

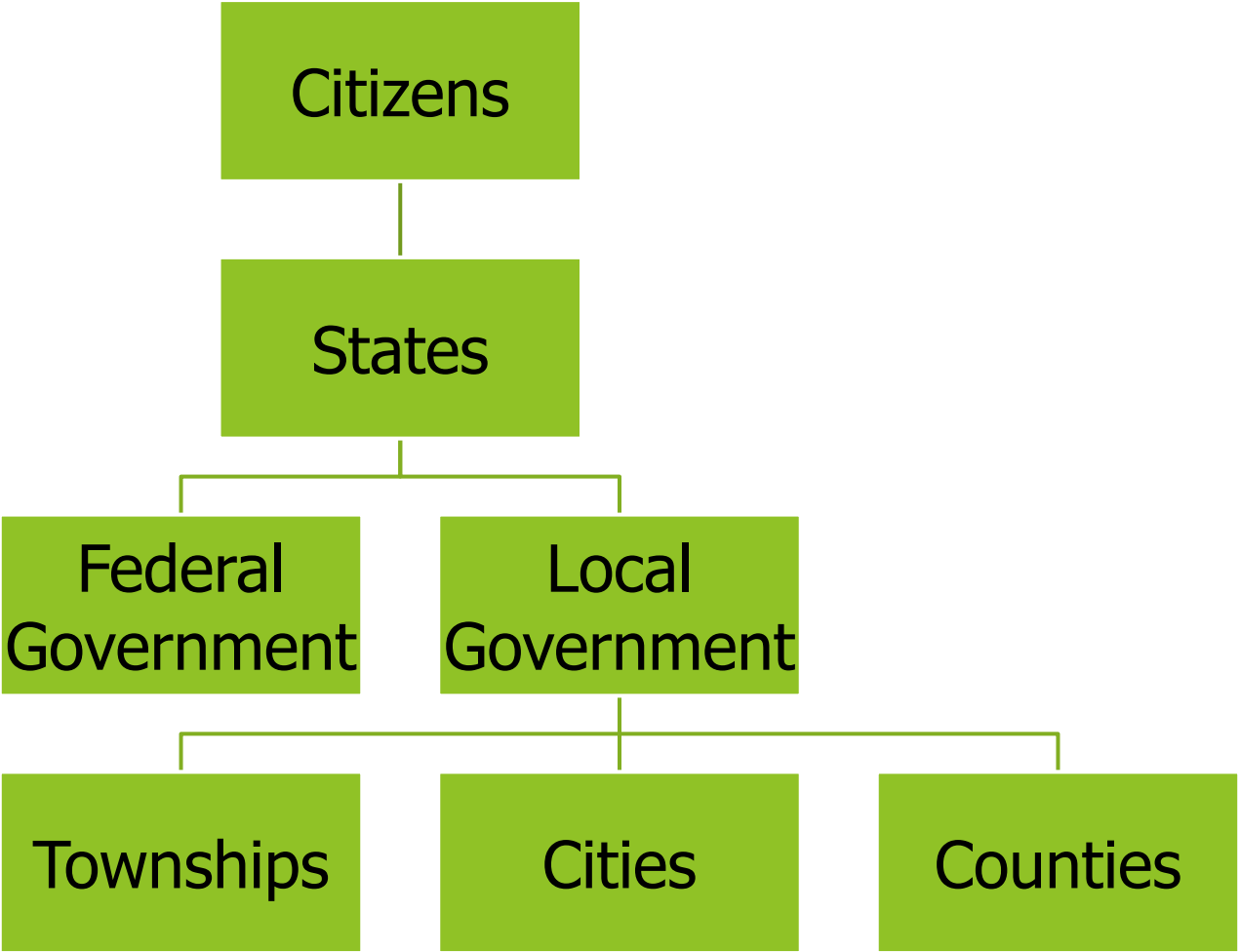
# New Officer Training & ▶ Orientation:

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Minnesota Association of Townships

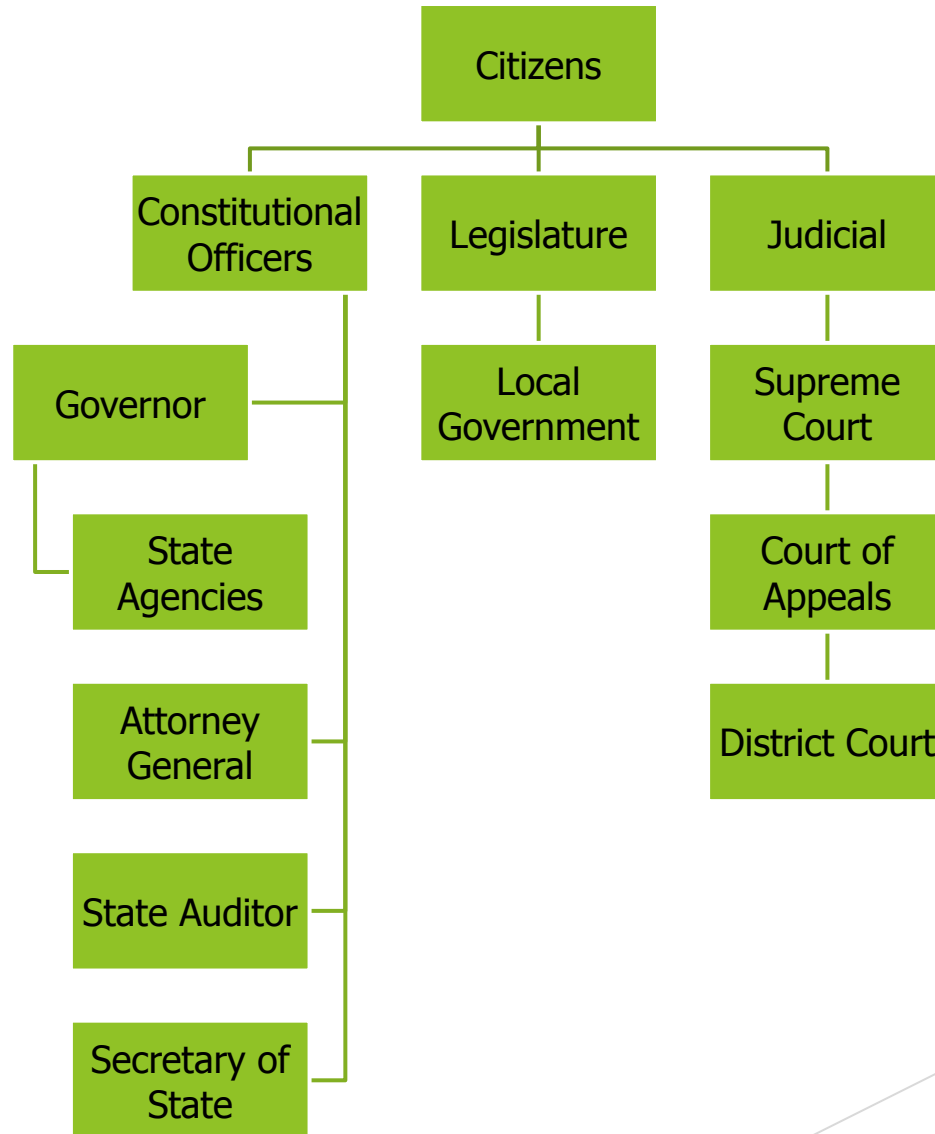
# NATURE OF LOCAL GOVERNMENT

## Organization



# NATURE OF LOCAL GOVERNMENT

## Separation of Powers



# MUNICIPAL POWERS

- ▶ All powers come from the legislature through statute
  - ▶ No inherent powers except those necessarily arising out of expressed powers

| <u>Town Electors</u>  | <u>Town Board</u>     | <u>Town Electors &amp; Town Board</u> |
|-----------------------|-----------------------|---------------------------------------|
| Act At Annual Meeting | Act at Board Meetings |                                       |
| 1. Set levy           | 1. Budget & Spend     | 1. Build Town Buildings               |
| 2. Elect Officers     | 2. Employment         | 2. Police & fire protection           |
| 3. Create Townships   | 3. Contracts          | 3. Cemeteries                         |
|                       | 4. Ordinances         | 4. Bonding                            |
|                       | 5. Land Use           | 5. Parks                              |
|                       | 6. Special Boards     | 6. Regulate animals                   |
|                       | And more              | And More                              |

# MUNICIPAL 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 by statute & (2) public purpose
  - ▶ Public Purpose is: “such an activity as will serve as a benefit to the community as a body and which, at the same time, is directly related to the functions of government.”

# POWERS OF 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
- ▶ Properly entering office
  1. Certificate of Election / Appointment
  2. Oath of Office
- ▶ Public Trust
  - ▶ Incompatible positions
  - ▶ Conflicts of interest

# Incompatible Positions

- ▶ To protect public trust, law prohibits a person holding two public offices that conflict with one another.
- ▶ “Public offices are incompatible when their functions are inconsistent, their performance resulting in antagonism and a conflict of duty, so that the incumbent of one cannot discharge with fidelity and propriety the duties of both.” *State ex rel. Hilton v. Sword*, 157 Minn. 264, 266, 196 N.W. 467 (1923).
- ▶ Easy enough in principle, but can be Very Difficult to apply
  - ▶ Incompatible: Town Supervisor and County Commissioner
  - ▶ Incompatible: Towns Supervisor and Park District Commissioner
  - ▶ Compatible sometimes: Town Supervisor and School Board Member - depends on whether the town exercises “urban powers” per chapter 368



# HOLDING PUBLIC OFFICE

- ▶ Public Trust (cont.)

- ▶ 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...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.

## CONDUCTING PUBLIC BUSINESS

### Running a Meeting

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

# CONDUCTING PUBLIC BUSINESS

## Running a 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

# Township Offices

| Supervisors  | Clerk                      | Treasurer           |
|--|----------------------------|---------------------|
| Spend money  | Record Keeping             | Record Keeping      |
| Mange staff & contracts                              | Take Minutes - Town Mtg    | Hold money          |
| Set ordinances                                       | Post Ordinances            | Disburse money      |
| Special Boards                                       | <b>Election Management</b> | Audit statement     |
| Manage Infrastructure                                |                            | Accounting of funds |
| <b>Everything not assigned to clerk or treasurer</b> |                            |                     |

- ▶ Above is a *Grossly Over-Simplified* example of the duties or powers of township offices.
- ▶ Clerks & Treasurers routinely perform more duties for the board by agreement.
- ▶ Clerks & Treasurers do not work for the Board - they work for voters.
- ▶ Communicate, Collaborate, Respect

# Getting Started as a New Officer

- ▶ Take the Oath of office properly - Get the Certificate & Take the Oath
- ▶ Ask questions - you're new but no less an officer. Experienced officers often do not know the rules you just learned. They can learn from you too.
  - ▶ No power unless a statute gives the town that power. Find out what statute is being used to do something?
- ▶ Use resources available to you. MAT has attorneys and clerk/treasurer trainings available to talk, an online library of documents, several published books, and a magazine.
- ▶ Stay in Your Lane. Respect each other's duties and limitations.
- ▶ When in doubt - STOP and don't say anything. Ask for help. You rarely get in trouble for silence or inaction while learning what to do.

# Open Meeting Law

- ▶ Minn. Stat. 13D.01: “All meetings . . . Must be open to the public.”
  - ▶ “Meeting” is not defined in the statute
- ▶ Intent is so that the public can be informed of decisions and considerations those decisions are based upon
- ▶ Courts rule in favor of public and allow public to be FULLY informed.

# Open Meeting Law

## Quorum

- ▶ OML applies to quorum of the Board and 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
- ▶ Quorum is 2 for 3-person board
- ▶ Quorum is 3 for 5-person board



# Open Meeting Law

## Discussion

- ▶ Includes all Exchange of ideas. **NOT ONLY THE FINAL DECISION!**
  - ▶ Talking
  - ▶ Phone calls
  - ▶ Emails / Text / Chat
  - ▶ Chain Meeting / Use of 3<sup>rd</sup> Parties

# Open Meeting Law

## Public Business

- ▶ Only discussions of public business trigger OML.
- ▶ Chance or social meetings do not trigger OML
- ▶ Training events allowed

# Open Meeting Law

## Exceptions

- ▶ Site Visit Exception
- ▶ Closed Meetings
  - ▶ Public is excluded.
  - ▶ Be able to point to the statute that allows closed meeting.
  - ▶ Check with town attorney about keeping minutes, but record if required by law

# Open Meeting Law

## Exceptions

- ▶ **Attorney Client Privilege**  
Minn. Stat. 13D.05, subd. 3(b)
- ▶ **Employee Review**  
Minn. Stat. 13D.05, subd. 3(a)
- ▶ **Preliminary Consideration of Allegations of Wrongdoing**  
Minn. Stat. 13D.05, subd. 2(b)
- ▶ **Labor Negotiations**  
Minn. Stat. 13D.03, subd. 1(b)
- ▶ **Real Estate Transactions**  
Minn. Stat. 13D.05, subd. 3(c)

# Open Meeting Law Exceptions

- ▶ 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.

# Open Meeting Law Notice

- ▶ 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”
    - ▶ Three days doesn't really mean three days
    - ▶ If last day is Weekend or Holiday that day is omitted.
- ▶ Continued Meetings
  - ▶ Announced - specific time and specific place

# Open Meeting Law Penalties

- ▶ 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

## Making Decisions

- ▶ You are a Servant of the Public
- ▶ Act in a timely fashion (e.g., 60-day rule)
- ▶ Approve motion, resolution, or ordinance
- ▶ Publish, file, and record documents in appropriate place
- ▶ No 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

# Municipal Contracting Law

## Contract Levels

Contracts over \$175,000 - must be let on 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

# Municipal Contracting Law

## 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

# Municipal Contracting Law

## 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

# Municipal Contracting Law

## Lowest Responsible Bidder

- ▶ 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 taxpayer of the jurisdiction
  - ▶ Losing bidder can recover costs of preparing bid

# Municipal Contracting Law

## 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)

# Conflicts of Interest

- ▶ 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)



# Conflicts of Interest

## Common Law

- ▶ No black and white line on when a person is disqualified
- ▶ Factors to consider:
  - 1) Nature of the decision
  - 2) Nature of the financial interest
  - 3) Number of interested officials
  - 4) Need for interested officials to make decision
  - 5) 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

# Conflicts of Interest

## 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, but proper process must be followed

# Liability

## Municipal

- ▶ Procedural / Decision Making Claims
  - ▶ Allegation that did not follow statutory procedures, violated legal rights, or made arbitrary decision
- ▶ Property Damage / Personal Injury
  - ▶ Trespass, crash on roads, flood land, fall at park
  - ▶ Employee injured within course and scope of their position with the municipality

# Liability

## 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

# Data Practices

## Minn. Stat. Chapter 13

- ▶ 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
  - ▶ Presumption is reversed for personnel data
- ▶ Must have written access policy and Responsible Authority responsible for collection, use and dissemination of data - usually clerk
- ▶ Willful violation is a misdemeanor

# Data Practices

## Minn. Stat. Chapter 13

- ▶ Only applies to urban townships in Twin Cities area, but all towns should make public information reasonably available
- ▶ Towns not covered by Data Practices Act, should have the Town Board affirmatively vote to release data.

**“Once you start destroying relationships, you can’t move forward”**

*Mayor Bill Spitzer, St. Charles, MN*

On the importance of cities and townships working together