

UMATILLA MORROW RADIO & DATA DISTRICT BOARD MEMBER DUTIES AND RESPONSIBILITIES

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SIGNED POLICIES AND RESOLUTIONS

1. INTRODUCTION

The authority given to a special service district, except as otherwise provided shall be exercised by a board of directors. Each type of special district has its own statute and requirements for board members. Some districts refer to board members as commissioners or directors. For the purpose of this chapter, district-governing officials will be referred to as board members. Most types of districts require by law that board members are electors, or at least own property within the boundary of the district. The number of board members varies, as does the length of their terms. For specific requirements, districts should refer to the Oregon Revised Statute that governs their type of district. (See Formation chapter for list of applicable statutes.)

District board members are public officials who must act in the best interest of the public and are accountable to the public through federal, state, and local laws. Governance is a responsibility that must not be taken lightly. Public laws concerning district elections, public records and meetings, investments, and budgeting can be time consuming and frustrating. Board members can become objects of public scrutiny and criticism if district affairs are not managed properly.

2. DISTRICT POWERS

Districts have only those powers, which are expressed in, or necessarily implied from, Oregon Revised Statutes (ORS). Expressed powers are found primarily in each district's Principal Act (Oregon Revised Statute that governs their type of district). Implied powers are acts necessary to carry out expressed powers.

There are several types of power in addition to expressed and implied powers:

- Intramural and Extramural powers: Powers, which can be exercised within or outside of district boundaries. For example: owning property.
- Governmental and Proprietary powers: Powers exercised in the district's governmental capacity (e.g. policy making) or powers exercised like a business (e.g. operating a marina or selling water).
- Legislative or Administrative powers: The power to adopt policy as opposed to the power to implement policy. For example: adopting a budget is legislative; spending the money is administrative.

- Quasi-judicial power: The power to adjudicate. Requires a decision based on the law and the evidence presented at a hearing. Requires due process. For example: appeal of termination by an employee.

Delegation of Power

A district can delegate some types of power. Delegation is governed by the Constitution and statutes.

Powers can be delegated vertically (e.g. down to a staff person, consultant, or committee) or horizontally (over to another government agency).

Legislative power cannot be delegated; only administrative or quasi-judicial power can be delegated. Only the Board can exercise legislative power.

Administrative power can be performed either by the Board or delegated to staff, consultants, or committees. If funds permit, most administrative power should be delegated to trained or experienced staff or professionals. This is particularly true with complicated administrative duties like hiring, firing, and contracting.

Board members should use caution in exercising administrative power because of the potential of liability, workers' compensation issues, staff morale issues, and other considerations.

All delegations of power should be clear and in writing (e.g. a job description, employment contract, personnel manual, resolution, etc.).

Limitations on Powers

- Federal limitations: Federal Constitution and statutes impose limitations on a district's powers. For example, districts must afford the rights of due process, equal protection, and non-discrimination in matters such as labor, employment, ratemaking, and termination. Districts must also respect federal environmental and safety regulations.
- State limitations: The State Constitution and statutes impose the same limits as above, but also impose restrictions regarding records, meetings, land use, contracting, budgeting, borrowing money, and a myriad of other regulations.
- Judicial limitations: Districts are also limited in their exercise of power by judicial decisions, which have interpreted and applied federal, state, and local laws.

3. POWER AND RESPONSIBILITY OF BOARD MEMBERS

District board members have no individual powers separate from the powers of the board, and have no authority to act individually without delegation of authority from the board.

- Board members only have the right and responsibility to participate in board meetings and vote on district matters as part of the board.
- Acting without authority can cause personal and district liability.

Supervision of staff: Individual board members have no individual authority to direct district staff or administrative activities without delegation of such authority from the board.

- Delegate administration to staff, if funds permit, and require compliance with such delegation.
- The solution to poor administration is training, and if training fails, replacement of administrators. The solution is not micro-management by board members.

4. OFFICE HOLDING

There are several constitutional and statutory limitations and requirements governing election to public office. Some restrictions apply before election and some during the term of office.

Eligibility for Office

Each district will have in its principal act the criteria for eligibility for office in that district. In some districts, board members must be citizens and residents of the area. In other districts, board members must own property. In most districts, board members must be an elector. In addition, board members may be ineligible if they have been convicted of a felony, adjudged mentally incapacitated, convicted of taking bribes, threats or unlawful rewards, or advocating the overthrow of the government.

Maintenance of Eligibility

Board members must maintain their eligibility throughout their term of office. For example, if residency is an eligibility requirement, a board member who moves out of the district during the term of office will lose his or her position.

Employees as Board Members

ORS 198.115 provides that a district can adopt an ordinance or resolution providing that employees are not eligible to serve as board members. Ordinance or resolution must take effect at least one year prior to the next regular district election.

Dual Office Holding

In Oregon, volunteer public officials are encouraged to hold as many unpaid public offices as they wish. For example, a person may be on the school board and the fire district board at the same time. Such dual office holding is not a conflict of interest. The only limitation is that a public official cannot hold two lucrative offices (i.e. the same person could not hold the position of sheriff and district attorney).

Resignation of Office

The holder of a public office may resign the office effective at a future date that is prior to the expiration of the term of the office. A resignation is binding unless withdrawn in writing by the end of the third business day after the resignation is made.

Except where an election is required by law, the appointing authority required by law to fill a vacancy may begin the process to fill the vacancy and may select a successor prior to the effective date of the resignation.

Vacancies in Office

Vacancies on a district board are to be filled by appointment by a majority of the remaining board members, and, in most districts, the appointee serves until a successor can be elected at the next regular district election. The regulations governing filling vacancies are found in ORS 198.320.

Compensation and Expenses

ORS 198.190 allows districts to pay board members up to \$50 per day as compensation for serving as a board member. Such compensation does not constitute the holding of a lucrative office. Districts need to withhold the appropriate taxes for any compensation given to a board member. Districts may also reimburse board members for reasonable expenses incurred in performing official duties.

5. DECISION MAKING PROCESSES

District board members typically make legislative, administrative, and quasi-judicial type decisions.

- Legislative decisions constitute law or policy and are generally afforded deference by the courts.
- Administrative decisions generally carry out or implement previously adopted law or policy, and courts will be less lenient in reviewing administrative decisions to assure that they comply with the policy that they are to implement.

- Quasi-judicial decisions must comply with state and federal due process rights, and courts will review such decisions rather strictly to assure that due process has been complied with.

Parliamentary Procedure

There is no statute governing the parliamentary procedure of special district boards. Therefore, boards can determine what procedural rules to employ. Some districts merely adopt Robert's Rules of Order or other model rules of procedure. Other districts draft and adopt their own procedural rules, which can be tailored to their own needs. It is recommended that boards adopt their own rules, because Robert's Rules of Order is intended primarily for large legislative bodies, which need detailed rules to maintain order. Small boards, however, are generally better served by custom rules designed to meet the needs of the board and the residents of the district.

Board rules should contain the regular meeting date, time, and place; the format of the agenda; the person responsible for preparing the agenda; the decorum and participation obligations of the public and board members; penalties for disrupting a meeting, etc.

Forms of Action

Normally, districts take action by use of ordinances, resolutions, and motions. Districts also have the authority to adopt rules and regulations, but would normally do so by adopting either an ordinance or a resolution.

- Ordinances are generally used to adopt law or policy that applies to the residents of the district. They are subject to statutory adoption processes found in ORS 198.510 to 198.600. That statutory adoption process must be followed strictly or the ordinance may be found invalid. Ordinances are subject to initiative and referendum laws.
- Resolutions are normally used to express policy or opinion of the board or to approve an action such as a contract or major expenditure of funds. A resolution should not be used for adoption of law or policy that applies to the residents of the district. A resolution may be used for the adoption of internal regulations such as personnel rules.
- Motions are simply devices to place a matter before the board for consideration. It is a procedural device rather than a written document. Motions should not be used to adopt or approve a matter that will have lasting effect beyond the meeting itself.

Quorums

District boards must have a quorum in order to meet. A quorum is more than fifty percent (50%) of the members of the entire board. A meeting of less than a quorum is not an official meeting, nor is it governed by public meeting laws.

Voting

In Oregon, it takes a majority of the entire membership of the board to adopt a motion, resolution or ordinance, or take any other action. A majority of a quorum is insufficient.

6. BONDING

A district board shall require a bond or irrevocable letter of credit of any board member or employee of the district who is charged with possession and control of district funds and properties. The board shall fix the amount of the bond, and the premium shall be paid from district funds. The letter of credit must be issued by a commercial bank (ORS 198.220).

All board members or employees can be bonded for a minimal additional charge to the cost (premium) of bonding only one board member. It is practical and beneficial to take the necessary steps to bond all board members and the district manager.

7. ETHICS AND CONFLICTS OF INTEREST

The Oregon Government Ethics Commission consists of a seven member board charged with the responsibility of enforcing and interpreting the Code of Ethics outlined in Oregon Revised Chapter 244.

State agencies and local governments may choose to adopt the Code of Ethics or adopt their own ethics policies to protect them from government ethics violations. Rules or policies interpreting the provisions of ORS 244 must be consistent with the provisions of the chapter and need to be approved by the Oregon Government Ethics Commission (OGEC).

OGEC may levy fines for ethics violations up to \$5,000 per violation. In lieu of or in conjunction with finding a violation of law or imposing a civil penalty, the commission may issue a written letter of reprimand, explanation, or education.

Special district board members are not required to file financial records with a district unless the district is a metropolitan service district or a port governed by ORS 777.005 to 777.725 or 777.915 to 777.953. To avoid problems with conflicts of interest, it may be wise to require board members to submit financial records, which at least indicate their degree of investment and property ownership within the district. This can be accomplished by enacting a resolution requiring board members to disclose their financial records.

Under Oregon's Conflict of Interest law (ORS Chapter 244), there are two types of conflicts of interest:

8. Potential Conflict of Interest

Any action or any decision or recommendation by a public official, including staff, the effect of which could be to the private pecuniary benefit (money or something of economic value) or avoidance of detriment (relief from financial obligation or other financial loss) of the person or the person's relative or business.

Actual Conflict of Interest

Any action or any decision or recommendation by a public official, including staff, the effect of which would be to the private pecuniary benefit (money or something of economic value) or avoidance of detriment (relief from financial obligation or other financial loss) of the person or the person's relative or business.

Exceptions

Where the pecuniary benefit or detriment arises out of one of the following:

- An interest or membership in a particular business, industry, occupation, or other class required by law as a pre-requisite to the holding by the person of the office or position.
- Any action in the person's official capacity which would affect to the same degree a class consisting of inhabitants of the state, or a similar class consisting of an industry, occupation, or other group including one of which or in which the person, or the person's relative or business with which the person or relative is associated, is a member or is engaged.
- Membership on a private, nonprofit 501(c) corporation board.

Disclosure Requirements

All conflicts, whether actual or potential, must be disclosed on the record prior to consideration of the issue. The disclosure must be recorded in the minutes. In addition, a notice of the actual or potential conflict and how it was disposed of may be provided to the Oregon Government Ethics Commission within a reasonable period of time.

- A public official may not appoint, employ, promote, discharge, fire, or demote a relative or member of their household unless they comply with the conflict of interest provisions.

Participation by the Official after Disclosure of a Conflict

- Potential Conflicts: Official may participate and vote, unless participation would violate the Code of Ethics prohibition of use of office for financial gain.
- Actual Conflicts: Official may not participate or vote unless their vote is necessary to take official action. Discussion or debate of the issue is still prohibited.

Prohibited Regardless of Disclosure Under the Oregon Code of Ethics (ORS 244.040), the following are prohibited regardless of disclosure:

- Use of or an attempt to use official position for financial gains or to avoid financial detriment that would not otherwise be available but for the public official's holding of the official position or office.
- Use of confidential information.
- Promises of future employment.
- Receipts of gifts over \$50 in a calendar year received by a public official, relative or member of their household from anyone who has a legislative or administrative interest in the business of the district.
- A public official may not participate in any interview, discussion or debate regarding the appointment, employment, promotion, discharge, firing, or demotion of a relative or member of their household. They may however serve as a reference, provide recommendations or perform other ministerial acts that are part of their normal job functions.
- A person may not, for two years after they cease to hold a public official position, have a direct beneficial interest in a public contract that was authorized by:
- The person acting in the capacity of a public official;
or
- A board, commission, council, bureau or other governing body of a public body of which the person was a member when the contract was authorized.

Exemptions from the Legal Definition of "Gifts"

- Contributions defined as the payment, loan, gift, forgiving or indebtedness, or furnishing without equivalent compensation or consideration, of money, services other than personal services for which no compensation is asked or given, supplied, equipment or any other thing of value;
- Gifts from relatives or members of the household of the public official or candidate.
- Unsolicited tokens with resale value of less than \$25.
- Informational material, publications or subscriptions related to the recipient's performance of official duties.
- Admission or cost of food or beverage provided to public official, relative or staff, as a "reception, meal or meeting held by an organization when the public official is representing its local government.
- Reasonable expenses paid by a local government to which public body pays dues, or 501(c)(3) that receives less than 5% of funding from for profit entities, to attend a convention, fact-finding mission or trip, or other meeting at which public official is to deliver a speech, make a presentation, participate in a panel, or represent state or local government.
- Reasonable food, lodging or travel expenses for the public official, relative, member of household or staff, when public official is representing state or local government at a "officially sanctioned trade promotion or fact finding mission" or "in officially designated negotiations, or economic development activities, where receipt of the expenses is approved in advance."

- Food or beverage consumed by a public official or candidate acting in an official capacity in association with the review, approval, execution of documents or closing or a borrowing or investment or other financial transaction.
- Waiver or discount of registration expenses or materials provided to the public official or candidate at a continuing education event needed to satisfy a professional licensing requirement.
- Expenses provided by one public official or candidate to another for travel inside the state to or from an event that bears a relationship to the public official's office.
- Food or beverage consumed by a public official or candidate at a reception where the food and beverage is an incidental part of the reception and no cost is placed on the food or beverage.
- Entertainment provided to a public official or candidate or relative or member of household that is incidental to the main purpose of another event.
- Entertainment when the public official or candidate is acting in an official capacity and is there for a ceremonial purpose.
- Anything of economic value offered to or solicited or received by a public official or candidate, or a relative or member of the household of the public official or candidate.
- As part of the usual and customary practice of the person's private business, or the person's employment or position as a volunteer with a private business, corporation, not-for-profit corporation or other legal entity operated for economic value.
- That bears no relationship to the public official's or candidate's holding of, or candidacy for, the official position or public office.

For further clarification, please refer to Oregon Administrative Rule 199, Division 5, Gifts at http://arcweb.sos.state.or.us/rules/OARS_100/OAR_199/199_005.html.

POLITICAL ACTIVITIES

Generally, ORS 260.432 states that a public employee (includes any public official, paid or unpaid, who is not elected) may not, while on the job during working hours, promote or oppose election petitions, candidates or ballot measures. Additionally, no person (including elected officials) may require a public employee (at any time) to do so.

Elected Officials May

- Advocate a political position - they are not considered a "public employee" for the purposes of ORS 260.432.
- Vote with the other elected officials of a governing body (such as a school board, city council, or county commission) to support or oppose a ballot measure, and publicly discuss such a vote – but must not use the public employee staff time to assist in this.
- Perform campaign activity at any time, but must take caution not to involve any public employee's work time to do so.

Notices

Public employers are required to post a notice that advises employees of the rights and duties they have regarding campaigning. The text of this notice is set forth in ORS 260.432(3).

Campaigning

ORS 260.432(2) provides that public employees have the right to express personal political views. Clearly the district can prevent campaign buttons and stickers from being affixed to any district equipment or facilities, but it is problematic whether it is a violation of the law for non-uniformed employees to wear campaign buttons while on the job.

Use of Public Funds to Influence Ballot Measures

Pursuant to ORS 294.100, public funds may not be used for campaigning. Public officials who authorize such expenditures are personally liable to taxpayers for their return (ORS 294.100(2)). However, public funds may be used to inform the public regarding measures.

The Federal Hatch Act, 7 USC Section 361a-361i, is applicable to any state or local government employee who is funded by federal resources. The Hatch Act is even more restrictive on employee's political rights than is the Oregon law.

9. LIABILITY AND EXPOSURE

District board members can be held liable for wrongful actions of the board. The potential for a lawsuit exists, although historically the number of governing boards found liable has been slight. Governments are no longer governed by the principal of sovereign immunity, which in the past protected them from liability.

Oregon Tort Claims Act (OTCA)

ORS 30.260 to 30.300 governs district tort liability, provides for defense and indemnity of public officials, and limits damages.

Tort Liability

Districts are liable for the torts of their officers, employees, and agents acting under the scope of their employment or duties. This does not include contractual or criminal liability.

Immunity

Districts and their officers, employees and agents are immune from tort liability for:

- Injuries covered by workers' compensation.
- Claims regarding assessment or collection of taxes.
- Claims based on performance or failure to perform a discretionary function, even if the discretion is abused.

Indemnity

District officials, employees, and agents must be indemnified by the district for any tort claim, groundless or otherwise, occurring in the performance of duty. Indemnity is not required for malfeasance or wanton or willful neglect of duty. Indemnity includes payment by the district or its insurer of any damages attributable to the act or omission of the official, employee, or agent.

Defense

Unless investigation demonstrates that a claim arose out of the official's or employee's malfeasance or willful or wanton neglect, the district must provide counsel to defend the claim against the official or employee. Normally, the district's insurer provides the defense.

Officials/Employees Names as Defendants

Normally, a lawsuit naming an official or an employee as defendant can be converted by motion into a claim against the district only.

Limitations on Damage Awards

Under the OTCA, damage awards against districts or their officers, employees, or agents are limited to:

- \$100,000 property damage per claim
- \$500,000 property damage per occurrence.

- \$1,000,000 for all other claims per occurrence (Increases per occurrence by \$66,666 per year beginning 7/1/2010 for five years until limits reach \$1,333,333). After caps are reached, caps are adjusted annually by 3% or the Portland-Salem Consumer Price Index, whichever is lower.
- \$500,000 for all claims arising out of a single occurrence (Increases per claim by \$33,333 per year beginning 7/1/2010 for five years until limits reach \$666,666). After caps are reached, caps are adjusted annually by 3% or the Portland-Salem Consumer Price Index, whichever is lower.
- No punitive damages.

Discretionary Immunity

Under Oregon law, public bodies and their officers, employees, and agents are immune from liability for “any claim based upon the performance of or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused” (ORS 30.265).

A discretionary (immune) act is an act in which a policy decision is made, while a ministerial (non-immune) act is an act which implements a policy decision which has already been made.

Establishing that an act was discretionary allows a court to dismiss an action against the public body before trial. It is well worth some planning to create a record to prove the discretionary nature of acts of your district.

What to Do if Sued

When the district or its officials or employees receive or are served either a tort claim notice or a summons and complaint: Immediately provide the document to the district’s counsel, insurance agent, and insurer.

- Do not discuss the matter publicly. Executive sessions may be called to discuss pending or threatened litigation with district counsel.
- Preserve attorney-client privilege.
- Gather and preserve all related documentation.

10. BOARD POLICIES

Every district board should have a policy manual to orient new board members and act as a guide for conducting public business, meetings, and behavior. A policy guide will help eliminate unnecessary arguments and confusion, because the rules will be specified in writing. Changes to the policies should be formally approved at a board meeting and the policies officially amended. All members should be made aware of the changes.

11. RESOURCES

Actions and Suits (ORS Chapter 30): <http://www.leg.state.or.us/ors/030.html>

Campaign Finance Regulations (ORS Chapter 260): <http://landru.leg.state.or.us/ors/260.html>

County and Municipal Finance Administration (ORS Chapter 294) <http://www.leg.state.or.us/ors/294.html>

Oregon Government Ethics (ORS Chapter 244): <http://www.leg.state.or.us/ors/244.html>

Oregon Government Ethics Commission (OAR 199) http://www.sos.state.or.us/archives/rules/OARS_100/OAR_199/199_tofc.html

Oregon Government Standards and Practices Law: Guide for Public Officials

http://www.oregon.gov/OGEC/forms_publications.shtml

Restrictions on Political Campaigning for Public Employees

http://www.sos.state.or.us/elections/publications/260.432_quickref.pdf

Special District Elections (ORS Chapter 255): <http://www.leg.state.or.us/ors/255.html>

Special Districts Generally (ORS Chapter 198): <http://landru.leg.state.or.us/ors/198.html>

UMATILLA MORROW RADIO & DATA DISTRICT BOARD MEMBER RESPONSIBILITIES POLICY

Communications

- Develop regular channels of communication with board members and staff.
- Encourage participation of staff members on appropriate committees.
- Develop procedures for bringing staff opinions and recommendations to the board, as well as board opinions and decisions to the staff.
- Invite clients, non-board members, other local governments, and groups to board or committee meetings or other types of board sponsored assemblies to explore and develop approaches to common concerns.
- Recognize that certain information obtained at board meetings may be non-public and confidential making disclosure a breach of trust.
- Make use of educational sessions, workshops, and seminars to gain a further understanding of issues.
- Respect the opinion of other members and accept the principle of majority rule in board decisions.

Financial

- Approve the annual budget.
- Monitor district finances and the budget, setting policy or taking action to ensure the fiscal integrity of the organization.

Policies, Objectives, and Plans

- Abide by and become familiar with all laws and policies governing the operation of the district.
- Approve the annual strategic plan or plan of operations.
- Approve policies for the organization.
- A board member's basic function is policy making - not administrative.
- Develop and approve long-range plan of growth and development for the district.
- Approve specific important projects.
- Approve any significant departure from established plans or policy.
- Receive and pass on committee or other planning body recommendations.
- Ensure that program objectives are assigned to the proper planning or implementing subgroups.
- Where applicable, bring other local governments or community groups into the planning and decision-making process.
- Approve contracts binding the district.
- Approve major changes in the district's organization or structure.
- Approve board plans of action.
- Pass district resolutions, or adopt ordinances.

Management

- Select the district president and other officers.

- Hire the district manager.
- Define the duties and responsibilities for the president, district manager, officers, and major committee chairpersons.
- Select legal counsel and consultants for the board.
- Authorize officers or board agents to enter into contracts or to sign other written instruments and to take financial actions.
- Approve the plan, form, and amount of management compensation, that is, salaries, bonuses, vacation, travel, and so on.
- Evaluate the performance of the district manager.
- Approve the form and amount of reimbursement for board members.
- Approve programs for management development.
- Provide advice and consultation to management on matters within the purview of the board's responsibilities.
- Recognize that the district manager should have full administrative authority for properly discharging the duties of managing the operation within the limits of the established board policy.
- Give the district manager the respect and consideration due dedicated people in their community service role.

Employee Relations

- Approve any employee benefit plans.
- Insist that personnel complaints go through a proper chain of command. If not resolved, only then should the board get involved.
- Approve contracts with and between any unions involved with the district.
- Do not allow personnel problems, other than problems with the district manager, to be brought into board considerations.

Control

- Identify types of information needed by the board to analyze effectively the district's directions and achievement. Create a process for collecting and analyzing information.
- Realize that the citizens within the boundaries of the district are the true "owners" of the district.
- Review and assess the organization's performance against objectives, resources, plans, policies, and services rendered.
- Analyze major "shortfalls" in achievement.
- Identify obstacles, sense-changing needs, and propose new directions or goals.
- Ensure that the district is in compliance with all federal, state, and local laws.

Board of Directors

- Motivate board members to accept positions of leadership and responsibility.
- Appoint, change, or abolish committees of the board.
- Define powers and responsibilities of committees of the board.
- Appoint and compensate outside auditors and legal counsel.

- Approve contracts for professional services required by and for the board.
- Do not make commitments on any matter that should come before the board as a whole.
- Recognize that an individual board member has no legal status to act for the entire board.
- Realize that if a quorum of the board meets to make a decision or to deliberate, then the meeting is considered a public meeting and must comply with all of the requirements of the Oregon Public Meetings Laws.
- Discussions on matters of overall policy outside of regular board meetings can violate the open meetings law.

Public Accountability

- Keep the public informed on all district matters.
- Make decisions based on the wishes and needs of the public.
- Spend the district's money with prudence and trust.
- Place the needs of the public above the ambitions of the board or the district.