

Everything I Need to Know for Board Service I Learned in Kindergarten

By David P. Goch, Esq.

Welcome to the board!

A highlight of one's professional career is serving as an officer or member of a board of directors. However, while it is an honor the distinction carries with it significant obligations.

Fulfilling one's duties can be achieved by following some basics that were likely taught when we were in kindergarten. Follow these principles for successful board service.

- **Attend** - If you are not there, you're not involved. Directors who do not attend meetings are nevertheless bound by actions taken at those meetings and will be held responsible if any such actions are deemed negligent.
- **Participate** - Be engaged. The *minimum* level of participation required of directors is to read all relevant materials (e.g., committee reports, budgets) and ask questions to be better informed. A good board member frequently asks questions that verify that things are operating effectively and without risk¹.
- **Delegate** – Volunteers cannot do it all. Boards delegate their authority to others; typically to committees and the organization's staff. But while such delegation is a legitimate practice, abdication of the board's responsibilities is not. Board members need to remain alert and aware.
- **Fiduciary Duty** – While this not a kindergarten term, it means to “play fair.” It includes the duty of good faith and fair dealing. A person assumes this duty, created by their own undertaking, and is required to act primarily for the benefit of the organization.
- **Conflict** - Conflicts of interest should be avoided but they continue to arise. While state laws vary, the general rule is that a director with a potential conflict of interest should disclose that interest to the board and recuse him or herself from consideration of, and voting on, the conflict-affected matter. Most organizations have a policy addressing conflicts.
- **Money** – Financial mismanagement is a common risk. It is vitally important that directors review financial statements and ask questions. If financial information is presented in a manner that cannot be understood, the directors should educate

¹ Bob Harris, CAE and board coach refers to the practice as, “Verify and Trust.”

themselves on how to read financial statements. One of the important questions is how finances are being invested (how diverse and how safe)?

- **Professionals** - You *don't* need to know it all! Boards are strongly advised to work with attorneys, auditors, professional investment advisors and insurance consultants to help protect the organization from liability and risk.
- **Papers** - Keep your homework! Documentation is essential for having a historical path to chart future decisions as well as to provide it with the “ammunition” necessary to defend the board if challenged. The board should have a document retention policy.
- **Relationships** - As implied throughout this document, the board is the decision making body. In fact, it is legally obligated to be so and it carries all the possible legal liability for it. While the responsibilities of the board and staff may overlap, suffice it to say that the board governs and acts strategically while the staff manages and is tactical.

Official Action

The nine rules assume that appropriate board action has occurred, or the meeting has been duly called and convened. Official action occurs where: 1) there is a meeting duly called in accordance with the bylaws; 2) with notice and adequate time being provided to all that are entitled to such; 3) there is a meeting that is conducted by unanimous consent (if all parties entitled to vote agree, then adequate time and notice is not necessary); or 4) if entitled parties voluntarily waive their right to notice of a meeting.

Generally, board action requires a majority vote of those parties present and entitled to vote. An official meeting cannot take place unless a quorum, generally defined as a majority of the members of the board, are present.

Although boards can ratify action subsequent to its occurring, unilateral decisions by directors and officers is discouraged except in the most extreme cases and upon consultation with others within the leadership and, if necessary, legal counsel.

The nine rules, similar to what one learned in kindergarten, will help board members understand their roles and responsibilities.

#

Note: David Goch is a Partner in the Washington law firm of Webster, Chamberlain & Bean. His practice includes all aspects of nonprofit law including: contracts, corporate, tax, antitrust, intellectual property, standards and certification, employment matters, and government relations for which the firm has established a national reputation as being the leader in the field. He has over twenty years experience working with associations/chambers/charities of all sizes. He can be reached at Webster Chamberlain & Bean, 1747 Pennsylvania Avenue, NW, Suite 1000, Washington, DC 20006, (202) 785-9500 or dgoch@wc-b.com.