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Being a School Board Member

***Ten Practical Tips from a
School Lawyer's
Perspective***

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DISCLAIMER

The legal information presented is for training purposes only and is a general service to ASBSD member school boards and board members. The information provided is for general information purposes only, does not constitute legal advice, does not establish an attorney-client relationship, and should not be interpreted or used as a substitute for a legal opinion from your school attorney. Before making legal decisions, school boards, school board members and administrators should consult with their school attorney.

I Fiduciary Duty:

- Fiduciary: a person having a duty to act primarily for another's benefit.
- Business you transact, money and property you handle, is not your own

- Requires high degree of good faith.
- SDCL 55-7-3 defines good faith as something done honestly.

Best way to fulfill fiduciary duty
on the Board is to be effective.

How are you effective?

- read policies;
- come to meetings prepared;
- educate yourself; and
- remain current

Tip:

You are always acting on the staff, students and public's behalf; put them first.

II.

Board Duties and Responsibilities:

SDCL 13-8-39 Management of schools by board--General powers.

As provided and limited by law, the school board has general charge, direction and management of the schools of the district and control and care of all property belonging to it. The school board may levy taxes, borrow money, employ any necessary personnel, lease real and personal property, carry liability and other insurance, or in lieu of insurance, make other arrangements, including entering into agreements with others, which agreements may create separate legal or administrative entities pursuant to chapter [1-24](#), to protect and assist the school board in meeting obligations arising from such acts or omissions for which the school board may be legally liable, purchase all necessary books and equipment, purchase real property and erect necessary buildings for the operation of such schools.

Look at your job descriptions;
update and change if necessary

Know your chain of command and classification of employees:

- Classified,
- Certified,
- Probationary,
- Tenured, and
- Administration.

Go slow in the beginning and
be a good listener.

TIP:

The Board only exists when it is meeting.

III.

Conflict of Interest.

Different kinds of conflicts:

Incompatible or inconsistent with office

SDCL 13-7-3 Public offices incompatible with board membership.

No elective county, municipal, or state officer or the holder of any other office, the duties of which are incompatible or inconsistent with the duties of a school board member, shall be eligible for such membership.

Interest in contract:

Yourself or a strawman

SDCL 6-1-2 Conditions under which contract with local officer permitted--Contract voidable if conditions not fully met.

The provisions of § [6-1-1](#) are not applicable if the contract is made pursuant to any one of the conditions set forth in the following subdivisions, without fraud or deceit. However, the contract is voidable if the provisions of the applicable subdivision are not fully satisfied or present at the time the contract was entered into:

- (1) Any contract involving five thousand dollars or less regardless of whether other sources of supply or services are available within the county, municipality, township, or school district, if the consideration for such supplies or services is reasonable and just;
- (2) Any contract involving more than five thousand dollars but less than the amount for which competitive bidding is required, and there is no other source of supply or services available within the county, municipality, township, or school district if the consideration for such supplies or services is reasonable and just and if the accumulated total of such contracts paid during any given fiscal year does not exceed the amount specified in § [5-18A-14](#);

- (3) Any contract with any firm, association, corporation, or cooperative association for which competitive bidding is not required and where other sources of supply and services are available within the county, municipality, township or school district, and the consideration for such supplies or services is reasonable and just, unless the majority of the governing body are members or stockholders who collectively have controlling interest, or any one of them is an officer or manager of any such firm, association, corporation, or cooperative association, in which case any such contract is null and void;
- (4) Any contract for which competitive bidding procedures are followed pursuant to chapter [5-18A](#) or [5-18B](#), and where more than one such competitive bid is submitted;

- (5) Any contract for professional services with any individual, firm, association, corporation, or cooperative, if the individual or any member of the firm, association, corporation, or cooperative is an elected or appointed officer of a county, municipality, township, or school district, whether or not other sources of such services are available within the county, municipality, township, or school district, if the consideration for such services is reasonable and just;
- (6) Any contract for commodities, materials, supplies, or equipment found in the state contract list established pursuant to § [5-18D-6](#), at the price there established or below;

- (7) Any contract or agreement between a governmental entity specified in § [6-1-1](#) and a public postsecondary educational institution if an employee of the Board of Regents serves as an elected or appointed officer for the governmental entity, and if the employee does not receive direct compensation or payment as a result of the contract or agreement; and
- (8) Any contract with any firm, association, corporation, individual, or cooperative association for which competitive bidding procedures are followed pursuant to chapter [5-18A](#), and where only one such competitive bid is submitted, provided the procedures established in § [6-1-2.1](#) are followed.

Board member - personal interest in a matter
before the Board

1. Direct personal interest
2. Indirect personal interest
3. Direct pecuniary interest
4. Indirect pecuniary interest

SDCL 3-23-6

Schools and coops prohibited from direct interest in or direct benefit in contract and SDCL 23-23-7.2 for exceptions.

- **SDCL 6-1-17. Official prohibited from discussing or voting on issue if conflict of interest exists--Legal remedy.**
- No county, municipal, or school official may participate in discussing or vote on any issue in which the official has a conflict of interest. Each official shall decide if any potential conflict of interest requires such official to be disqualified from participating in discussion or voting. However, no such official may participate in discussing or vote on an issue if the following circumstances apply:

- (1) The official has a direct pecuniary interest in the matter before the governing body; or
- (2) At least two-thirds of the governing body votes that an official has an identifiable conflict of interest that should prohibit such official from voting on a specific matter.
- If an official with a direct pecuniary interest participates in discussion or votes on a matter before the governing body, the legal sole remedy is to invalidate that official's vote.

TIP:

When in doubt, report it and let Board decide.

IV.

Due Process:

U.S. Constitution – No person deprived of life, liberty or property without due process.

No property right to government employee
unless given by state or contract.

- Administrators - Contracts
- Teachers – SD Law
- Classified - Contract or Work Agreements

Students – required to attend school.

Thus property right

Basic due process requires:

1. Notice of charges;
2. Opportunity to respond;
3. Confront witnesses; and
4. Fair, impartial hearing

TIP:

The Golden Rule applies

v.

Social media and free speech

U.S. Constitution grants all of us
freedom of speech and applies to social media.

But there are restrictions:

1. Fire in a crowded theater;

2. School district, as a public employee in promoting the efficiency of the public services it performs through its employees

Courts balance employees interest as a citizen against the school's right to efficient operation.

How?

Public issue vs. private matter

Example:

Bond issue vs. wasteful spending

Does it cause a substantial disruption?

1. Teacher acts as an “exotic dancer.”

2. Religious objects in classroom.

3. Sioux Falls employee on Trump assassination attempt.

Remember the code of ethics for
teachers and administrators

TIP:

**Call your school attorney
on these issues.**

VI

Grievances and Complaints

Your policies are law in your district.
Know them and follow them.

If you don't like your policy,
Change – Board or through negotiations.

When teacher or parent calls,
you are not acting as a board member.

Do not discuss the issue with them;
insist they follow policies and procedure

Informal Complaints vs. Formal

Does your policy allow?

TIP:

You will lose on the issues or be recused
if you do not follow your policies to the letter.

VII.

Meetings

Do not adopt Roberts Rules of Order.
Guideline only.

Your Duty of Care:

1. Make informed decisions;
2. Ask questions about information Board is presented;
3. Good faith effort to exercise sound judgment and avoid emotional decisions.

Your Duty of Loyalty:

1. Avoid conflict;
2. Avoid actions for personal gain;
3. Preserve confidentiality.

Your Duty of Obedience:

1. Safeguard District's purpose;
2. Safeguard District's assets;
3. Obey your policies and mission.

TIP:

Don't act on behalf of yourself, your family, or friends; act only on behalf of the District and its goals.

VIII

Public Forum

State Law: 1-25-1

“...shall reserve at every official meeting a period for public comment, limited at ... ‘districts’ discretion as to time allowed for each topic, and the total time allowed for public comment, but not so limited as to provide for no comment.”

Public comment not required
if only meeting for executive session.

Policy to limit time and limit topics.

Do not allow for personnel or student issues.

Refrain from getting involved with
teacher/personnel or student issues.

You've hired administrators for that,
and you may need to be fair and impartial.

TIP:

Always remember you are there for the public. They have a right to know how you are spending their money and educating their children.

IX.

Executive Session

Only for things public doesn't have a right to know

SDCL 1-25-2

Executive or closed meetings--Purposes--Authorization--Violation as misdemeanor.

- Executive or closed meetings may be held for the sole purposes of:
- (1) Discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. The term, employee, does not include any independent contractor;
- (2) Discussing the expulsion, suspension, discipline, assignment of or the educational program of a student or the eligibility of a student to participate in interscholastic activities provided by the South Dakota High School Activities Association;

- (3) Consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters;
- (4) Preparing for contract negotiations or negotiating with employees or employee representatives;
- (5) Discussing marketing or pricing strategies by a board or commission of a business owned by the state or any of its political subdivisions, when public discussion may be harmful to the competitive position of the business; or

- (6) Discussing information pertaining to the protection of public or private property and any person on or within public or private property specific to:
 - (a) Any vulnerability assessment or response plan intended to prevent or mitigate criminal acts;
 - (b) Emergency management or response;
 - (c) Public safety information that would create a substantial likelihood of endangering public safety or property, if disclosed;
 - (d) Cyber security plans, computer, communications network schema, passwords, or user identification names;

- (e) Guard schedules;
- (f) Lock combinations;
- (g) Any blueprint, building plan, or infrastructure record regarding any building or facility that would expose or create vulnerability through disclosure of the location, configuration, or security of critical systems of the building or facility; and
- (h) Any emergency or disaster response plans or protocols, safety or security audits or reviews, or lists of emergency or disaster response personnel or material; any location or listing of weapons or ammunition; nuclear, chemical, or biological agents; or other military or law enforcement equipment or personnel.

However, any official action concerning the matters pursuant to this section shall be made at an open official meeting. An executive or closed meeting must be held only upon a majority vote of the members of the public body present and voting, and discussion during the closed meeting is restricted to the purpose specified in the closure motion. Nothing in § [1-25-1](#) or this section prevents an executive or closed meeting if the federal or state Constitution or the federal or state statutes require or permit it. A violation of this section is a Class 2 misdemeanor.

X.

Confidentiality

Student and Parents Privacy: FERPA

1. Directory information
2. Cannot disclose education a records
3. Only on need to know

4. Parents consent
5. Who is a parent
6. Review records

Employees

1. Right to privacy
1. Violations: liable/slander;
1983 civil rights suit

Executive session

1. No penalty for violation of confidentiality;
2. No Code of Ethics;
3. Only remedy – Reproach or reprimand by Board

TIP:

No such thing as “pillow talk”.

Never say anything in executive session, or out of it that you wouldn't want to read in the paper the next day.