


**Ethics, Liability, and
Best Practices
for Elected Officials:
The Short Version**


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Speaker Bio

- Tami A. Tanoue
- In-house General Counsel/Deputy Executive Director for CIRSA
- Previously in private practice with the firm of Griffiths, Tanoue, Light, Harrington & Dawes, serving CIRSA as its contract General Counsel for 12 years, and serving as City or Town Attorney for several Colorado municipalities.
- Previously Staff Attorney for the Colorado Municipal League, representing the collective interests of Colorado municipalities.
- Regular speaker on local government liability topics; author of several publications on liability issues.




Speaker Bio

- Suggestions today are based on my years as a municipal attorney and observing the ways in which governing bodies can get into or stay out of trouble from a liability standpoint
- Suggestions are those of the author, who takes full responsibility for them...any resemblance strictly coincidental, etc. ☺
- Here as a training resource; in the event of any conflict between my training tips and the advice of your entity's attorney, the advice of your attorney prevails!




Introduction

- In this presentation, we'll examine these issues:
 - Governance versus administration: respecting the allocations of responsibility in your organizational structure:
 - Personal conduct towards one another, staff, and the community




Governance Models

- John Carver's work on "policy governance" is perhaps the most comprehensive model for board governance
 - Addresses many common and recognizable inefficiencies in governing body-staff relationships
 - Seems to have caught on in part because it is a complete and holistic model, and provides a template for distinguishing between governance versus management/administration, and for honoring that distinction
 - Carver, Boards That Make A Difference (2006)
 - More recent updating of policy governance model by Ken Schuetz, "Aligned Influence" (www.alignedinfluence.com)



Policy Governance Basics

- **Ends versus means:** Governing body determines the "ends," and CEO and staff determine and carry out the "means"
 - Ends: the outcomes to be achieved, for whom, and at what costs
- **Executive limitations:** Governing body sets forth the boundaries of ethics and prudence, in carrying out the means, beyond which the CEO and staff must not cross
 - But within those boundaries, the CEO is free to choose the means to the board's ends
- **Board-staff linkage:** Governing body determines the manner in which it delegates authority to the CEO, how it will evaluate CEO performance (in achieving the "ends" and meeting the executive limitations)
- **Governance process:** Governing body determines its own philosophy, the specifics of its own job, and its accountability

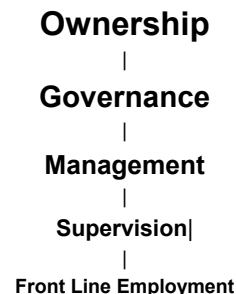


Governance characteristics

- Is the governing body's focus on governance rather than management or administration?
 - Management is not the same thing as governance! Being a "super-manager" is still not governing.
 - Governance is policy-setting, big picture, and forward-looking, rather than making reactive, case-by-case decisions as issues arise, or after-the-fact after a problem surfaces
 - Boards should develop "a taste for the grand expanse of the big picture," says Carver



Where are you focusing your efforts?



Where are you focusing your efforts?

- **Time Horizons:** Yours should be the furthest out!
- **Dealings within Chain of Command:** Don't jump more than one level!
- **No Redundancy:** Unlike other levels in the organization, there is no one else who can step in and do *your* job!



Governance characteristics

- Does the governing body speak with one voice?
 - "Deliberate in many voices, but speak with one"
 - Recognize that, while there may be dissension or disagreement, the CEO (w.f the Town Administrator and/or other direct report) is accountable only for directions *given by the body as a whole*
 - Is the voice directed at the CEO, the governing body's primary employee?



Honoring the Governance-Management Distinction

- Why is this a liability issue?
 - Public officials have protection from liability when they are within the "scope of employment" – term used in Colorado Governmental Immunity Act
 - "Scope of employment" means everyone must respect the parameters of your job description
 - So to the extent you have organizational parameters that include an allocation of responsibilities, those parameters are part of your job description; honoring those parameters will help keep you within the "scope of employment"
 - Liability coverages also hinge on your being within the scope of your authorized duties
 - If you are going outside the parameters, you could be outside the scope of your job description...and outside the scope of your liability protections!
 - If you're doing management/administration, then who's doing the governance? And what about those who are supposed to be doing the management/administration? What are they doing?




Personal Conduct

- The way you conduct yourself in relation to other members of the body, staff, and the community greatly impacts your effectiveness as a governing body member
- The incivility and divisiveness that characterize partisan politics need not be imported into nonpartisan local government!



Personal Conduct

- With respect to one another:
 - Is someone maintaining the "outsider" perspective even after becoming the ultimate "insider"?
 - You may have started as a "critic" of the status quo, or been propelled to seek public office because of one particular issue of interest to you, but changes to your focus and perspective may need to change once you are in public office
 - Is someone not recognizing that a governing body member's power can be exercised only through the body as a whole? Acting as "I" rather than "we"?
 - What about individual Town projects
 - Can you be both an elected official and a "volunteer" of the Town?
 - Is there an "imbalance of information" on the governing body?
 - Is there a sense of distrust among one another? Is there constantly the same split vote on every issue with the same people lining up on the same side every time?
 - This could mean that the entire power of the governing body is always being given over to the one "tie breaker"!




Mayor – Statutory Towns (Julesburg, Hugo, Limon, Ordway, Collbran)

What about the role of the Mayor?


- In statutory towns, the operative statute provides:

"Mayor - powers. The mayor or, in his absence, one of the trustees, who may be elected mayor pro tem, shall preside at all meetings of the board of trustees and shall have the same voting powers as any member of said board. The mayor shall be considered a member of the governing body and the board of trustees."
- So the statute specifies only one power: presiding at meetings!
- This is distinct from statutory mayor-council cities, statutory manager-council cities, and home rule municipalities
 - In these other types of municipalities, the role of the mayor is considerably more fleshed out in statute or charter provisions...



Mayor - Statutory Council-Manager Cities (Rocky Ford, Florence)


- The Mayor shall be the presiding officer of the city council and shall have the same voting powers as any member of said council
- The Mayor shall be considered a member of the governing body and the city council and shall be recognized as the head of the city government for all ceremonial purposes, by the courts for serving civil processes, and by the government for purposes of military law.
- The Mayor shall exercise such other powers and perform such other duties as are conferred and imposed upon him by CRS 31-4-201 et seq. or the City's ordinances



Mayor – Statutory Mayor-Council Cities (Brush)

The Mayor shall:


- keep an office at some convenient place in the city, to be provided by the city council
- sign all documents which by statute or ordinance may require his or her signature.
- be its chief executive officer and conservator of the peace
- cause the ordinances and the regulations of the city to be faithfully and constantly obeyed.
- supervise the conduct of all the officers of the city, examine the grounds of all reasonable complaints made against any of them, and cause any violations or neglect of duty to be promptly corrected or reported to the proper tribunal for punishment and correction.
- exercise, within the city limits, the powers conferred upon the sheriffs of counties to suppress disorders and keep the peace
- perform such other duties compatible with the nature of his office as the city council may from time to time require
- be the presiding officer of the city council and have the same voting powers as any member of said council
- be considered a member of the governing body and the city council
- If so provided by ordinance, not be entitled to vote on any matter before the council except in the case of a tie vote, and approve or disapprove any ordinance adopted and all resolutions authorizing the expenditure of money or the entering into of a contract



Mayor – Home Rule Municipalities (Basalt, Carbondale, Fort Morgan, Glenwood Springs, La Junta, Parachute)


In home rule municipalities, the Mayor's role varies by charter. As one example, in La Junta:

- The mayor shall preside at the meetings of the Council and shall exercise such powers and perform such other duties as are or may be conferred and imposed upon him by this Charter or the ordinances of the City.
- The mayor shall have all of the powers, rights and privileges of a Council member and shall vote in the same manner as other Council members.
- The mayor shall be recognized as the head of the City government for all ceremonial purposes by the courts for serving civil process and by the government for purposes of military law.
- The mayor shall be a conservator of the peace, and in emergencies may exercise within the City the powers conferred by the Governor of the State of Colorado for purposes of military law, and shall authority to command the assistance of all able-bodied citizens to aid in the enforcement of the ordinances of the City and to suppress riot and disorder.
- Except as may be required by statute, the mayor shall exercise only such power as this Charter or the Council shall specifically confer upon him.



Personal Conduct - Mayor

- So what the Mayor does in one community does not necessarily fall within the legal provisions that apply in YOUR community!
- Of course, in many communities, the leadership role of the mayor extends significantly beyond statutory/charter responsibilities
 - Consensus-builder, lead representative of the community, the "face" of the governing body, liaison role, others?
- **But especially in statutory towns, governing bodies govern by consensus, mayors lead by consent**
 - Consent can be explicit (ordinance or rules of procedure)
 - Or implicit (history, oral tradition, "we've always done it this way and it works for us")
 - Or may be by default, vacuum-filling, or apathy (it was just allowed to happen)



Personal Conduct

- *If there's no meeting of the minds between the Mayor and the rest of the Board on what the Mayor's role should be, then there may be a day of reckoning – the rest of the Board could decide to get explicit on the parameters of the Mayor's leadership role*
- In towns that have a Town Administrator position in place, additional issues can arise between the Administrator's role and the Mayor's role
- So mayoral leadership can be a tightrope-walk
 - What are the governing body's expectations?
 - What are the responsibilities that have been delegated to the Administrator?
- If these issues are ignored, worst case scenarios can result
 - A governing body that refuses to recognize any role for the mayor beyond the strictest interpretation of 31-4-302
 - A governing body that chafes under what it views as an unsanctioned "power grab"
 - Administration and staff struggling with what has or has not been delegated to them



Personal Conduct

- With respect to staff:
 - Is staff viewed as "the enemy"?
 - Is there frequent second-guessing of staff, or a desire on the part of one or more governing body members to do individual "research" on staff recommendations?
 - Is staff frequently blindsided by issues that are raised for the first time only in the middle of a governing body meeting?
- With respect to the community:
 - Are "public comment" periods turning into "public inquisition" periods or "public argument" periods? (see previous slides)
 - Is "staff bashing" or "elected official bashing" happening at governing body meetings?



Honoring Personal Conduct Guidelines

- Why is this a liability issue?
 - CIRSA's observation: How a governing body interacts with one another and with staff is a great predictor of liability. A dysfunctional governing body inevitably attracts claims.
 - A governing body that mistreats staff or citizens is modeling bad behavior organization-wide. "You know what" rolls downhill!
 - A governing body that creates or allows chaos in the chain of command is asking for employment claims!
 - A governing body that is over-involved in administrative matters is straying away from its "job description" as well as its best areas of immunity.



Conclusion

- Ethical behavior is not just about instances where a financial or other conflict of interest may exist
- In a larger sense, ethical issues are present in all of your dealings with one another, staff, and the community
- The ethical choices you make in those dealings will either enhance or reduce your effectiveness, and enhance or reduce your liability
- Following best practices for maximizing your effectiveness as a governing body member also maximizes your liability protections!



About CIRSA

- Colorado Intergovernmental Risk Sharing Agency
- Public entity self-insurance pool for property, liability, and workers' compensation coverages
 - Formed by in 1982 by 18 municipalities pursuant to CML study committee recommendations
 - Not an insurance company, but an entity created by intergovernmental agreement of our members
- Total membership today stands at 266 member municipalities and affiliated legal entities
- Out of 271 incorporated municipalities in Colorado:
 - 81% are members of our PC pool
 - 45% are members of our WC pool



About CIRSA

- Member-owned, member-governed organization
 - No profit motive – sole motive is to serve our members effectively and responsibly
 - Have returned over \$30,000,000 in contributions to our membership
- CIRSA Board made up entirely of municipal officials
- Seek to be continually responsive to the liability-related needs of our membership – coverages and associated risk management services, sample publications, training, and consultation services, as well as specialty services such as home rule charter review
- We have the largest concentration of liability-related experience and knowledge directly applicable to Colorado municipalities

