



**California Special
Districts Association**
Districts Stronger Together

GOVERNANCE BEST PRACTICES

Board Member Liability Issues

Governance Best Practices

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CSDA Chapter
Plumas County



Board Member Liability Issues

Presented By

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Dennis supervises the SDRMA Property/Liability and Workers' Compensation claims operations. In addition, Dennis provides Safety and Risk Management training to Member agencies.

Currently there are 501 Member agencies in the Property/Liability Program and 439 Member agencies in the Workers' Compensation Program.



Board Member Liability Issues

GOVERNANCE

1. government, control, or authority
2. the action, manner, or system of governing

Simple Definition of *govern*

- : to officially control and lead (a group of people) : to make decisions about laws, taxes, social programs, etc., for (a country, state, etc.)
- : to control the way that (something) is done
- : to control or guide the actions of (someone or something)



Board Member Liability Issues

California Government Code

61000. This division shall be known and may be cited as the Community Services District Law.

61003. (a) This division provides the authority for the organization and powers of community services districts.

61002.(b) "Board of directors" means the board of directors of a district that establishes policies for the operation of the district.

(d) "District" means a community services district created pursuant to this division or any of its statutory predecessors.



Board Member Liability Issues

California Government Code

61002. (f) "General manager" means the highest level management appointee **who is directly responsible to the board of directors** for the implementation of the policies established by the board of directors.

61040. (a) A legislative body of five members known as the board of directors **shall** govern each district. The board of directors shall establish policies for the operation of the district. The board of directors **shall** provide for the implementation of those policies which is the responsibility of the district's general manager.



Board Member Liability Issues

California Government Code

61045. (a) A majority of the total membership of the board of directors shall constitute a quorum for the transaction of business.

(b) **The board of directors shall act only by ordinance, resolution, or motion.**

(c) Except as otherwise specifically provided by law, a majority vote of the total membership of the board of directors is required for the board of directors to take action.

(d) The minutes of the board of directors shall record the aye and no votes taken by the members of the board of directors for the passage of all ordinances, resolutions, or motions.



Board Member Liability Issues

California Government Code

61044. A board of directors shall hold a regular meeting at least once every three months. Meetings of the board of directors are subject to the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5.



Board Member Liability Issues

California Government Code

(e) The board of directors shall keep a record of all its actions, including financial transactions.

(f) **The board of directors shall adopt rules or bylaws for its proceedings.**

(g) The board of directors shall adopt policies for the operation of the district, including, but not limited to, administrative policies, fiscal policies, personnel policies, and the purchasing policies required by this division.



Board Member Liability Issues

California Government Code

61047(e) For the purposes of this section, a "day of service" means any of the following:

(2) Representation of the district at a public event, **provided that the board of directors has previously approved the member's representation at a board of directors' meeting** and that the member delivers a written or oral report to the board of directors regarding the member's representation at the next board of directors' meeting following the public event.

(5) Participation in a training program on a topic that is directly related to the district, provided that the board of directors has previously approved the member's participation at a board of directors' meeting, and that the member delivers a written or oral report to the board of directors regarding the member's participation at the next board of directors' meeting following the training program.



Board Member Liability Issues

California Government Code

61048. A board of directors **may** appoint one or more advisory committees to advise the board of directors about the district's finances, policies, programs, or operations.

61050. (a) **The board of directors shall appoint a general manager.**

(d) The general manager and the district treasurer, if any, **shall serve at the pleasure of the board of directors.**



Board Member Liability Issues

California Government Code

61051. The general manager shall be responsible for all of the following:

- (a) The implementation of the policies established by the board of directors for the operation of the district.
- (b) The appointment, supervision, discipline, and dismissal of the district's employees, consistent with the employee relations system established by the board of directors.
- (c) The supervision of the district's facilities and services.
- (d) The supervision of the district's finances.



Board Member Liability Issues

California Government Code

61060. A district shall have and may exercise all rights and powers, expressed and implied, necessary to carry out the purposes and intent of this division, including, but not limited to, the following powers:

- (b) To adopt, by ordinance, and enforce rules and regulations for the administration, operation, and use and maintenance of the facilities and services listed in Part 3 (commencing with Section 61100).
- (f) To appoint employees, to define their qualifications and duties, and to provide a schedule of compensation for performance of their duties.
- (g) To engage counsel and other professional services.
- (l) To provide training that will assist the members of the board of directors in the governance of the district.



Board Member Liability Issues

California Government Code

§ 820.9 Statutory Immunity

Members of city councils, mayors, members of boards of supervisors, members of school boards, members of governing boards of other local public entities, members of locally appointed boards and commissions, and members of locally appointed or elected advisory bodies are not vicariously liable for injuries caused by the act or omission of the public entity or advisory body.

Nothing in this section exonerates an official from liability for injury caused by that individual's own wrongful conduct.



Board Member Liability Issues

California Government Code

§ 815.3

If the trier of fact determines that the act or omission arose from and was directly related to the elected official's performance of his or her official duties, the public entity shall be liable for the judgment as provided by law. However, acts or omissions constituting sexual harassment shall not be deemed to arise from, and to directly relate to, the elected official's official duties.



Board Member Liability Issues

California Government Code

§ 815.3. (a) Notwithstanding any other provision of this part, unless the elected official and the public entity are named as codefendants in the same action, a public entity is not liable to a plaintiff under this part for any act or omission of an elected official employed by or otherwise representing that public entity, which act or omission constitutes an intentional tort, including, but not limited to, harassment, sexual battery, and intentional infliction of emotional distress. For purposes of this section, harassment in violation of state or federal law constitutes an intentional tort, to the extent permitted by federal law. This section shall not apply to defamation.



Board Member Liability Issues

California Government Code

§ 815.3 (c) If the trier of fact determines that the elected official's act or omission did not arise from and was not directly related to the elected official's performance of his or her official duties, upon a final judgment, including any appeal, the plaintiff shall first seek recovery of the judgment against the assets of the elected official. If the court determines that the elected official's assets are insufficient to satisfy the total judgment, including plaintiff's costs as provided by law, the court shall determine the amount of the deficiency and the plaintiff may seek to collect that remainder of the judgment from the public entity. The public entity may pay that deficiency if the public entity is otherwise authorized by law to pay that judgment.



Board Member Liability Issues

Public Records Act

In a unanimous opinion, the Court announced that it would not permit public officials to conduct the public's business on private devices and place those communications beyond the PRA's reach. The Court referred — several times — to a constitutional mandate to broadly interpret the PRA in favor of public access. However, the Court acknowledged that the Act was dated, and that this case “concerns how laws, originally designed to cover paper documents, apply to evolving methods of electronic communication. It requires recognition that, in today's environment, not all employment-related activity occurs during a conventional workday, or in an employer-maintained workplace.” The Court went on to assert that what it was deciding was a “narrow question” — namely, whether writings concerning the conduct of public business are beyond the reach of the PRA merely because they were sent or received using a nongovernment account. The Court's answer was no, they are not.



SPECIAL DISTRICT RISK MANAGEMENT AUTHORITY



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Questions?

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(f) It is the intent of the Legislature that elected officials assume full fiscal responsibility for their conduct which constitutes an intentional tort not directly related to their official duties committed for which the public entity they represent may also be liable, while maintaining fair compensation for those persons injured by such conduct.



Board Member Liability Issues

Public Records Act

The California Supreme Court has finally decided a question that has, for years, vexed courts, public officials, the media and citizen watchdogs: Are electronic communications — emails, voicemails and texts — on private devices or servers subject to disclosure under the state's 48-year-old Public Records Act? In a ruling that arose from litigation involving a citizen watchdog and the City of San Jose, the Court held today that such communications may be subject to disclosure under the Act. The Court rejected the City and other allied governmental entities and associations' position that such communications should not be subject to disclosure by a public agency since they are not in the public agency's possession.

