



MINUTES

SPECIAL MEETING/TRUSTEE WORKSHOP OF THE BOARD OF TRUSTEES OF  
BLAINE COUNTY SCHOOL DISTRICT NO. 61  
MONDAY, JULY 18, 2011 - 6:00 P.M.  
DISTRICT OFFICE

**I. Call to Order and Welcome**

Chairman Steve Guthrie called the Special Meeting/Trustee Workshop of the Board of Trustees of Blaine County School District No. 61 to order at 6:00 p.m. and welcomed everyone in attendance.

Present were Board Members Paul Bates, Shawn Bennion, Kathryn Graves and Don Nurge. Also present were School District Attorney, Adam King and Board Clerk, Laurie Kaufman.

Chairman Guthrie stated that a quorum was present.

**II Ann Additions, Corrections, Modifications or Substitutions to the Current Agenda**

None.

**III. Legal Orientation: Open Meetings and Ethics in Government – Adam King, School District Attorney**

Adam King's presentation detailed the Idaho Open Meetings Law and Ethics in Government as it applies to Blaine County School District and the Board of Trustees. His PowerPoint presentation, *Legal Orientation – Open Meetings & Ethics in Government*, is book-marked for your reference.

There being no further business to discuss, Board Member Kathryn Graves made a motion to adjourn the meeting. The motion was seconded by Paul Bates and passed unanimously.

The Special Meeting/Trustee Workshop of the Board of Trustees of Blaine County School District No. 61 adjourned at 7:20 p.m.

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Steve Guthrie, Board Chairman

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Laurie Kaufman, Board Clerk

**BCSD TRUSTEES**  
**Legal Orientation**  
**Open Meetings & Ethics in Government**

Presented by

Adam B. King

Attorney at Law, PC

General Counsel to Blaine  
County School

# Whom do I represent?

- Good question!
- Attorney General: “It depends.”
- I represent the entity Blaine County School District No. 61 as embodied by the Board and executives.
- Representation varies with circumstances.

# Examples of Representation

- Board Meeting – Board and individuals
- Employee subpoenaed to testify in court (social worker, maintenance person, etc.)
- Conflicts can arise with internal disputes
- Privilege/duty of confidentiality owed to and owned by entity

# Open Meetings


## - Meeting Purpose

- To conduct the Board's business
- Idaho law says: "Government is a spectator sport"
- Public comment is optional and is a *comment* – it does not need to be a question and answer session. (And probably should not be unless you like very long meetings.)

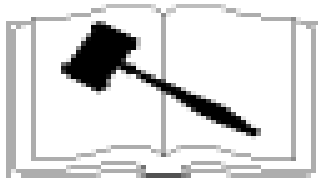
# Effective Meetings

- Organized
- Purposeful
- Respectful
- Robert's Rules of Order
- Not too long...




## The POLICY:

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

{Idaho Code § 67-2340}



## The RULES:

-  All **MEETINGS** of a Government Body shall be open to the Public (unless exception applies)
-  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 § 67-2342}

# Is it a Meeting???

- A “**Meeting**” means
  - The convening
  - Of a governing body (= **quorum OR a committee of at least 2 that can make recommendations to Board**)
  - to make a **Decision** (any action where a vote is required)
  - to **Deliberate** (= *receive or exchange* of information relating to a **Decision** which relates to a matter then pending before the Board for **Decision**)
  - See Idaho Code Section 67-2341 for definitions

# Can I go to ...

- The supermarket or a party with other Trustees?
  - Yes, just don't talk about Board business
- A PTO Meeting?
  - That depends...
  - What is being discussed?
  - Is it something that is before the board
  - ... SEE NEXT SLIDE

# AVOID

- The **APPEARANCE OF IMPROPRIETY**
- Something could come up at a PTO meeting that is directly before the board

# Best Practice: Outside Meetings

- If Trustees are interested in going to PTO meetings the best practice is to notice them as Special Board Meetings.
- The Agenda would say “Attendance at PTO Meeting”
- Do not come to order
- Do not discuss or vote
- Avoid the Appearance of Impropriety!
- Ask, ask, ask!

# Meeting Requirements

- Required for all meetings
- 48 hr posting of agenda
- **Can add to agenda in good faith**

## **RECORDS:**

- ALL meetings must have minutes  
(who, general discussions, motions....)

## **EXCEPTIONS TO MINUTES:**

- Executive sessions
- “Ministerial or Administrative”

# Tele - Meetings



- ✓ **Now specifically allowed - I.C. § 67-2345(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**

# Executive Session Rules


- **Executive Sessions**
  - May occur during regular or special meetings.
  - Require approval of two-thirds of the Board by roll call vote and 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 67-2345(1)(a) to consider hiring a public officer, employee, staff member or individual agent.
  - Final actions/decisions must be made in public session.

# Serial Meetings

- This is exceedingly important
- A quorum ***must not*** communicate orally or via e-mail (or text, IM, etc.) about issues before the board either
- Simultaneously OR
- **Serially**
- You cannot send an e-mail to a group of trustees or have an e-mail circulate – that is a violation of the open meeting laws!
- There is an exception for purely administrative issues.

# Executive Session

## Reasons for Executive Session

 (a) through (j) and (2) – labor negotiations

 There are NO others. If it doesn't fit, no executive session.

# Executive Session

## Most common use:

1. (a) and (b) issues regarding personnel or students, but no general discussion of staffing
2. (c) labor negotiations, real property
3. (d) records exempt under “Public Records Act” **e.g. Legal Memorandum**
4. (f) litigation – with your attorney
5. (j) claims or potential claims – with risk manager or insurer

# Executive Session







## **How to go into E/S:**

- Motion and second from member with statutory reference and reason**
- Individual roll call vote recorded in minutes**
- Requires 2/3 majority of quorum**

# Executive Session

## Suggestions:

-  **Give time frame to attendees and send message if that time changes.**
-  **Remind all in executive session that all matters are confidential!!**
-  ***Trustees – even if you disagree with an action the E.S. is confidential***
-  ***Crime or fraud – consult with an attorney before divulging***

# Executive Session

**W**ho can attend?

 All “Governing Board” members

 Anyone else that Governing Board members wish to attend.

 May have witnesses come and go as needed

# Executive Session Drift...

**W**hat to do with unexpected issues:

 **If it deals with non-executive session issues**

 **STOP** the discussion and move to executive session

# Executive Session

**No** executive session may be held for the purpose of taking any final action or making any final decision.

# Confidentiality vs. Privilege

- What transpires in an executive session is **confidential**.
- Confidentiality is an agreement among us all not to divulge information.
- Revealing information could be a serious breach of fiduciary duty and harm individuals or the School District.
- Privileged communications are different...

# Privilege

- A privilege is a rule of evidence.
  - Attorney – Client
  - Doctor – Patient
  - Priest/Minister/Rabbi – Penitent
  - Etc. ... they are recognized under the law.
- A privilege is different than something which is confidential ...
- But for our purposes: “Don’t talk about things from executive sessions.”

# Executive Session Pitfalls



**Going into executive session when you shouldn't.**



**Not using executive session when you should.**



**Straying from the subject while in executive session.**



**Disclosing information to others.**

# Fine (\$50 - \$500) or ...Cure?

- Idaho Code § 67-2347(7) is new
- Cure process
  - Self-recognize or respond to a complaint
  - Publicly acknowledge error
  - Correct via *nunc pro tunc* declaration
  - Bars civil penalty

**WHEN IN DOUBT  
DON'T HESITATE TO CALL ME OR ...**

**“Open the meeting!!”**

- Idaho Attorney General

# Information

- Open meetings
  - <http://www2.state.id.us/ag/manuals/openmeeting.pdf>

# Public Records

- The definition of Public Records is exceedingly broad:
  - “Public record” includes, but is not limited to, any writing containing information **relating to the conduct or administration of the public's business**
  - **prepared, owned, used or retained by any state agency, independent public body corporate and politic or local agency**
  - **regardless of physical form or characteristics.**

# “Writing”

- The definition of “writing” is nearly everything:
  - “Writing” includes, but is not limited to, handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds or symbols or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums or other documents.

# Why Do We Care?

- Basically all of your communications **as a Trustee** are public records. This includes:
  - Memos, faxes, e-mail, texting, etc. etc.
  - Even to or from your personal e-mail
- Some of these **may** be protected by a privilege, such as communications from me as the School District attorney.
- Most are not protected

# Public Records Take-Away

- Your communications related to the District are Public Records
- There are some protections but not many ...
- The vast majority of Public Records can be subpoenaed
- So communicate in a manner that **assumes** that someone that you did not anticipate may see it some day... be professional

# Communications

- **Assume** that your school related e-mails could be revealed under certain circumstances ... like a public records request. [E.g. day-care]
- Disclosures: For LEGISLATIVE acts there is no affirmative duty to disclose communications. But they are still public records!
- For QUASI-JUDICIAL acts, there is an affirmative duty.
- Legislative v. Quasi-Judicial

# Improper Communications

- At a Board of Trustee's meeting, please do not
  - send or receive e-mail or texts either within or outside the board
  - Seek information on the internet related to the meeting
- These would be serious violations of the open meeting laws as the information **must** be part of the record
- Government is to be conducted in public!

# Ethics in Government and Title 33 Idaho Code

- The ethics in government act is a complex set of fairly vague rules designed to eliminate and or advise the public of potential conflicts.
- It is sensitive to the fact that many communities in Idaho are quite small ...
- The only plumber in town may be the Mayor's brother...

# Title 33 Provisions

- The Attorney General has opined that the Title 33 provisions are more specific to schools and take precedence over the Ethics in Government Act.
- Idaho Code § 33-507: Trustees shall have no pecuniary interest directly or indirectly in any contract or other transaction pertaining to the maintenance or conduct of the school district...

# No Gifts - Misdemeanor

- Idaho Code § 18-1356 forbids giving a gift to public servants with discretionary functions regarding contracts, claims, etc.
- There is an exception if the gift is via kinship, or if it is less than \$50 *and* incidental to personal or professional contacts *and* there is no substantial risk of undermining official impartiality
- Examples...

# Appearance of Impropriety

- If you *think* there is a conflict of interest or anything improper, bring it to my attention! It is much easier to solve or discuss or strategize sooner rather than later.
- The public needs to feel comfortable.
- Never get in a fight with anyone who buys ink by the barrel!

# Conflicts of Interest

- See Idaho Code Section 59-703
- No pecuniary benefit to official, member of household, business of official or member of household.
- There are exceptions, but they should be discussed, don't assume they apply or do not apply.

# Trustee Terms

- The law changed as of July 1<sup>st</sup>.
- Newly elected Trustees now serve four year terms.