

New Officer Training & Orientation

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Nature of Local Government

Municipal Powers

- All powers come from the legislature through statute
 - No inherent powers except those necessarily arising out of expressed powers
- Powers are limited by statutes, court decisions, and the constitutions
- Must follow the procedures associated with exercising the power, or it is as though you acted without authority
- Spending Money
 - Public purpose doctrine – Public funds may only be expended for purposes that are (1) authorized & (2) public

Public Office

- Interpreted by the Courts
- Give Meaning to statutes adopted by Legislature
- If the record is adequate, courts will usually defer unless decision is “arbitrary and capricious”

Holding Public Office

- Why is it important to understand the nature of public office?
 - Civil and criminal penalties
- Public Trust
 - Incompatible positions
 - Conflicts of interest
- Properly entering office
 - Duty to report violations of the trust
- Whenever a public officer “discovers evidence of theft, embezzlement, unlawful use of public funds or property, or misuse of public funds by a charter commission or any person authorized to expend public funds, the employee or officer shall promptly report to law enforcement and shall promptly report in writing to the state auditor a detailed description of the alleged incident or incidents.” Minn. Stat. § 609.456, subd. 1.
- “Unlawful” versus “disagree with”

Conducting Public Business

- Who makes decisions?
 - A quorum of the supervisors or council members
 - By majority vote of those present, unless law specifically requires otherwise.

- Parliamentary procedure (e.g., Robert’s Rules) helps to keep things organized and maintain order, but it is not a legal requirement
- Clerk maintains minutes, which are the official record of the meeting
- Public Comment
 - Not required by law
 - Can’t have rules that are based on viewpoint
 - Rules should be uniformly applied
 - Public Hearings
 - Are required by law
 - Public does have a right to speak
 - Governed by statute that requires hearing

Open Meeting Law

- OML applies to quorum of any group appointed by governing board:
 - Elected Officials
 - Planning Commission
 - Advisory Commission
- OML does not apply to private groups
 - Church Board
 - VFW
 - Ad Hoc Citizen Group
- Exchange of ideas. NOT FINAL DECISION
 - Talking
 - Phone calls
 - Emails
 - Social Media
- Only discussions of public business trigger OML.
- Chance or social meetings do not trigger OML
- Training events allowed
- Closed Meetings
 - Public is excluded.
 - Be able to point to the statute that allows closed meeting.
- Emergencies – Require immediate consideration
 - Protect public peace, health, or safety.
 - Be able to explain why OML couldn’t be met.
 - Courts defer to governing body but be careful.
- Regular Meetings
 - Schedule adopted at organizational meeting
 - Clerk keeps on file
- Special Meetings
 - Posted notice of time, date, place and purpose of meeting
 - Mail or deliver notice to those who’ve filed request
 - Posting or delivery must be “at least three days before the date of the meeting”

Notes:

- Three days doesn't really mean three days
 - If last day is Weekend or Holiday that day is omitted.
- Action may be brought by any person.
- Official personally liable.
 - \$300
 - Three violations = loss of office.
- Court may award attorney fees up to \$13,000 per party.

Conducting Public Business

- Act in a timely fashion (e.g., 60-day rule)
- Approve motion, resolution, or ordinance
- Publish, file, and record documents in appropriate place
- Individual Authority

Municipal Contracting Law

- **Purpose:**
 - A uniform and orderly contracting process,
 - Protect public funds by increasing the likelihood of the best price being obtained, and
 - Reduce the potential for fraud and abuse by public officials
 - Applies to contracts for the sale or purchase of supplies, materials, equipment or the rental thereof, or the construction, alteration, repair or maintenance of real or personal property. Minn. Stat. § 471.345
- **Contract Levels**
 - Contracts over \$175,000 – must be sealed bid
 - Contracts over \$25,000 to \$175,000 – either sealed bids or by receiving at least two written quotes
 - Contracts under \$25,000 – direct negotiation, no need for bids or written quotes
- **Contract Specs**
 - Sufficiently definite to afford basis for a bid
 - Not so restrictive as to keep process from being fair and competitive – not to exclude or give advantage
 - Okay to consult with vendors and experts
 - Bonds – bid, performance, payment, etc.
 - File town road contract specs with clerk before soliciting bids Minn. Stat. §160.17
- **Opening Bids**
 - Public opening at time and location in notice
 - Review bid before awarding contract
 - Responsive - Whether the bid meet the specs
 - Changes or Errors in bid – material and substantial
- **Lowest Responsible Bidder**
 - Introduces some level of discretion for town officers in sealed bid contracting

Notes:

- Courts are the ones that decide when discretion has been used reasonably
- Courts consider:
 - Amount of time spent investigating items in bid
 - Reasonableness of factors used to evaluate bid or bidder
- Discretion must be supported by findings of fact in minutes showing board went through deliberative and objective process
- A contract let on bid must be let to the lowest responsible bidder. (Minn. Stats. §365.12 & §412.311)
- “A town officer who violates this . . . is guilty of a misdemeanor and must leave office.” (Minn. Stat. 365.37)
- Contract made in violation of this requirement is void
- Municipality still responsible for paying for completed work
- Challenge can be brought by losing bidder or any tax payer of the jurisdiction
 - Losing bidder can recover costs of preparing bid
- **Exceptions**
 - State Contract - Cooperative Purchasing Venture
 - Joint Powers Agreements – only one has to follow procedural requirements; specify which member
 - County road contract – towns may agree to the terms of an existing county contract on an adjacent road
 - Purchases between local governments or with the Federal government or the State
 - Emergencies
 - Imminent threat to health, safety or welfare of community
 - Not reasonably foreseen in time to follow law

Purchasing Municipal Property

- No officer or employee shall sell to any other *officer or employee* any property owned by the municipality except pursuant to specific conditions
- Property not needed for public purposes, may be sold to an *employee* of the municipality after reasonable public notice at a public auction or by sealed response
 - The employee cannot be directly involved in the auction or process pertaining to the administration and collection of sealed responses
 - Exception for things sold to the general public in the normal course of business
- A person violating the provisions of this section is guilty of a misdemeanor (Minn. Stat. § 15.054)

Notes:

Conflicts of Interest

- **Common Law**
- Generally it's when a person has a personal financial interest in a decision in which they have a vote or substantial influence regarding the decision
- Two Types – Statutory (contracts) & Common Law (non-contract situations)
- No black and white line on when a person is disqualified
- Factors to consider:
 - Nature of the decision
 - Nature of the financial interest
 - Number of interested officials
 - Need for interested officials to make decision
 - Other means available to ensure public interest
- Solve by abstaining – don't vote
- Decision still valid **if** the result would have been the same without the interested member voting
- **Statutory**
- Except as specifically authorized, “a public officer who is authorized to take part in any manner in making any sale, lease, or contract in official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom. Every public officer who violates this provision is guilty of a gross misdemeanor.” Minn. Stat. § 471.87
- Can't avoid the problem by abstaining from voting
- Most common exception is contracts that don't require competitive bids are required, but proper process must be followed

Liability

- **Municipal**
 - Procedural / Decision Making Claims
 - Allege did not follow statutory procedures, violated legal rights, or made arbitrary decision
 - Takings
 - Property Damage / Personal Injury
 - Trespass, crash on roads, flood land, fall at park
 - Employee injured w/in course and scope of their position with the municipality
- **Personal**
 - Indemnification requirements and liability limitations
 - Civil liability
 - Exceed authority, violate open meeting law
 - Criminal liability
 - Failure to follow certain statutory procedures, breach public trust, other “standard” criminal offenses

Notes:

Data Practices

- Governs public access to government data
- Simple rule is that all data is public unless there is an exception – over 100 pages of exceptions, plus federal law
- Must have written access policy and Responsible Authority responsible for collection, use and dissemination of data – usually clerk
- Willful violation is a misdemeanor
- Only applies to urban townships in Twin Cities area, but all towns should make public information reasonably available

Thank you for your service to your community.

Please contact us with any questions.

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