

**A Presentation For APTA Transit Board Members & Administrators
Seminar**

TRANSIT BOARD OF DIRECTORS – RESPONSIBILITIES & DUTIES

Bill Moseley

Jacksonville/Atlanta | Jackson Lewis P.C.

Richard Milian

Orlando | Nelson Mullins Broad and Cassel LLP

What Does It Mean To Be A Director?

- ◆ A Director Acts as **PART** of a Board
 - As a body, a Board of Directors has considerable power
 - As an individual, a Director, acting ALONE, has almost no power
 - Nonetheless, an individual Director is still legally accountable for corporate actions as well as his or her individual actions
- ◆ A Director directs but **DOES NOT** perform
 - The Board determines corporate actions... which will be carried out by officers, employees and agents
 - Most Transit Boards are policy making Boards
- ◆ The Board of Directors acts on behalf of its constituencies

Corporate Purpose: How It Affects A Director

Note: Even if a Director is specifically nominated, appointed or elected by a particular group, or is chosen in part because of an association with a certain subset of the organization's members or beneficiaries, each Director shares the same fiduciary duty to act in the best interest of the Authority's constituency as a whole

Duties

- ◆ A Director has 2 main duties:
 - **A DUTY OF CARE**
 - **A DUTY OF LOYALTY**
- ◆ Underlying both of these duties is the **DUTY OF OBEDIENCE** (*i.e.*, to follow the Authority's bylaws and other corporate documents)
- ◆ These are common terms for the standards that are to guide ALL actions that a Director takes

Duty Of Care – Definition

- ◆ A Director must act in a reasonable and informed manner when participating in the Board's decisions and its oversight of the Authority's management
 - In other words a director must do for the Authority what a **PRUDENT** person would do with regard to his or her own business affairs
 - That means acting in good faith; in or at least not opposed to the best interests of the Authority, and with the care of a prudent person under similar circumstances in a like position

Duty Of Care – Breach

- ◆ There are two ways to breach the duty of care:
 - NONFEASANCE – Director’s inaction
 - Only liable when his failure to act causes a loss to the Authority
 - MISFEASANCE – Director does something to hurt the Authority
 - The **Business Judgment Rule**
 - Informed decision
 - Allowed to rely on factual information, opinion, reports, or statements provided by others
 - Rational basis for making the decision
 - A Director is liable if he or she engages in **willful or reckless misconduct**

Duty Of Care – Elements

◆ Attend Meetings

- Regular Meetings – Bylaws
 - Directors **ACT** by resolution following informed discussion of issues at meetings
 - Directors must be prepared prior to the meeting
- Special Meetings – Bylaws
 - Determine who can call and for what purpose(s)
- Meeting attendance is critical
 - Directors Act as a **GROUP**
 - **QUORUM** is needed to have a valid meeting

Duty Of Care – Elements

◆ Exercise Independent Judgment

- No matter how selected, all Directors share equally in the responsibility of the Board to act in the best interest of the Authority
- A Director, although able to draw on his/her individual experience and affiliation, **MUST** make decisions based on what is in the Authority's best interest
- A Director may give weight to the views of other Directors but no Director should vote solely on the basis of what another Director thinks, even if that Director has special expertise

Duty Of Care – Elements

◆ Have Adequate Information

- A Director must have an adequate source of information being supplied in order to satisfy his/her duty of care
- INFORMATION SOURCES:
 - Officers and employees of the Authority
 - Authority's business records
 - Board Committees
 - Experts retained by the Authority: e.g. legal counsel or public accountant
 - A Director may act in reliance on information and reports received from sources that the Director reasonably regards as trustworthy

◆ Be Prepared

Duty Of Loyalty - Definition

- ◆ A Director must exercise their powers in **good faith** and in the best interest of the Authority, **rather than** in their own interest or the interest of another entity
 - In other words, a Director must place the Authority's interests above the Director's personal interests
 - Key areas of loyalty (and ways to breach)
 - Conflicts of Interest (cannot act contrary to Authority interest)
 - Authority Opportunities (cannot usurp them)
 - Confidentiality (cannot disclose confidential information)

Duty Of Loyalty – Conflict Of Interest

◆ WHEN is a conflict present?

- Whenever a Director, or a close family member or friend, has a financial interest in a proposed transaction to which the Authority may be a party
 - The interest can be direct or indirect
 - It is improper for a Director to use his or her position to advance a personal financial interest
 - It doesn't have to be harmful to the Authority to be a conflict

Duty Of Loyalty – Conflict Of Interest

- ◆ How to deal with a conflict
 - Conflicts are not inherently illegal
 - Manner the Director deals with the conflict is critical
- ◆ Dealing with an interested Director conflict
 - Director must show fairness; or
 - Director must show disclosure and approval

Duty Of Loyalty – Confidentiality

A Director should not, in the regular course of business, disclose information about the Authority's legitimate activities unless they are already known by the public or are of public record

Delegation

- ◆ TO WHOM can the Board Delegate:
 - Chief Executive Officer – Bylaws
 - Executes, manages and administers the Board's plans, programs and policies
 - Acts as the connecting management link between the Board and all other Authority employees
 - Participates in setting plans, programs, and policies
 - Authority Officers
 - Committees
 - Committees can do much of the groundwork for Board decisions
 - The Board, as a whole, is still the acting entity

Advisory And Auxiliary Boards

- ◆ Composed of community and business leaders, volunteers, or other supporters
- ◆ Provide additional support to accomplish the Authority's purpose
- ◆ Can provide useful insight and information to the Board
- ◆ Allow involvement by individuals who are unable to give the necessary commitment for Board service, but whose experience and reputation will benefit the Authority.
- ◆ Agents of Authority, but not same duties and responsibilities as a board member.

Advisory And Auxiliary Boards

◆ WARNING:

- Members of an advisory or auxiliary board DO NOT have the same legal duties, responsibilities, and powers as the Board of Directors
- In some circumstances they may still be considered AGENTS of the Authority
- This means in some situations an Authority can be legally bound by actions of the advisory group

Questions?



Thank You!



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