

***OVERVIEW OF LEGAL SERVICES AND  
OPEN GOVERNMENT RESPONSIBILITIES  
OF BOARD MEMBERS***



**NEW TRUSTEE ORIENTATION**

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# Legal Services to Colleges

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- By law, Attorney General is the legal adviser to state agencies, boards, commissions, and state officials. AGO represents agencies in court and defends lawsuits.
- AGO is organized into 26 legal divisions.
- Education Division assigns an attorney to each college to act as general counsel.

# AAG Interactions with the College

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- Advise on interpreting state and federal laws, scope of authority as delegated by the legislature, defend challenges to college action
- Work through chain of command from administrative team, to president, and then the board
- Work with the Board collectively or through the Chair, since individual members do not speak for the whole board
- Role at Board Meetings
- Multi-level hearings—Board in quasi-judicial role

# *OPEN PUBLIC MEETINGS ACT*

## *(RCW 42.30)*

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- ◆ *All meetings of the governing body of a public agency shall be open and public (RCW 42.30.030)*
- ◆ *Requirement to maintain minutes (RCW 42.32.030)*

# Legislative Declaration of Purpose – RCW

42.30.010

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- Public agencies of this state exist to aid in the conduct of the people's business. Actions are to be taken openly and deliberations conducted openly
- People do not yield their sovereignty to the agencies which serve them
- People do not give public servants the right to decide what is good for the people to know and what is not good for them to know
- People remain informed so they may retain control over the instruments they have created

# *What is a Governing Body?*

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“All meetings of a ***governing body*** of a public agency shall be open and public . . . “

- ◆ Multi-member governing bodies of state and local agencies
- ◆ Subcommittees, if quorum of board
- ◆ Subcommittee, if delegated final decision-making authority, conducting hearings, or taking public testimony
- ◆ Governing Body of Associated Students

# *What Constitutes a Meeting ?*

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“All *meetings* of a governing body of a public agency shall be open and public . . . .”

- ◆ A meeting is a gathering where “action” is taken. Any such meeting must be open.
- ◆ “Action” means “the transaction of the official business of a public agency by a governing body including but not limited to:

# ACTION

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- ◆ **Public testimony**
- ◆ **All deliberations**
- ◆ **Discussions**
- ◆ **Reviews**
- ◆ **Evaluations**
- ◆ **Final action (collective positive or negative decision or final vote by a majority sitting as a body or entity)**



# Emails

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- An exchange of emails among board members can constitute a deliberation or discussion and thus, a “meeting” subject to the Open Public Meetings Act.

*Wood v. Battle Ground School District (2001).*

# Travel & Gathering

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- “It shall not be a violation of the requirements of this chapter for a majority of the members of a governing body to travel together or gather for the purposes other than a regular meeting or special meeting...PROVIDED, That they take no action as defined by this chapter.” RCW 42.30.070

# ***GIVING NOTICE: REGULAR MEETINGS***

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- ◆ Recurring meetings of the public body.
- ◆ Colleges must adopt regular scheduled meetings by rule in the Washington Administrative Code (WAC). All state agencies, including colleges, file yearly prior to January 1st with Code Reviser.
- ◆ No agenda requirement.

# ***GIVING NOTICE: SPECIAL MEETINGS***

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- ◆ Final action limited to agenda items
  
- ◆ Written notice must be given to:
  - ◆ Each member of governing body
  - ◆ Each media entity which has requested notice
  - ◆ Posted on College website
  
- ◆ Delivered at least 24 hours in advance
  
- ◆ Must specify:
  - ◆ Time
  - ◆ Place
  - ◆ Business to be transacted (agenda).

# ***EXECUTIVE SESSIONS***

*Are authorized for limited, specific topics listed, including:*

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- ◆ Receive and evaluate complaints or charges against a public officer or employee
- ◆ Review performance of an employee
- ◆ Evaluate qualifications of a job applicant
- ◆ Meet with legal counsel relating and potential litigation matters & agency enforcement actions
- ◆ Site selection, acquisition, price of real estate
- ◆ Quasi-judicial actions (exempt)
- ◆ Collective bargaining strategy (exempt)

RCW 42.30.110; 140

# Going into Executive Session

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- “. . . [T]he presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting and the time when the executive session will be concluded.”

(RCW 42.30.110(2))

# Penalties for Violating Open Public Meetings Act

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- Personal civil liability (\$100/penalty)
- Costs and attorneys fees
- Action taken is null and void
- Media attention (of the bad kind)

To: Smith    From: Jones  
BCC: Doe

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Dear Trustee Smith, in response to your previous email, I have been polling the other trustees over continued viability of the Jet-Diesel Program and whether we need a change of instructors. The Board needs show unanimity on the vote at next week's meeting.

*Any problems presented by this email? Is it private?*



# PUBLIC RECORDS -- RCW 42.56

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- Any writing containing information relating to (a) the conduct of government, or (b) the performance of any governmental or proprietary function
- Prepared, owned, used, or retained by any agency
- Writing can be in any media or format

# Public records definition (cont'd)

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- The definition is broad enough to encompass anything you prepare or use for College business
- Includes email messages
- Includes materials you prepare on personal computer, i-phone, i-pad
- Public has right to review and seek copies

# Public Policy Strongly Favors Disclosure

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- The duty to disclose public records is broadly construed. Public policy favors disclosure
- Exemptions are narrowly construed
- Emails between and among Board members are public records and must be disclosed unless a specific exemption applies

# Some Exemptions

## RCW 42.56.230-480

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- Preliminary drafts in which policies are formulated
- Communications protected by the attorney-client privilege
- Student Education Records under federal law (the Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g)
- Test questions, scoring keys, and other examination data used to administer an academic exam
- Trade secrets
- Private information in employee personnel files/application materials

# PUBLIC RECORDS

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- Penalties can range from \$0-\$100 per day per record for improperly withheld records.
- Tip: Assume everything you put in writing even tangentially related to college business may be made public at some point.
- Tip II: Keep all college-related emails in one easily identifiable folder

# Faculty Tenure

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- Governed by statute –RCW 28B.50.850-873 and echoed in collective bargaining agreements
- Tenure = faculty appointment for an indefinite period of time.
- Tenure is a property right that may only be removed for sufficient cause and with due process.
- The Board “shall” provide for the award of faculty tenure following a probationary period not to exceed 9 consecutive quarters (excluding summer).

# Probationary Faculty Appointment

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- Tenure track faculty are hired into yearly probationary appointment for 3 years (not to exceed 9 consecutive quarters, excluding summer)
- Probationary appointment:
- shall be one of continuing evaluation by a review committee
- may be terminated without cause upon expiration of the term of employment

# Probationary Appointment Renewal/Nonrenewal

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- Notice of a decision to terminate/non-renew a probationary appointment shall be made as soon as possible, but must be given no later than one complete quarter (excluding summer) prior to expiration of the contract.
- For practical purposes, this usually means a decision is made at the last winter quarter (March) Board meeting



# Awarding Tenure

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- The Board *must* give reasonable consideration to recommendations of the tenure review committee.
- *May* take into consideration recommendation of president. (*Smith v. Greene* (1976))
- May award tenure at any time, but must make a decision within 9 quarters.
- Exception: may extend probations for 1-3 quarters with formal recommendation of TRC and written consent of probationer, to complete PIP in progress.

# Removing Tenure

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- Removal only for sufficient cause
- Due process procedures must be observed
- Committee of peers hears evidence supporting dismissal
- Committee and hearing officer make recommendations to the Board of Trustees
- Board makes the final decision (quasi-judicial role)
- Since Board makes the final decision, it cannot be part of the initiation of charges or hearing process

# Tenure Dismissal During Financial Emergency

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- Triggered by Governor or Legislature Reductions
- State Board Declaration
- Local Board Determination that RIF may be necessary due to the financial emergency declared by the State Board
- =Expedited Hearing timelines/Consolidated Hearings/Limited bases for challenge

# Executive Ethics Act

## RCW 42.52

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- Aimed at preventing/mitigating conflicts of interest
- Government officials and employees hold a public trust. Paramount in that trust is the principle that public office may not be used for personal gain or private advantage
- Executive Ethics Board – <http://ethics.wa.gov>

# Ethics Law Overview

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- No activity in conflict with proper discharge of official duties
- May not use official position or state resources to secure special privileges for yourself or others
- May not receive a gift if it could be reasonably expected to influence performance of official duties -- \$50 aggregate limit on unsolicited gifts per year from a single source.
- May not use state resources for political campaigns

# Ethics (cont'd)

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- Ethics violations are personal to the state employee/official, rather than the college.
- The Attorney General's Office is not statutorily authorized to defend an official or employee in actions before the Executive Ethics Board

# RECAP

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- AGO –we're here to assist
- Open Meetings—everything is action
- Public Records—Everything is a public record
- Tenure—The Board gives and the Board takes away. But, follow the process
- Ethics—Be aware of conflicts and make use of the Exec Ethics Bd

# E-MAIL

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- **Compose under the assumption that it will be made publicly available**
- **Don't hit Reply-all to a message sent to multiple board members**
- **If using personal computer, keep Board business in a separate file**