to day process of operating classrooms, school buildings or programs, and/or the district office.



These decisions will often require a high degree of detailed information about the subject matter and should usually be made by the administration with limited guidance from an informed board.



- ▶ When school boards make operational decisions they are often accused of micromanagement.
- ▶ Micromanagement is a management style that:
 - Requires a high degree of control,
 - Is based on access to a great deal of detail, and
 - Generally has a negative connotation.

- ▶ South Carolina school boards have a difficult time engaging in micromanagement or making operational decisions while simultaneously maintaining effectiveness.
- ▶ As a practical matter, the need for public notice of meetings and limited ability to change published agenda items combine to make voting actions by school boards a difficult way to make operational decisions.

- ▶ Also, perceived micromanagement by school boards has a tendency to foster feelings among the micromanaged that they are being
 - Underappreciated,
 - Underestimated, and
 - Undervalued.



- ▶ In South Carolina, the powers and duties of school trustees are found in:


S.C. Code Ann. § 59-19-90

- ▶ In exercising the powers and duties enumerated under § 59-19-90, school trustees must make sure that the correct type of decision is being made to ensure organizational effectiveness.

- ▶ School trustees are authorized to provide schoolhouses (buildings) in paragraph 1 of section 59-19-90.




- ▶ The decision to provide a school building is a strategic decision and will require input from the community and administration with the board making the final decision.




- ▶ Paragraph 2 of § 59-19-90 authorizes school trustees to employ and discharge teachers.
- ▶ The hiring and discharging of teachers presents unique problems for school trustees because each decision is an organizational decision requiring significant input from the administration
- ▶ There is a temptation for the board to exert complete or near complete control of the hiring and discharge process which could cause the board to make operational decisions.

- ▶ Hiring requires the collection of applications, screening applications, conducting interviews, conducting background checks, verifying credentials and making recommendations.



- ▶ These tasks require operational decisions by the administration before the board is able to make its organizational decision of hiring.


- ▶ The discharging of teachers also requires significant coordination between the board and the administration.




- ▶ The administration must work with the teacher to set clear objectives, make sure the objectives are being met, give the teacher assistance where necessary, or remove the teacher from the work environment when circumstances require, while the board is not involved due to the teacher's right to a full and fair hearing.
- ▶ See §59-25-410 *et seq.*

- ▶ Paragraph 3 of §59-19-90 authorizes the board of trustees to promulgate rules and regulations.
- ▶ This is the policy making power of the board.
- ▶ Constructing the best possible policy requires input from the administration and, at times, from other groups.
- ▶ This can be either a strategic or an organizational decision.

- ▶ Paragraph 9 of §59-19-90 authorizes the board of trustees to transfer and assign pupils. This will require significant coordination between the board and administration.



- ▶ The administration will need to determine the student's grade level, educational needs, space availability for the student and make a recommendation. The board makes the organizational decision while the administration makes the operational decision.



- ▶ Clearly, school boards make a large number of decisions. It is critically important that the board understands the different types of decisions available and takes care to make the right type of decision, in the right context, and at the right time.

A Lesson from "The Gambler"

- ▶ Effective school boards use decision making authority in a manner designed to capitalize on the strengths of experienced administrators supported by an informed board.
- ▶ In other (very famous) words, as trustees: "You got to know when to hold 'em, know when to fold 'em."



Go Where the Rules Take You



SOUTH CAROLINA ETHICS ACT

- ▶ In South Carolina, like other states, public officials – elected or appointed – must act in the public interest when exercising the powers and duties of their respective offices.



What is the public interest?

- ▶ The public interest is the common well being of those areas over which the elected or appointed official has control or responsibility for the business of the governmental unit.
- ▶ In short, public officials must mind the public's business and keep the public's business separate from their personal business.

Separating your business from the public's business

- ▶ The South Carolina Ethics Act has specific rules and guidance to help public officials keep their personal business separate from the public's business.



Why keep personal business separate from the public's?

Our system requires the consent of the "governed" to operate and be effective.

In this instance, the "governed" are the taxpayers and voters who elected you.

Keep yours separate from ours

- ▶ A public official may not knowingly use office/position for financial gain. Section 8-13-700(A).
- ▶ What is financial gain?

Make conflicts known publicly

- ▶ Recusal provisions for conflicts. Section 8-13-700(B).
- ▶ State the conflict for the record and indicate that you will neither participate in the discussion on the matter nor vote on the matter.
- ▶ May want to leave the room if the matter is being discussed in closed session.



NO BRIBES

- ▶ A person may not receive or give anything of value with intent to influence decisions or governmental action. (Anti-Bribery Statute). Section 8-13-705.



Practice free speech

- ▶ A person may not accept an honorarium for speaking engagements in one's official capacity. May accept payment for actual expenses. Section 8-13-715.

- ▶ When in doubt...



Only what is mine

- ▶ A person may not accept additional money for assistance given while performing one's duty. Section 8-13-720.

- ▶ Neither governmental services nor transactions are for sale.



No insider trading

- ▶ A person may not use confidential information gained through employment for personal gain. Section 8-13-725.

- ▶ If you are not willing to say it on the floor during open session of your meeting, should you say it to anyone behind the scenes?



Limit your clients

- ▶ A public official may not represent a person before the body with which the public official sits. Section 8-13-725.
- ▶ You cannot represent the student who is being expelled before the principal, superintendent, the hearing officer or the board.



Not all in the family

- ▶ A person may not cause the employment, promotion, or transfer of a family member to a position in which the public official supervises. Also, prohibits discipline of one's family member. Section 8-13-750.



No revolving door

- ▶ There are limitations on employment with the governmental unit after your term of office ends. Section 8-13-755.



No sweetheart deals

- ▶ It is a breach of ethical standards for an employee participating in a procurement to resign and accept employment with the person or company contracting with the governmental body. Section 8-13-760.



No public funding of campaigns

- ▶ A person may not use government personnel/materials in an election campaign. Section 8-13-765.
- ▶ This includes school board races and other elected offices.



Stay out of business with the government

- ▶ A public official/employee may not have an economic interest in a contract with the State or a political subdivision if the public official/employee is authorized to perform an official function relating to the contract. Section 8-13-775.
- ▶ Keep your "day job" separate from your other business interests.



Financial disclosures

- ▶ Your statement of economic interest must be filed on or before April 15, of each year of service.
- ▶ Mark you calendars – file income taxes and file economic interest forms.



Campaign practices

- ▶ A person may not use/authorize public funds to influence the outcome of an election. A school district may not use public funds, property, or time in an attempt to influence the outcome of a ballot measure. Section 8-13-1346.
- ▶ Educate but not advocate.



Penalties for violations

- ▶ Penalties for violations are authorized in Section 8-13-320(10)(l). The specific penalties are determined by the SC Ethics Commission and are based on the circumstances surrounding the violation.
- ▶ The punishment includes an element of discouraging future violations.



Example of penalties

- ▶ The Commission may order a public member or public employee to pay a civil penalty of not more than two thousand dollars for each violation.
- ▶ The Commission may also order the forfeiture of gifts, receipts equal to the value of any thing obtained in violation of SC Ethics Act.



Penalties continued...

- ▶ The Commission may void non-legislative state action obtained in violation of the Act.
- ▶ Or the Commission may impose a combination of fines, forfeitures, and the voiding of non-legislative state actions obtained in violation of the Act.

Penalties continued...

- ▶ Section 8-13-705(G) provides for imprisonment of not more than 10 years and fines not more than \$10,000 and that the violating party be permanently disqualified as a public official or forfeit public employment.



Penalties for failure to file or late filings

- ▶ Section 8-13-1510(A) provides: Except as otherwise specifically provided in this chapter, a person required to file a report or statement under this chapter who files a late statement or report must be assessed civil penalty as follows:


Penalties (failure to file or late filings) continued...

- ▶ 1. a fine of \$100 if the statement or report is not filed within five days after the established deadline provided by law in this chapter; and
- ▶ 2. after notice has been given by certified or registered mail that a required statement or report has not been filed, a fine of ten dollars per calendar day for the first ten days after notice has been given, and \$100 for each calendar day if not filed, not exceeding \$5,000.

Penalties (failure to file or late filings) continued...

- ▶ After the maximum civil penalty has been levied and the required statement or report has not been filed, the person is subject to additional actions...

- ▶ (1) for the first offense, guilty of a misdemeanor triable in magistrates court and, upon conviction, must be fined not more than \$500 or imprisoned not more than thirty days;



- ▶ (2) for a second offense, guilty of a misdemeanor triable in magistrates court and upon conviction, must be fined not less than \$2,500 nor more than \$5,000 or imprisoned not less than a mandatory minimum of thirty days;
- ▶ (3) for a third offense or subsequent offense, guilty of a misdemeanor triable in magistrates court and, upon conviction, not more than \$5,000 or up to one year in prison or both.

- ▶ Section 8-13-1520 provides that a violation of the Rules of Conduct is a misdemeanor and on conviction one may be fined not more than \$5,000 or be imprisoned not more than 1 year or both.
- ▶ A person guilty of violating the campaign reporting provisions is guilty of a misdemeanor, and must be fined a minimum of \$5,000 and a max of 500% of the amount that should have been reported or may be sentenced up to one year in prison,
- ▶ Section 8-13-780 provides the Commission may issue a public reprimand.

Statute of Limitations

- ▶ Section 8-13-320(9)(d) provides that action may not be taken on a complaint filed more than 4 years after the violation is alleged to have occurred.



Additional research...

- ▶ You may want to visit the website of the SC Ethics Commission at <http://ethics.sc.gov>.
- ▶ You can get information on:
 - ▶ Electronic filing
 - ▶ Public reporting
 - ▶ The Ethics Reform Act
 - ▶ All advisory opinions

V. HANDLING INFORMATION AND CONDUCTING BUSINESS



A. Freedom of Information Act (FOIA) - The purpose of FOIA, S.C. Code Ann. § 30-4-10 *et seq.*, is to protect the public from secret government activity. South Carolina Tax Comm'n v. Gaston, 316 S.C. 163, 447 S.E.2d 843 (1994). School boards are considered public bodies under § 30-4-20(a), and are subject to the Act. 37A Am. Jur. 2d, *Freedom of Information Act* § 22 (1994). Under its provisions, a public body must make its records available to the public, and cannot take formal actions in closed session. S.C. Code Ann. §§ 30-4-30(b), 30-4-70(b).

FOIA and how it relates to discussions and documents from Legal Counsel

- ▶ A board member cannot independently review or release attorney-client privileged documents.
- ▶ The privilege belongs to the board, and the board must, as a whole, authorize the release of the information
- ▶ The board has to waive the privilege before an individual member can disclose privileged documents.

See S.C. Code Ann. § 30-4-40(a)(7); Wilson v Preston, 378 S.C. 348, 662 S.E.2d 580, 585-86 (2008)

1. **Public Records.** Books, papers, documentary materials, regardless of physical form, including most information on applications and resumes of potential superintendents are deemed public records, and are accessible by the public. S.C. Code Ann. § 30-4-20(c).

a. **Specific Information.** Written policies, goals, and planning decisions are specifically made public information by the Act. S.C. Code Ann. § 30-4-50(A)(5). District budgets and any other information relating to the expenditure or receipt of public funds must also be disclosed. § 30-4-20(c). Minutes and votes of open meetings are considered public, as well as the identities of District employees and officers. S.C. Code Ann. § 30-4-50(A)(1), (7).

b. **Exceptions.** Items that are not considered public record include: 1) data prepared by board members in anticipation of a meeting; 2) proposed budgets prior to a board meeting; and 3) legal advice to the Board. *Cooper v. Bales*, 268 S.C. 270, 233 S.E.2d 30 (1977).



c. **Exemptions.** FOIA contains several "permissive exemptions," which allow the governmental body the option of choosing to disclose or withhold information from public access. S.C. Code Ann. § 30-4-40(a). These exemptions do not create an affirmative duty *not* to disclose. *Bellamy v. Brown*, 305 S.C. 291, 408 S.E.2d 219 (1991). Discretionary exemptions include: 1) data affecting personal privacy rights; 2) documents in contemplation of a contract that has not been executed; 3) compensation of certain employees; and 4) materials gathered in search of high-level employees, except the final three candidates. The exemptions do not provide for blanket prohibition against disclosure, but rather, allow the exempt material to be separated from the non-exempt material. *Beattie v. Aiken County DSS*, 319 S.C. 449, 462 S.E.2d 276 (1995).

d. **Violations.** When a District fails to respond within fifteen days to a request for information categorized as "permissive," the request is considered approved. *See S.C. Code Ann. § 30-4-30(c); Litchfield Plantation Co., Inc. v. Georgetown Water and Sewer Dist.*, 314 S.C. 30, 443 S.E.2d 574 (1994).

2. Meetings Defined as "the convening of a quorum of the constituent membership of a public body . . . to discuss or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power, S.C. Code Ann. § 30-4-20(d). meetings of public bodies generally must be open to the public. S.C. Code Ann. § 30-4-60.

a. Exemptions Closed meetings are permitted under S.C. Code Ann. § 30-4-70 to discuss: 1) employee compensation, promotion, termination, or discipline; 2) discipline or release of a student; and 3) negotiations incident to proposed contracts, among other issues. Additionally, a public body has the right to close employment interviews from the public. Multimedia, Inc. v. Greenville Airport Comm'n, 287 S.C. 521, 339 S.E.2d 884 (Ct. App. 1986). Closed meetings are also permitted when complaints against an officer are unspecific and the Board wishes to glean more information from witnesses. Georgetown Communications, Inc. v. Williams, 290 S.C. 149, 348 S.E.2d 396 (Ct. App. 1986).

b. Conference Calls Telephone conference calls are within the definition of "meeting"; therefore, they require public notice and disclosure of minutes. 1981 Op. Atty. Gen., No. 81-29.

c. E-Mail. The courts have not yet addressed the issue of e-mail between board members. However, the State's Supreme Court has determined that topics of discussion are determinative in identifying whether a "meeting" has taken place. See Braswell v. Roche, 299 S.C. 181, 383 S.E.2d 243 (1989).

d. Advisory Committee Meetings. The South Carolina Supreme Court recently recognized that "a committee formed to give advice to a public body or official is performing a government function," and thus is subject to FOIA. Quality Towing Inc. v. City of Myrtle Beach, 2001 WL 533180, *3 (S.C.). The Court named several factors in deciphering whether the committee was an advisory committee. Most importantly, there exists no reason to hold the committee's meetings and discussions in private. Next, an advisory committee gives advice directly to the parent body. Third, an advisory committee determines the expenditure of public funds. It makes no difference whether members of the committee are also members of the parent body.

e. Location. Public meetings need not be held in a public building, or even within the same municipality that the public body represents. To determine reasonableness of the location, a court compares the governmental interest to the cost or delay to the public. Morgan v. IPS Automotives, 326 S.C. 261, 486 S.E.2d 263 (1997); see also Weidemann v. Town of Hilton Head Island, 330 S.C. 532, 200 S.E.2d 783 (1998).

f. Violations. A trial court may order equitable relief to a contestant by invalidating a board's vote when that vote was made in violation of FOIA. Piedmont Public Serv. Dist. v. Cowart, 319 S.C. 124, 459 S.E.2d 876, (Ct. App. 1995).

THANK YOU

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