TRUSTEES
Ways to stay out of trouble!
January 2016

Jim McNall
ICRMP – Risk Management Specialist
Personal Liability

- As a public official in Idaho the it is very unlikely that you will ever be personally liable for your actions on behalf of the District as long as your actions are;

  Within “course and scope”.

And not intentional or malicious.

Idaho Tort Claims Act, Idaho Code Title 6 Chapter 9
ICRMP
Idaho Counties Risk Management Program

- JPA now 935 members.
- Established 1985 – why?
- Governance – we are a government entity
- Provides property and liability coverage.
- Risk management assistance.
  - Training
  - Direct assistance – 336-3100 or intake@icrmp.org
  - Forms
ICRMP Policy

- Any elected or appointed official serving as a volunteer or employee of the named insured, as well as any volunteer or employee of the named insured while acting within the scope of their duties as such. This does not include any appointed or elected official or employee who is serving the named insured as an independent contractor.
Library Claims

1. Most costly – property claims – books don’t like water!

2. Driving – bookmobiles are costly to repair.


Slips trips and falls.
WHAT TO NOT DO

- **Roles & Responsibilities**
  - Authority of individual board members.

  - The board sets policy and exercises its authority as a single body, operating in public meetings preceded by notice.

- An individual governing board member has no authority to supervise, discipline or fire employees.
Role of the Board (partial)

33-2720. Powers and duties of the board of trustees.

(1) The board of trustees of each library district shall have the following powers and duties consistent with the laws of the state of Idaho:

(b) To establish policies for the administration, operation and use of the library or libraries under its control;

(c) To employ and evaluate a library director or library director team to administer the library;

(d) To create job descriptions, personnel policies, and compensation packages for library personnel;

(e) To establish an annual budget and to oversee the financial management of the library district;
Role of the Director

33-2721. Library director - -----

---- The library director or director team shall advise the board, implement policy set by the board, and shall acquire library materials, equipment and supplies.

--------(2) The board shall fix and pay employee salaries and compensation, classify employees, adopt personnel policies, and discipline or discharge any library director --- for cause. The library director ----- and shall discipline and discharge any employee for cause, as necessary, according to the written policies of the board. (2002)
The board of trustees of each city library shall appoint the library director, who shall serve at the pleasure of the board. The library director shall advise the board, implement policy set by the board, supervise all library staff and shall acquire library materials, equipment and supplies. The library director shall attend all board meetings but shall not vote.
Public Libraries

- With the recommendation of the library director, the board shall hire other employees as may be necessary for the operation of the library in accordance with city policies and procedures. These employees shall be employees of the city and subject to the city's personnel policies and classifications unless otherwise provided by city ordinance.
Role of the Staff

- Do all of the work
- Keep everybody happy
- Be aware of all of the rules
- Enforce them (see “happy” above)
- Get along with co-workers (at least pretend)
Meetings
Meeting Purpose

- To conduct the Board’s business

- Issues may be either:
  - Executive
  - Legislative
  - Quasi-judicial?

- Gather needed (and wanted) input

- “Spectator sport”- The public gets to watch - and participate when invited.
  - Item on agenda for public comment (rules?)
  - Invited by presider to comment on agenda topic.
    - Hearings are different!
Conduct of Meetings

- **Agenda – who sets?**
  - Is the topic – not the person.
  - May indicate when public input is appropriate.
    - Usually general policy decisions.

- Allow (encourage) participants to discuss.

- Motions – need to be succinct, clear, comprehensive.

- Voting?

- Order of business?
Role of the Chairman

- Conducts the meeting.
- Retains rights (obligations) to discuss and vote.
- Controls public input when it is allowed.
- Ideally:
  - Keeps the discussion to the agenda item.
  - Prohibits personal attacks and discussions of issues not before the Board.
The RULES:

- All meetings of a Government Body shall be open to the Public (unless exception allows)
- 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 §74-203}

The POLICY:

- Formulation of Public Policy is Public Business and Shall Not Be Conducted in Secret
{Idaho Code § 74-201}
DEFINITIONS:

MEETING:
Convening of the governing board

GOVERNING:
- Elected Board
- Appointed Board
  - Advisory Group
    - Committees
    - Sub – Committees
    - Study Groups

DELIBERATION:
The receipt or exchange of information relating to a decision. NOT talk about the weather.

DECISION:
A public policy action.
Quorum – Don’t bet on it!
Meeting Notices

■ Regular Meetings:

Post notice 5 calendar days in advance
Publish annually (post continually)

Special / Executive Meetings:

24-hour notice
Include statutory authority for executive session-only meeting
Additional requirements for libraries (2 day notice)

Emergency Meetings

Requires good faith effort to notify governing board members and media if requested
AGENDAS

An agenda is required for each meeting.

- Posted same as meeting notice
- Posted 48 hours (or 24 hours for “special” meeting)
- Only “good faith” amendments
- Motion and vote required for amendments made within 48 hours of, or during, the meeting to include reason
Voting

- Most issues may be decided by voice vote.
- Certain actions require each member’s vote be cast and recorded individually in the minutes:
  - Motions to go into executive session.
  - A member can request a roll call vote on any motion.
- **No voting by secret ballot.**
(1) All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;

(b) All motions, resolutions, orders, or ordinances and their disposition;

(c) The results of all votes, and upon the request of a member, the vote of each member, by name.

Always a record of what happened – not what you wish happened!
(2) Minutes pertaining to an executive session shall include a reference to the specific statutory subsection authorizing the executive session and shall also provide sufficient detail to identify the purpose and topic of the executive session but shall not contain information sufficient to compromise the purpose of going into executive session. (2009)
Executive Session Rules

- Executive Sessions

  - May occur during regular or special meetings.

  - Require approval of two-thirds of the board by roll call vote & 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 74-206 (1) (a) to consider hiring a public officer, employee, staff member or individual agent.

  - Final actions/decisions must be made in public session??
Executive Session

Most common uses:

I.C. §74-206

- Personnel selection and evaluation (a) and (b)
- Acquire interest in real property (c)
- Consider records exempt from disclosure (d)
- Discuss litigation – with your attorney (f)
- Consider claims or potential claims – with your risk manager or insurer (i)
Executive Session

Who can attend?

- All “Governing Board” members

- Anyone else that Governing Board members wish to attend.

- May have witnesses come and go as needed
Tele - Meetings

✓ Specifically allowed - I.C. §74-203(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
CURING VIOLATIONS

- Either self-recognition or written notice of an alleged violation
- If a violation - determine within 14 days and acknowledge the violation
- Then 14 days to void that action or actions
- A cure acts as a bar to the civil penalty
Violations

- Failure to comply with the provisions of Idaho Code §74-201 through 74-207 renders the action null and void.

- Any member who participates in a meeting that violates these provisions will be subject to a civil penalty.
  - up to $250
  - up to $1500 for “knowingly” participating
  - up to $2500 if subsequent to previous violation within last 12 months

Idaho Code § 67-2347 (74-208)
Public Records
(13) "Public record" includes, but is not limited to, any writing containing information relating to the conduct or administration of the public's business
"Writing" includes, every means of recording, including letters, words, pictures, sounds or symbols.
Collecting/Retaining Electronic Records

- Does form matter?
- Use of personal devices.
- Difficulty with policy.
- What is public (see definition)
- Shoshone court ruling.
- Washington Supreme Court article
PUBLIC RECORDS

Role of the Board

- Designate a custodian(s)
- Establish a fee schedule (>100pg or 2 hrs)
- Provide access to the District’s Attorney
- Adopt a records retention policy.
Elected Officials and Electronic Communication

- What is public? (definitions)
- Keep private and public records separate or at least able to be viewed easily.
- Open meeting violations?
- Remember – you are now the government.
Records Questions

Public records? Available to the public?

- Tapes of the Council meetings?
- Reference books used in your job?
- Names and home addresses of employees or elected officials?
- Wages/salaries of employees and EOs?
- Information in your personnel file?
- Records of calls/texts on your personal phone? - related to work? - examples
Ethics and Conflict of Interest
Ethical Breaches (cont.)

- Failure to disclose and step down when necessary in conflict situations.
- Misuse of public funds – embezzlement and other less obvious issues:
  - Use of public gas/cards
  - Overstatement of expenses
  - Presenteeism
ETHICS/CONFLICT OF INTEREST

- Idaho Ethics in Government Act—Idaho Code Title 74 Ch. 4

- What is a conflict of interest?

  - Any official action, decision or recommendation by a public official (elected, appointed or staff), which would be to the private financial benefit of the individual or a member of their household, or a business with which the person or a member of their household is associated.
ETHICS/CONFLICT OF INTEREST

- **Prohibition on Contracts with Officers**

- **Idaho Code 74-201**

  “Members of the legislature, state, county, city, district and precinct officers, must not be interested in any contract made by them in their official capacity, or by any body or board of which they are members.”
CRIMINAL ACTIONS

- Bribery & Corrupt Influence Act—Idaho Code Title 18, Chapter 13

  - Prohibited Acts

    - Bribery, Threats & Improper Influence
    - Compensation/Retaliation for Past Actions
    - Compensating Public Servants
    - Buying/Selling Political Endorsement or Influence
    - Using city funds or property for economic benefit without specific authorization from the city.
    - Using or disclosing confidential information for economic benefit.

  - No defense: Not in office yet, or lacked jurisdiction.
Employing Relatives (General)

\{I.C. 18-1359 \}

- No public official may:
  - (1)(e) Appoint or vote for the appointment of any person related to him by blood or marriage within the second degree, to any clerkship, office, position, employment or duty, when the salary, wages, pay or compensation of such appointee is to be paid out of public funds ----
If a relative holds a position when the official is elected, that relative retains his/her position and continues getting general and merit pay increases, bonuses and promotions just like all other employees. I.C. § 18-1359(5)

Just don’t treat the relative preferentially!
CRIMINAL ACTIONS

- Bribery & Corrupt Influence Act—Idaho Code Title 18, Chapter 13

  - Penalties for Violation

    - Any public servant violating the Bribery & Corrupt Influence Act is guilty of a misdemeanor and may be punished by a fine up to $1,000 and incarceration in the county jail for up to 1 year, or both.
18-5702. Punishment for misuse of funds.

- **Stealing less than $300:**
  - Not in charge of money - $1000 fine 1 yr in jail.
  - In charge of money – felony, $5000 and 5 yrs.

- **More than $300:**
  - Felony punishable by a fine up to $10,000, or by imprisonment in the state prison for not less than one (1) year nor more than fourteen (14) years, or by both.

- And repay including retirement!
Thanks for your time & attention!

Please don’t hesitate to call ICRMP if you have questions.