



WASB

Legal Services Membership

LEGAL NOTES

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TAKING OFFICE AS A SCHOOL BOARD MEMBER

Introduction

School board members are elected at the spring election¹ for a general term of three years.² Once a person is elected to a school board, that individual is not automatically entitled to act. Rather, certain steps must be taken in order to become a school board official and to organize the school board after each spring election. The purpose of this Legal Note is to review common questions that arise concerning taking office, functioning of the board, and the duties of a school board member.

Oath of Office

Before an individual is empowered to act as an officer of the school district, such individual must take and file the official oath.³ The oath must be taken in writing and be sworn to. The oath is generally in the following form:

I, the undersigned who have been elected to the office of school board member, have not yet entered upon the duties thereof, swear or affirm that I support the Constitution of the United States and the Constitution of the state of Wisconsin, and will faithfully discharge the duties of said office to the best of my ability, so help me God.⁴

Once the oath is taken, it is then filed with the school district clerk.⁵ The official oath can also be given orally in addition to the written oath, if desired.⁶ Both forms of the oath can be given to the new school board member by the school district clerk or any other authorized individual.

It is essential that all new school board members realize that they must take this oath prior to taking office. Such oath must be taken on or before the fourth Monday in April.⁷ If a newly elected board member neglects to take the oath by such date, a vacancy will be created on the school board.⁸ This vacancy on the board will have to be filled by an appointment by the remaining members. Such appointee will hold office until the successor is elected.⁹

Electing Officers

The organizational school board meeting must be held on or within thirty days after the fourth Monday in April.¹⁰ Various actions and informational matters may be discussed at this meeting. Most importantly, the election of school district officers occurs. A school board with three members has three officers, president, treasurer and clerk. These officers serve for staggered terms. At the first election of the board, the clerk will serve for a one-year term, the treasurer for a two-year term, and the president for a three-year term.¹¹ Thereafter, elections for officers take place when the terms expire. In the case of a school board with more than three members, the school board annually elects a president, vice president, treasurer, and clerk.¹² In addition, in unified school districts, the board must elect a secretary who need not be a member of the school board.¹³ Election of these officers can be done by either general ballot or a secret ballot.¹⁴

Voting

Each board member is entitled to vote. A member must be present to exercise his or her voting privileges. The statutes make no provision for voting by "proxy." Section 19.88(2) of the Wisconsin Statutes provides that a member of a school board may require that a vote be taken in such a manner that the vote of each member is ascertained and recorded. This is commonly referred to as a roll call vote. In instances where a statute does not require voting in a form that the vote of each member can be ascertained and recorded, and where no member requires the vote to be taken in that manner, action may be by voice vote or by hand vote.¹⁵

A majority of the number of school board members constitutes a quorum for the transaction of business at a board meeting.¹⁶ Once assembled, a quorum will be deemed to have passed a particular motion if the motion receives the vote prescribed by law. In absence of a statute specifying the vote required to do a particular act, a majority vote of a quorum of a school board is sufficient.¹⁷

Some particular statutes which address the number of votes needed to act include Wis. Stat. § 118.22(2) which states that no teacher may be employed or dismissed except by a majority vote of the full membership of the board, and Wis. Stat. § 65.90(5)(a) which requires a vote of two-thirds of the entire membership of the board for transfers of budget appropriations to alternative purposes.

Calling Meetings

The school board must hold a regular meeting at least once each month at a time and place determined by the board.¹⁸ The school board of a common or union high school district may also hold special meetings upon the written request of any school board member.¹⁹ The school board of a unified school district can hold meetings at other times upon the call of the board president or by a request of the majority of the board filed with the clerk.²⁰

Procedure

At the organizational meeting board members may be informed of the procedures that must be followed by the school board along with each individual board member's duties and responsibilities. The specific parliamentary procedure to be used for the running of each school board meeting is not defined in the statutes. A school board's authority to adopt its own rules of parliamentary procedure has not been challenged.²¹ A board's parliamentary procedure need not be elaborate. It must be noted, however, that any rules adopted by the board must be consistent with any statutory requirements.

One of the most recognized works of parliamentary procedure is *Roberts Rules of Order*.²² *Roberts* can be extremely detailed and may be more specific than needed for many school boards, but it does offer guidance to a school board which desires to adopt its own procedures. Whatever rules the board adopts, it should try to apply them consistently even though the courts have not required strict compliance with the technicalities of parliamentary procedure. Absent proof to the contrary, the action of a school board is presumed to have been in conformity with its own rules and a board's decision will not be overturned on a technicality or strict construction of parliamentary procedure if the facts can be gleaned from the minutes.

Open Meetings Law

While each school board can adopt its own procedures which it will use for running its meetings, there are certain statutory procedures which must be followed. One of these is compliance with the Open Meetings Law.²³ The Open Meetings Law requires that every meeting of school boards and other governmental bodies be preceded by public notice, and be held in open session unless an exemption applies.²⁴ A closed session held under one of the exceptions to the Open Meetings Law should be viewed by board members as one part or segment of the overall meeting which must initially be convened in open session.²⁵ Prior notice of a contemplated closed session must be given indicating the subject matter of the session and the specific statutory exception by which the contemplated closed session is authorized.²⁶ Where only a closed session is contemplated, prior notice of the meeting must be given stating that an open meeting will be held solely for the purpose of taking a vote to convene a closed session. Compliance with the Open Meetings Law is extremely important and therefore it is helpful for all board members to understand the basic requirements of the statute.

Publishing Proceedings

The proceedings of a school board meeting must be published within 45 days after the meeting. The notice should include the substance of every official action taken by the board and a statement of receipts and expenditures in the aggregate. The notice must be a Class 1 notice (a notice which requires only one insertion) in a newspaper published in the district, if any, or by a district-wide distribution prepared and directed by the school board and paid out of school funds. If there is no newspaper published in the district, the proceedings shall be posted or published as the school board directs.²⁷

Rules of Ethics

All school board officials must be aware that their conduct is governed by a code of ethics for local governmental officials.²⁸ Basically, the code of ethics prohibits school board members from using their office to obtain any type of gain or benefit for themselves or for their family. The school board member should not accept items or services offered because of his or her position on the board. An item or service includes food, drink and travel, among others, of more than a nominal value. A board member should not accept items that could influence his or her vote on official actions or that could reasonably be considered a reward for any official action or inaction. A school board official should also not accept transportation, travel accommodation or communication services for which the supplier would usually charge.

A school board official can accept and retain items such as food, drink, transportation, lodging, items and services which are offered for a reason unrelated to his or her board position, or if they are provided for the benefit of the local governmental unit and not for a private benefit. Mere tokens or items of only nominal insignificant or trivial value can also be accepted. This presents only a brief list of dos and don'ts under the code of ethics. School board officials should become familiar with the ethics rules to ensure that their conduct does not raise a question of impropriety.

A board member should also be aware that certain actions can result in criminal violations for official misconduct.²⁹ For example, a board member is guilty of a class E felony, which is punishable by a fine not to exceed \$10,000.00 or imprisonment not to exceed two years, or both,³⁰ if he or she in his/her capacity as a school board member:

- (a) intentionally fails or refuses to perform a mandatory duty of office within the required time or in the required manner;
- (b) performs an act knowing it is in excess of his/her authority or knowing it is forbidden by law;
- (c) exercises power with an intent to gain a dishonest advantage;

- (d) makes an entry in an account, report or statement which is intentionally falsified; and
- (e) accepts items of value in exchange for performance of a service.³¹

A school board member is also forbidden from having a private interest in any contract of the district in which he or she negotiates or participates.³² Violation of this rule is also a Class E Felony. There are certain exceptions to the rule including contracts not totalling more than \$7,500.00 per year and contracts for the deposit of funds with a depository, among others.³³ It should be emphasized, however, that this is a strict liability statute which means that if a violation is found, the penalty will be imposed. There does not have to be a corrupt motive on the part of the board member.³⁴ Therefore, board members should exercise extreme caution if they may have a private interest in a district contract.

Duties and Responsibilities

The school board is responsible for all district concerns. The state statutes specifically define the legal powers and responsibilities of school board members.³⁵ An individual board member has no legal powers. An individual board member (other than an officer exercising his or her duties of office) can exercise his or her power as a board member only through board action.

School board members are responsible for policy making throughout the district. This encompasses all facets of the school's operations from staffing to educational programs to financing. The board will establish current and long-range educational plans and programs for its district along with approving and adopting an annual budget which will provide the financial basis for the buildings, furnishings, staff, materials, and equipment needed to carry out the educational programs. Board members will be involved in determining staffing needs and hiring as well as the involvement in investigations regarding conduct of students and teachers. The board is also responsible for designating the superintendent of schools who is charged with implementing the policies that are adopted by the board. The role of the board member is all encompassing and members must be prepared to address the variety of issues that they will encounter.

Conclusion

The organizational meeting of the school board is a good opportunity for new members of the board to become acquainted with board procedures and responsibilities, and to receive an overview of the issues that they will face during their term. Another excellent opportunity for board member inservice occurs during the spring and summer at workshops sponsored by WASB at various locations throughout the state. This year the workshops are scheduled for April 30 and May 1 in Eau Claire; May 14 and 15 in Green Bay; and June 4 and 5 in Madison.

ENDNOTES

1. Wis. Stat. §§ 120.06(1) and 102.42(1).
2. Wis. Stat. §§ 120.06(3) and 120.42(2).
3. Wis. Stat. §§ 19.01(5), 120.06(4), 120.06(10), and 120.42(2).
4. Wis. Stat. § 19.01(1).
5. Wis. Stat. § 19.01(4)(h).
6. Wis. Stat. § 19.01(1m).
7. Wis. Stat. §§ 120.06(4) and 120.42(2).
8. Wis. Stat. § 17.03(7).
9. Wis. Stat. §§ 17.26(1) and 120.42(3).
10. Wis. Stat. §§ 120.05(1)(c) and 120.43(1).
11. Wis. Stat. § 120.05(1)(b).
12. Wis. Stat. §§ 120.05(1)(c) and 120.43(1).
13. Wis. Stat. § 120.43(1).
14. Wis. Stat. § 19.88(1).
15. 66 Op. Att’y Gen. 60 (1977).
16. Wis. Stat. § 120.11(1).
17. Legal Comment October 1980.
18. Wis. Stat. §§ 120.11(1) and 120.43(2).
19. Wis. Stat. § 120.11(2).
20. Wis. Stat. § 120.43(2).
21. Hall v. Banking Review Board, 13 Wis. 2d 359, 365, 108 N.W.2d 543 (1961); Legal Comment December 1992.
22. 75 Op. Att’y Gen. 247, 248 (1986).
23. Wis. Stat. § 19.81, et seq.
24. Wis. Stat. § 19.83.
25. Wis. Stat. § 19.85; Legal Comment July 1981.
26. Wis. Stat. § 19.84.
27. Wis. Stat. §§ 120.11(4) and 120.42(4).
28. Wis. Stat. § 19.59.
29. Wis. Stat. § 946.12.
30. Wis. Stat. § 939.50(3)(e).
31. Wis. Stat. § 946.12(1)-(5).
32. Wis. Stat. § 946.13(1).
33. Wis. Stat. § 946.13(2).
34. State v. Stoehr, 134 Wis. 2d 66, 396 N.W.2d 177 (1986).
35. Wis. Stat. §§ 120.12, 120.13, and 120.44(2).