



FOIA, ROBERT'S RULES & ETHICS WORKSHOP 2018

Freedom of Information



FOIA Covers

- Public Meetings
 - Major focus of this presentation.
- Public Documents
 - Broad look at the end.

Public Meetings

- "Meeting" definition:
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- FOIA defines a "meeting" as "any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency...to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power." Conn. Gen. Stat. § 1-200(2).

What types of meeting are not public?

- **1. Any meaning of a personnel search committee for an executive level position.**
- **2. A chance meeting or social gathering (not planned nor intended to discuss board business)**
- **3. Strategy or negotiations with respect to collective bargaining.**
- **4. A caucus of the members of a single political party (Even if there is a quorum of the board).**
- **5. "An administrative or staff meeting of a single-member public agency." This exemption applies when the administrative head of a public agency (i.e. the First Selectman) holds a staff meeting without other members of the Board of Selectmen being present. See e.g. Guinness v. PZC City of Middletown, #FIC 1998-322 (3/10/99); Bowman v. BOE, Regional School District #18, #FIC 1 998-119 (9/23/98).**

Rights of the Public

- **When a board holds a meeting, members of the public are free to attend, except for executive session.**
- **The right to attend a meeting is not limited. Anyone can attend, regardless of residence, and the board cannot require that persons attending a meeting provide their name or any other information as a condition of attendance.**
- **Members of the public have the right to tape-record any meeting of the board; any person making such tape recording does not need permission or even to provide notice to the board.**

Rights of the Public (Cont.)

- **In addition, the public has the right to broadcast and/or photograph meetings of the board.**
- **Boards may adopt rules in advance to govern recording, photographing and/or broadcasting its meetings. (Ask Town Attorney for help!)**

Types of Meetings

- Regular
- Special
- Emergency

Regular Meeting

- A regular meeting is one that has been included in the listing of regular meetings posted with the town clerk no later than January 31 of each year.
- The agenda of a regular meeting must be filed with the Town Clerk at least 24 hours before the meeting convenes, and the posting must be available to the public. **NOTE: THE TOWN CLERK HAS TO BE OPEN FOR IT TO APPLY!**
- No business other than that listed on the posted agenda may be conducted at the meeting. However, by a two-thirds vote, the members of the board may add an item to the agenda at a regular meeting.

Special Meeting

- **What is a “special meeting: Any meeting (except emergency meetings) not included on the list of regular meetings filed with the town clerk**
- **Notice of the meeting (time/place/agenda), must be filed with the town clerk at least 24 hours before the meeting convenes.**
- **Each member of the board is entitled to written notice delivered to him or her, unless the member waives such notice or actually attends the meeting. (Email works for this!)**
- **NOTE: Items cannot be added to the agenda of a special meeting, and the board can address only business as is included in the notice of the meeting.**

Emergency Meeting

- **Similar to a special meeting in that the board is not permitted to deal with any item not on the posted agenda for the meeting.**
- **The difference between a special meeting and an emergency meeting is that the notice of an emergency meeting need not be filed 24 hours before the meeting.**
- **In an emergency meeting, the board may only conduct such business as is required by the emergency.**
- **The board must include in the minutes of the meeting a statement setting forth the nature of the emergency, and the minutes of the meeting must be filed with the town clerk within 72 hours of the meeting.**

Agenda

- **The agenda/notice must contain:**
 - Time
 - Place
 - The business to be transacted.
 - **NOTE: While the FOIA does not cover the level of detail that is required in an agenda. The agenda should identify the business to be transacted for the potentially interested members of the public.**

Votes

- **The votes of all members of the board must be reduced to writing and be available for public inspection within 48 hours of the meeting.**
- **“For Public Inspection” means filed with the Town Clerk.**

Minutes

- **The minutes of the board meeting must be available for public inspection, within seven days of the meeting.**
- **Minutes should include:**
 - **when the meeting was convened;**
 - **which members of the board were present/absent;**
 - **a short description of the business transacted**
 - **a listing of any action taken by the board, specifying the vote of each board member;**
 - **Any executive sessions held, with a statement of the reason(s) for the executive session and who was in attendance; and**
 - **When the meeting was adjourned.**

Minutes

- Get your draft minutes in to the Town Clerk within 7 days.
- You can always amend minutes and file your amendment at a later point.
- Easier than having to attend a hearing with the FOI Commission!!!

Executive Sessions

- A board may exclude the public from a portion of its meeting by executive session.
- Note that there is no general executive session privilege for discussions with a board's lawyer.
- To go into Executive session you need a two-thirds vote of the members present and voting.
- The board must publicly state the reasons for the executive session.

Executive Sessions

- In an executive session, only discussion is permitted.
- Any votes must be taken in open session.
- Attendance in the executive session must be strictly limited to members of the board, and such other persons whose "testimony or opinion" is required, and only for the period their presence is necessary to present such information.
- Minutes of the executive session should state who attended the executive session (unless job applicant).

Reasons for Executive Session

- #1 Personnel matters: "Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting."
- Note: the key provision here is that the individual who is the subject of the discussion must attend OR require that the discussion as to him or her be held in public.

Reasons for Executive Session

- #2 Security Devices:
- FOIA permits public agencies to convene in executive session to discuss security strategy or the deployment of security personnel or security devices.

Reasons for Executive Session

- #3 Pending Claims and Litigation.
- "Strategy and negotiations with respect to pending claims or pending litigation to which the public agency or a member thereof, because of his conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled."
- Must be "bona fide". Must have received written notice of the claim.

Reasons for Executive Session

- #4 Real estate:
- The law also permits executive session discussion concerning the acquisition of real estate, when publicity regarding the acquisition could cause the price to increase.
- This privilege terminates when all of the property has been acquired or the proceedings have been terminated. Conn. Gen. Stat. §1-18a(e)(4).

Reasons for Executive Session

- #5 Confidential documents/information:
- "Discussion of any matter which would result in the disclosure of public records or information contained therein described in subsection (b) of Section 1- 19." Conn. Gen. Stat. §1-18a(e)(5).
- Examples: Medical Records, Student Records, Minor's Identity

Other Reasons for Executive Session?

THERE ARE NO OTHER REASONS TO HOLD AN
EXECUTIVE SESSION.

Practical Points on Meetings

- If you are not going to meet: Cancel your meeting.
- Town Clerk cannot correct or alter minutes.
- Members should all be sworn in.
- Resigning Members must submit written resignation to Town Clerk.

Public Records

- The public has the right to view and/or copy all public records maintained by the Town.

What is a public document?

- “Public records or files” means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.”

It's probably a public document.

- MOST documents in a public agency are available to the public for inspection and/or copying. The FOIA generally favors disclosure. This means that when there might be a question about whether a document should be disclosed, the FOIC will order it disclosed unless there is a really compelling reason not to.

FOIA REQUESTS

- The Town must respond to written requests within 4 business days.
 - Response does not mean produce.
 - Respond with an estimate of the amount of time it will take to locate and copy records.
 - In other words, the requested records do not necessarily need to be ready in four days, there just needs to be a response to the request within that time period.
 - a failure to respond is deemed a denial of the request.

FOIA Requests

- If you receive any request for information:
 - Contact Staff Assigned to your Board.
 - Town Attorney
 - Town Clerk



ROBERT'S RULES OF ORDER



A Board or Commission's authority comes from:

- Constitutional
- Statute/Administrative Law/Court Rulings
- Town Charter
- Town Ordinance

Procedure by which Board Act Comes from:

- Authority (See last slide) and where silent:
 - Commission Bylaws (Were applicable)
 - Robert's Rules of Order (When adopted)

Robert's Rules: Generally

- Rules to govern your meeting so they run smoothly.
- Extremely detailed.
- Tonight we will go over some highlights of items that I see tend to be problems for Boards and Commission.

Robert's Rules: The Chair

- The Chair runs the meeting.
 - Keeps order.
 - Moves through the agenda.
 - Asks for Motions.
 - Recognizes individuals to speak.
 - Rules on disputes.
 - May end debate.

Motions

- Generally, all motions need a second.
- When appropriate, the Chair should invite speakers to present.
- The Chair may ask for a motion and for a second.
- **If no second, the motion fails.**
- **If second, the chair moves for discussion.**

- Note the requirements of “seconds” do not apply to the Board of Selectman per charter.

Discussion

- Once there is a motion and a second, the chair opens discussion on the motion.
- When satisfied, the chair may end discussion and call a vote; OR
- The members can move to end discussion and call for a vote. (Needs 2nd and 2/3rds Vote).

Discussion & Amendments

- Amendments: Remember Motions can be amended or tabled during discussion.
- Both require a second.
- If second, there is an immediate vote.
- Needs majority to pass.

- NOTE: There are no friendly amendments.

Types of “ Regular” Motions

- Approve an Agenda item: “I move to adopt/approve/etc.”
- Adjourn
- Recess
- Table an Item
- Amend a Motion

- Note : All need second and majority.
- Note: Motions should always be in the affirmative.

“Special Motions”

- Amend an Agenda (Needs 2nd and 2/3 vote)
- Point of Order (Can interrupt speaker, no vote)
- Point of Information (Can interrupt speaker, no vote)
- Point of Personal Privileged (Chair decides)
- Amend an Agenda (Needs 2nd and 2/3rds)
- Add Executive Session (Needs 2nd and 2/3rds)
- Consider Something Out of Order (Needs 2nd and 2/3rds)
- End Debate and vote (Needs 2nd and 2/3rds)

Election of Officers

- Nominations do not require a second.
- Keep voting until a majority reached (unless bylaws provide otherwise).
- First Selectman (or designee) cannot break a tie unless bylaws/charter/statute provide.

When to adopt Robert's Rules?

- At the Organizational Meeting.
 - OR
- With the adoption of bylaws.
 - Check to see if your commission has bylaws.
 - If you do not, then draft and adopt some.
 - If you do: Appoint someone to review. Adopt. Record with Town Clerk.





ETHICS

Goal of the Ethics Code

- Transparent Government
- Process must be:
 - “Free from Threats, Undue Influence, and all forms of Impropriety so that the public trust is not eroded.”
 - “Good government depends upon decisions based on the merits of an issue in the best interests of the town, without regard to personal gain.”

Practically: What does that mean?

- **GOOD GOVERNMENT:**
 - Process is followed.
 - No appearance of favoritism or impropriety.
 - Reasoning behind decisions can be explained.
 - Every member of the public is treated the same.
 - Public access to records, minutes, agenda, etc.

How is it enforced?

Code of Ethics

Ethics Commission

Ethics Code

- Code governs:
 - Employees
 - Public Officials
 - Contractors
 - Former Employees/Public Officials.

**Let's Review Selected Portions of the Code
Applicable to Boards and Commissions**

Sec. 2-164. Fair and equal treatment.

- No official or employee shall grant or accept any special consideration, treatment or advantage to or from any person beyond that which is available to every other person.
- Simple: Treat everyone the same. Follow the process.

Sec. 2-165. Conflicts of Interest

- Charter Definition prevails.
- Code goes into great detail about what is and is not a conflict of interest.
- Remember the standard:
 - 1) Is there a conflict?
 - 2) Is there an appearance of a conflict?

Charter Definition

- 1101 Conflict of Interest Any elected or appointed town officer, official or employee, including any member of any town board or commission who has a financial interest, direct or indirect, in any contract, transaction or decision of any agency, agent, officer, board or commission of the Town, to which the Town is a party, **shall as soon as such financial interests shall appear to him disclose the nature and extent of that interest in writing to the Board of Selectmen who shall record such disclosure upon the official record in the office of the Town Clerk.**
- Any such officer, official, employee, board member or commission member **shall be disqualified from acting on any such matter coming before such agency, agent, officer, board or commission.** Violation of the provisions of this section shall be grounds for the removal of any such officer, official, employee, board or commission member. Such violation with the knowledge, expressed or implied, of any person, firm, partnership or corporation participating in such contract, transaction or decision shall render the same voidable by the Board of Selectmen.

Disqualification in matters involving a personal or proprietary interest.

- No employee or official shall participate in the hearing or decision of the board or commission of which he is a member upon any matter in which he is directly or indirectly interested in a personal or financial sense. In the event of such disqualification, such fact shall be entered on the records of the commission or board. No employee or official shall appear for or represent any person in any matter pending before the commission or board of which he is a member.
- Practically: Can't decide on a contract for a relative, friend, business, etc.

Disclosure of confidential information.

- No persons governed by this Code shall disclose or use any confidential information concerning the Town of Suffield affairs nor shall he or she use such information for the purpose of advancing the financial or personal interest of himself or herself or others.
- Practically: “Insider Trading”.

Representations of Private Interest

- No official or employee shall appear on behalf of another person's interests before any board, commission or agency of the town, nor shall he represent another person's interests in any action or proceeding against the town in any litigation when such appearance or representation would be in conflict with or would impair his independence of judgment and action in the performance of his official duties as such officer or employee.

Representation of Self

- Any public official or public employee may appear before any board or commission of the Town of Suffield on his/her behalf, or be a party in any action, proceeding, or litigation brought by or against a public official or public employee to which the Town of Suffield is a party.
- Bottom line: Representation of Self is OK

No Multiple Positions

- No officer, official, or employee shall hold two or more positions in Town government (whether paid or unpaid) which have a conflict of interest or have the appearance of a conflict of interest.
- EXAMPLE: Can't be a Town employee on Board of Finance. Can't serve on Board of Finance and Board of Education

No Fees or Honorarium

- No employee or official shall accept a fee or honorarium for an article, appearance, speech, or for participation at an event, in his or her official capacity.

Competitive Bidding

- Persons governed by this Code, or business with which he or she is associated, or member of that person's immediate family, shall not enter into a contract with the Town unless it is awarded through a process of public notice and competitive bidding
- Whenever possible: Competitively Bid.

Outside Influence

- Outside influence. No employee or official, or member of such individual's immediate family or business with which he or she is associated, shall solicit or accept anything of value, including but not limited to, a gift, loan, political contribution, reward or promise of present and/or future gifts and present and/or future employment based on any understanding that the vote, official action or judgment of the public employee or public official would be or had been influenced thereby
- Examples: Bribes and Kick backs.

Post Employment Duties

- (a) Any former employee or official may appear before any town board, commission, or agency, by whom he or she was formerly employed or was a member of. If said appearance is within a period of one year after termination of his or her service on that board, commission or agency, that person shall disclose on the record his or her former position to the board, commission, or agency.
- (b) No former public employee or public official shall disclose or use confidential information acquired in the course of and by reason of his or her official duties, for financial gain for himself or herself or others, except such information which may be disclosed under the Connecticut Freedom of Information Act

Post Employment Duties

- (c) No former public employee or public official who participated substantially in the negotiation of award of a municipal contract obliging the town to pay an amount of \$100,000 or more, or who supervised the negotiation or award of such a contract shall accept employment with a party to the contract other than the municipality for a period of one year after the contract is signed. For the purposes of this subsection, “substantially” shall mean drafting of the contract documents, negotiating the terms for the contract, and either approving the award of the contract or recommending the approval of the contract to the cognizant board(s) or commission(s), including the Board of Selectman.

Incompatible Dealing

- No employee or official shall engage in or participate in any business or transaction, including outside employment with a private business, or have an interest, direct or indirect, which is incompatible with the proper discharge of his or her official responsibilities or which would tend to impair his judgment or action in the performance of his or her official responsibilities.

Gifts and Favors

- No official or employee or member of his immediate family shall solicit or accept any gift having a substantial value greater than \$50.00, in any one year, whether in the form of service, loan, thing, promise or any other form, from any person or persons who to his knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the town.

Financial Benefit

- A person subject to this Code may not use his or her position or office for personal financial benefit, or for the financial benefit of a business with which he or she is associated, or for the financial benefit of a member of his or her immediate family.

What if you have a question.

- Ask.
- You can seek advice from
 - Human Resources
 - The Town Attorney
 - The Ethics Commission.
- You can even get a formal opinion from the Ethics Commission if warranted.
- **REMEMBER: IGNORANCE OF THE LAW IS NOT A DEFENSE.**

What else does the Code Require?

- DISCLOSURE

- all government officials and volunteers, elected and appointed, and Town employees shall disclose, at the time a given subject is to be given consideration, any relationships or interests that could potentially result in a conflict of interest.

Disclosure of Interest

- Any official or employee who has, or thinks he or she has real, pecuniary or personal beneficial interest in any matter coming before any board, commission, or agency of the town should disclose to such body that they have interests and/or relationships that could be perceived as a conflict of interest. If a conflict does exist, he or she should recuse themselves and leave the room.

Duty to Disclose

- All officials or employees, who have knowledge of or probable cause to believe that there are violations of any provisions of this Code, shall report these violations to the Suffield Ethics Commission. Such reports shall be in good faith and the Town in turn guarantees that no reprisals against a reporter of such violations will be taken (provided that such charges are not later proved to have been malicious and false). All persons against whom such charges have been made will have full access to all the protections of due process as spelled out in this Code. It shall be a violation of this Code for a person to falsely and maliciously charge another with violations of this Code. The Commission, in its sole discretion, will determine if a charge is false and malicious.

Crimes and Misdemeanors

- Ethics violations: Willful or Accidental could lead to criminal charges like:
 - Bribery
 - Conspiracy
 - Larceny
 - Embezzlement
 - Fraud
- The Ethics Commission has the duty to refer to State's Attorney when violations are serious.

Big Trouble. Little State.

- Your friend is a contractor. Does work for the Town. Does work on your house at discount. (State v. Perez)
- You receive gifts, work, etc. in exchange for government contracts (State v. Rowland).
- You receive kick backs from contractors (State v. Ganim).

Final thoughts...

- There is nothing wrong with having a conflict.
- Where people get into trouble is where they don't ASK and/or DISCLOSE.

