

MSBA Presentation

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Topics for Discussion

- Board Basics
- Surety Bonds
- Purchasing
- Compliance Audits

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Board Basics - Responsibilities

- **§ 37-7-301 - General powers and duties**
 - (a) – (bbb) 54 main responsibilities as set out by State Law
- (a) To organize and operate the schools of the district and to make such division between the high school grades and elementary grades as, in their judgment, will serve the best interests of the school
- (l) To prescribe and enforce rules and regulations not inconsistent with law or with the regulations of the State Board of Education for their own government and for the government of the schools, and to transact their business at regular and special meetings called and held in the manner provided by law;
- (m) To maintain and operate all of the schools under their control for such length of time during the year as may be required;
- (n) To enforce in the schools the courses of study and the use of the textbooks prescribed by the proper authorities;
- (o) To make orders directed to the superintendent of schools for the issuance of pay certificates for lawful purposes on any available funds of the district and to have full control of the receipt, distribution, allotment and disbursement of all funds provided for the support and operation of the schools of such school district whether such funds be derived from state appropriations, local ad valorem tax collections, or otherwise. The local school board shall be authorized and empowered to promulgate rules and regulations that specify the types of claims and set limits of the dollar amount for payment of claims by the superintendent of schools to be ratified by the board at the next regularly scheduled meeting after payment has been made;

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Fiduciary Duty

- A legal obligation of one party to act in the best interest of another.
- Duty of Care
- Duty of Loyalty
- Duty of Good Faith
- Duty of Confidentially
- Duty of Prudence
- Duty of Disclosure

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Duty of Care

- Duty of Care
 - principle that directors and officers of a corporation in making all decisions in their capacities as fiduciaries, must act in the same manner as a reasonably prudent person in their position would
 - requires that directors inform themselves “prior to making a business decision, of all material information reasonably available to them”

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Duty of Loyalty/Good Faith

- Loyalty - principle that directors and officers in making all decisions in their capacities as corporate fiduciaries, must act without personal economic conflict
- Good Faith - principle that directors and in making all decisions in their capacities as corporate fiduciaries, must act with a conscious regard for their responsibilities as fiduciaries

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Duties of Confidentially/Prudence/Disclosure

- Confidentially -directors and officers must keep information confidential and not disclose it for their own benefit.
- Prudence – director of officer must administer a responsibilities with a degree of care, skill, and caution that a prudent person would exercise
- Disclosure – directors and officers operate with complete candor

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What Does All this Mean?

- Don't "rubber stamp" what is brought to the Board!
- Examples –
 - Board's responsibility is to approve the Claim's Docket BEFORE payment is made – you cannot ratify payments already made.
 - Before you approve the Claim's Docket, you need to know how much cash is available for disbursement – you need a reconciled bank statement.
 - Question why before you vote yes!

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Surety Bonds

- Surety bonds do not protect the individuals bonded – they protect the School.
- Demands can be made against your bond for improper payments, dereliction of duty, etc.
- Bonds are required by State Law.
 - New bond for each term. These bonds are “stackable” meaning that if you have multiple bonds over the course of your tenure, a demand can be made on each one if necessary.
 - Continuation certificates for Board Members are not allowed by state law.

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Employee Bonds

- Law requires Superintendents, Purchasing Agents and Principals to be bonded.
 - Superintendents by their contract term.
 - Principals and Purchasing agents are allowed continuation certificates – but these are poor internal controls!
- Just because something is “legal” doesn’t mean it’s a good control and that you have exercised your fiduciary duties.

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Purchasing

- Levels
 - \$0 - \$5,000 – Bidding not required, but follow internal policies
 - Bid Splitting is illegal
 - Be wary of purchases just under threshold and multiple purchases to the same vendor on the Claim's docket
 - \$5,001 - \$50,000 – At least two competitive quotes must be obtained.
 - \$50,000+ - Reverse Auction
 - Requires advertising
 - Length depends on what is being purchased.
- Applies to all commodities by State Law
 - Buying, renting, demo, or otherwise acquiring

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Sole Source

- An item cannot be sole source based on brand.
- Section 31-7-13(c)(iv)(1) - **Specifications** pertinent to such bidding shall be written so as not to **exclude** comparable equipment of domestic manufacture.
- Just because a vendor provides you a “sole source letter” does not mean they meet the MS legal definition of sole source.

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Lowest and Best

- Purchases may be made from the lowest and best bidder.
- In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation.
- If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid.
- No agency or governing authority shall accept a bid based on items not included in the specifications.

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Things NOT to do

- Only the lowest bidder can reduce their quote/bid.
- If you conduct a reverse auction or other type of bidding, and a vendor does not have the lowest and best bid, you cannot turn around and declare that vendor a "sole source"

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Compliance Reviews

- A review to determine if your School District is in compliance with state laws and an evaluation of your internal controls.
 - Purchasing
 - 16th Section
 - Board Policies
- Fee should be between \$7,500 - \$10,000
- Every school district on a three year rotation unless problems
- We will look for fraud, waste and abuse.

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Fraud, Waste and Abuse

- **Fraud** is defined as the wrongful or criminal deception intended to result in financial or personal gain. Fraud includes false representation of fact, making false statements, or by concealment of information.
- **Waste** is defined as the thoughtless or careless expenditure, mismanagement, or abuse of resources to the detriment (or potential detriment) of the government. Waste also includes incurring unnecessary costs resulting from inefficient or ineffective practices, systems, or controls.
- **Abuse** is defined as excessive or improper use of a thing, or to use something in a manner contrary to the natural or legal rules for its use. Abuse can occur in financial or non-financial settings.

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Common Areas of Compliance Concern

- Economic interest statements not filed with Ethics Commission
- 16th Section land leases delinquent payments
- Division of 16th Section land when property is shared by multiple districts
- Surety Bonds are inadequate
- Purchasing
- Poor internal controls over travel and cc purchases

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New Things in the Pipeline

- GASB 84 – Fiduciary Activities
- Lease Recognition

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