



**What are your Responsibilities as a
Governing Official?**

2018 IACC Conference - Session S-2
Tuesday, October 23, 2018 Wenatchee, Washington

The Good Old Days (5 Years Ago)

MEETING AGENDA:

- ☐ Fishing holes
- ☐ Deer season
- ☐ Any money in the bank?
- ☐ Keep rates low!
- ☐ Adjourn



How About Today?

- Responsibilities!
- Expectations!
- Accountability!
- Easy to get lost in the details



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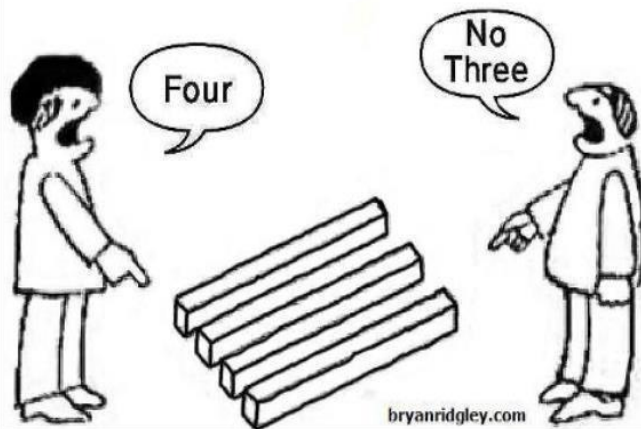
The Other Pieces Of The Puzzle...

- Your System/Operation /Management = Maintenance
- Staff
- Customers
- Physical assets



Complexities of Reality

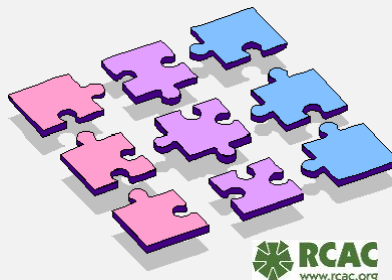
Reality can be so complex that equally valid observations from differing perspectives can appear to be contradictory.



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So Your Job Is...

- Make sure all the pieces of the puzzle are working together to...
 - Serve your customers
 - Protect public health
 - Stay in business



General Duties

- Regulatory Compliance
- Adhering to Fiduciary Responsibilities
- Adhering to Governance Ordinances / Bylaws
- Scheduling and Attending Meetings
- Avoiding Conflicts of Interest
- Procuring Goods and Services
- Development / Enforcement of Administrative Policies and Procedures
- Overseeing Utility Manager



Board Duties: Basic

- Compliance
- Business by the board is binding
- Avoiding conflicts of interest
 - Abstaining from votes
 - Conflicts filed with clerk
- Vigilant accounts management and documentation
- Revenues cover costs, debt and debt reserve
 - Rate review is a necessity
 - Function as business: maintain operations and satisfied customers



Board Duties: Basic (continued)

- Each member responsible
 - Remaining in charge and knowledgeable of operations
 - Well-being of system
- Operate within legal framework
- Legal responsibility to protect utility assets
- Validate all major contracts
- Attend all board meetings



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Board Duties: Specific

- Types of utility boards
 - Regional Sewer and Water Districts
 - **Conservancy Districts**
 - Utility boards/Mayor & Council (incorporated city or town)
 - Non-profits
 - Water Authorities



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What are my Legal Responsibilities?

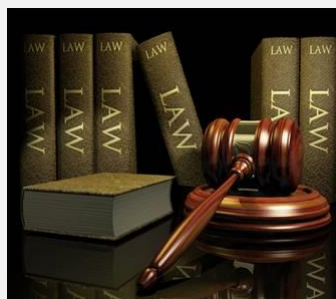
- Board members have legal duties to the organizations they serve!
 - ☐ **Loyalty**
 - ☐ **Due diligence**
 - ☐ **Care**
- Derived from common law



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Compliance With State and Federal Laws

- Legal reference materials available?
- Provide copies to new members
- All members should read and understand them



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Federal Water Acts

- **Safe Drinking Water Act (1974)**
 - Requires EPA to set regulations for drinking water Maximum Contaminant Levels (MCLs)
 - Mandates annual Consumer Confidence Reports (CCRs)
 - Authorizes revolving loan fund and other resources
- **Clean Water Act (1972)**
 - Ensures surface waters meet standards for use
 - Requires permits for pollution discharge (NPDES)
 - Authorizes revolving loan fund and other resources



What is the Legal Authority that Boards and Councils work under?

- The federal government and state laws **authorize** local entities to provide water service to the public.
- **Local organizations in the community can provide water service.** The board of directors / governing body are directing a system that is given its authority to operate by the state.



Legal Authority

- The state law include the following:
 - the legal process for forming and governing the entity
 - general and specific powers granted to the entity by the state
 - powers or authority prohibited by the state



Legal Authority

- It is each board member's responsibility to become familiar with and knowledgeable about:
 - state laws granting that system the authority to operate
 - the municipal or corporate charter
 - county or municipal ordinances establishing the system
 - articles of incorporation and bylaws
 - any other documents relating to the organization and structure of the system



Roles of Board Members

- Who are the members of your board of directors? Many have similar structure:
 - Officers: president, vice president, secretary and treasurer
 - Mayor / Councilmembers
 - Other members



RCWs and WACs

- Revised Code of Washington (RCW)
 - RCW Title 57 - Water Districts
- RCW Title 64 – Homes Associations
- RCW Title 35 – Cities and Towns



Washington Administrative Codes

- WAC 246-290 Group A Public Water Supplies
- WAC 173 – WW Discharge Standards, Operators, Water Rights, Permitting etc.



RCWs and WACs

- Washington Administrative Code (WAC)

WATER SYSTEMS

246-290	Group A public water supplies.
246-291	Group B public water systems.
246-292	Water works operator certification.
246-293	Water System Coordination Act.
246-294	Drinking water operating permits.
246-295	Satellite system management agencies.
246-296	Drinking water state revolving fund loan program.



RCW 42.23.070

Code of Ethics for Municipal Officers

(1) No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.

(2) No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the officer's services as such an officer unless otherwise provided for by law.

(3) No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.

(4) No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.



RCW 42.23.050

Prohibited contracts void — Penalties for violation of chapter.

Any contract made in violation of the provisions of this chapter is void and the performance thereof, in full or in part, by a contracting party shall not be the basis of any claim against the municipality. Any officer violating the provisions of this chapter is liable to the municipality of which he or she is an officer for a penalty in the amount of five hundred dollars, in addition to such other civil or criminal liability or penalty as may otherwise be imposed upon the officer by law.

In addition to all other penalties, civil or criminal, the violation by any officer of the provisions of this chapter may be grounds for forfeiture of his or her office.



Revised Code of Washington Title 57 Water-Sewer Districts

Chapters

- 57.02 General provisions.
- 57.04 Formation and dissolution.
- 57.06 Validation and construction.
- 57.08 Powers.
- 57.12 Officers and elections.
- 57.16 Comprehensive plan -- Local improvement districts.
- 57.20 Finances.
- 57.22 Contracts for system extensions.
- 57.24 Annexation of territory.
- 57.28 Withdrawal of territory.
- 57.32 Consolidation of districts -- Transfer of part of district.
- 57.36 Merger of districts.
- 57.42 Disposition of property to public utility district.
- 57.46 Voluntary contributions to assist low-income customers.
- 57.90 Disincorporation of districts in counties with 210,000 population or more.



Indebtedness

- **RCW 57.20.110**
- **Limitation of indebtedness.**
- A district is authorized and empowered by and through its board of commissioners to contract indebtedness for its purposes, and **the maintenance thereof not exceeding one-half of one percent of the value of the taxable property in the district,** as the term "value of the taxable property" is defined in RCW 39.36.015



RCW 9A.60.050 False certification.

- (1) A person is guilty of false certification, if, being an officer authorized to take a proof or acknowledgment of an instrument which **by law may be recorded, he knowingly certifies falsely** that the execution of such instrument was acknowledged by any party thereto or that the execution thereof was proved.

(2) False certification is a gross misdemeanor.



RCW 9A.28.040 Criminal conspiracy.

- (1) A person is guilty of criminal conspiracy when, **with intent that conduct constituting a crime be performed**, he or she agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.



RCW 9A.08.010

General requirements of culpability.

- (d) CRIMINAL NEGLIGENCE. A person is criminally negligent or acts with criminal negligence when he **fails to be aware of a substantial risk that a wrongful act may occur** and his failure to be aware of such substantial risk **constitutes a gross deviation from the standard of care that a reasonable man would exercise in the same situation.**



RCW 70.54.020

Furnishing impure water — Penalty.

- Every owner, agent, manager, operator or other person having charge of any waterworks furnishing water for public or private use, **who shall knowingly permit any act or omit any duty or precaution** by reason whereof the purity or healthfulness of the water supplied shall become impaired, **shall be guilty of a gross misdemeanor.**



Conduct Business Only As A Board

- Individual board members may not make contracts on behalf of the board
- Decisions binding on the utility must be made by **the board as a whole**



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Avoid Conflict Of Interest (Or The Appearance Of One!)

- Personal interest
- Financial interest
- Family
- Friends
- Should you abstain?



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Follow Generally Accepted Accounting Principles (GAAP)

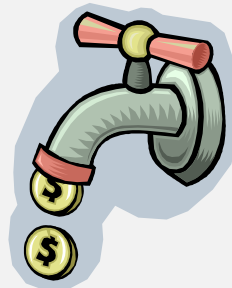
- Bookkeeping and cash management
- Purchasing
- Record keeping
- Auditing



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Ensure That Revenue Covers Expenses Plus Reserves

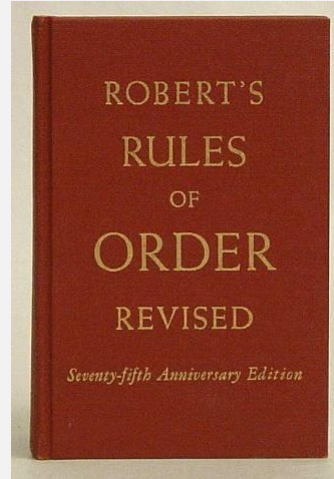
- Your utility is a business – operate like one!
- 4 types of reserves
- Examine rates often!



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Boards Must Direct!

- Remain in charge
- Remain engaged
- Follow rules of order
- But what about delegation??



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Responsibilities

- Management responsibilities include planning and policy decision making.
- Operational responsibilities include normal day-to-day operations, preventative maintenance, water quality monitoring, troubleshooting, emergency response, response to complaints, public/press contact, and record keeping.



Protect Utility Assets

- Misuse / misappropriation
- Know your physical assets
- Know your budget process
- Understand expenditures
- Ask for clarification if needed



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Be Involved In Major Contracts

- Temptation to delegate
 - Negotiations/administration
 - Approval of major contracting?

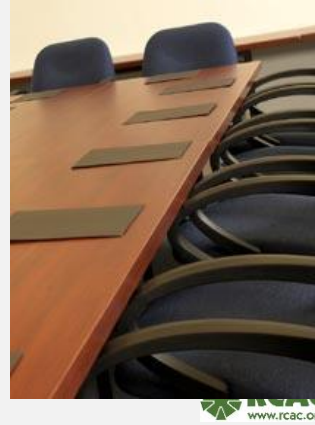


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Attend As Many Meetings As Possible

- Duty of loyalty
- Duty of care
- Take an active interest
- Is attendance really a hardship?



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What Do Policies Look Like?

- Clarify roles & responsibilities
- Standardize procedures
- Establish consistency
- Set boundaries
- Establish standards of conduct



What Makes A Good Policy?

- Clearly written
- Fair and equitable
- Readily available
- Conforms to state and federal laws



Typical Water & Wastewater Utility Policies

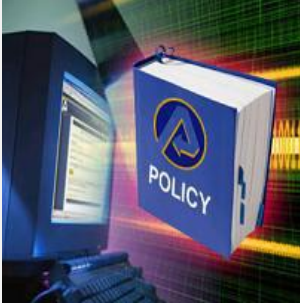
- ◆ Customer service policies
- ◆ Governance policies
- ◆ Financial policies
- ◆ Personnel policies



Sample Policy Manual Contents			
General Board Policies		Board of Director Policies	
- Adoption of policies	- Conflict of Interest	- Code of ethics	- Attendance at meetings
- Public complaints	- Amending policies	- Reimbursement	- Role of officers
- Copying public documents	- Claims Procedure	- Basis of authority	- Committees
Over 35 Personnel Policies		Operations Policies	
- Family & medical leave	- Nepotism	- Accounting	- Budget preparation
- Advancement of wages	- Sick leave	- Expense authorization	- Purchasing
- Educational assistance	- Substance abuse	- Illness & injury prevention	- Easement abandonment
- Computer usage & security	- Employment status	- Encroachment permits	- Records retention
- Internet & e-mail ethics	- Jury duty		
Board Meeting Policies		Facilities Development Policies	
- Meeting Agenda	- Actions & decisions	- Annexation procedures	- Project approval
- Minutes	- Rules of order	- Development agreements	- Development/Improvement Standards
- Conduct	- Review of decisions		

Policies Summary

- Key responsibility!
- Many forms and locations
- Combine into one document if possible



In a Perfect World, Water Systems will...

- Use robust and comprehensive planning processes to pursue water infrastructure investments that are cost-effective over their life cycle, are resource efficient, and are consistent with community sustainability goals.



In a Perfect World, Water Systems will...

- employ effective utility management practices, including consideration of alternatives such as natural or “green” systems and potential climate change impacts, to build and maintain the technical, financial, and managerial capacity necessary to ensure long-term sustainability.



In a Perfect World, Water Systems will...

- have an on-going collaborative process with all stakeholders to determine where and how water infrastructure investments are made in their communities.

