
Authorities Budget Office Recommended Practice



This Recommended Governance Practice is intended for use by policymakers, and directors, officers and officials of state and local authorities. These bulletins are intended to promote best practices and encourage their consideration and incorporation into the management policies and oversight of public authorities.

Issue: Written Policies Governing the Use of Authority Discretionary Funds

Provisions: Section 2824(1)(b) of Public Authorities Law requires directors to understand, review and monitor the implementation of fundamental financial and management controls and the operating decisions of the authority.

Objectives: Boards of directors and authority management have an obligation to authorize the expenditure of funds only for purposes that relate to and support the mission of the authority. The fiduciary duty of the board includes adopting policies that safeguard the assets and resources of the authority and protect against the use of funds for purposes that do not advance its core purpose and objectives. It is particularly important for the board to develop a policy on the proper use of authority discretionary funds that clarifies for all employees what would and would not be considered appropriate expenditures.

Recommended Practice: Public authorities are governed by statute. In its legal opinion #2007-F4, the Office of the Attorney General determined that the expenditure of authority funds must relate directly to an enumerated power, duty or purpose of the authority. The funds of an authority may not be spent in support of the private or personal interests or to the benefit of directors, management or staff. Accordingly, the Authorities Budget Office recommends that all state and local authorities adopt written policies that specifically delineate the proper use of an authority's discretionary funds. This policy should address not only what constitutes a proper discretionary expenditure related to the mission and public purpose of the authority, but also address what would be considered an improper use of those funds.

For example, at the discretion of the board or management certain out-of-town business travel and travel-related expenses may be appropriate to advance the mission of an authority. While such an expense would be permissible under the authority's policy, the policy should also provide guidance as to reasonable amounts for such expenses and require that employees perform due diligence to obtain the lowest cost. The policy should also require prior approval of or authorization by an appropriate individual to ensure that such travel is reasonable and necessary. The policy should require documentation to justify the nature and purpose of such expenses, require the employee to provide receipts for

expenses and provide dollar thresholds for what will be considered reasonable (such as amounts allowed by federal GSA guidelines for travel expenses including per diems, government lodging rates and amounts for meals and other incidental expenses).

Certain meal costs also may be incurred through participation in, or sponsorship of, activities integral to meeting the core public purpose of the authority. Similar to appropriate travel expenses, eligible meal costs must be properly documented and reasonable cost thresholds established.

At the same time, the policy should explicitly outline the types of expenses for which the board will not give approval. This section should specifically note the impropriety of purchases using authority cash or credit that are personal in nature, that would benefit one or more staff of the authority rather than benefit those dependent on the authority's services, or are not necessary to advance the mission of the authority. Examples of inappropriate use of authority funds would include, but need not be limited to:

- Food, beverages, and other refreshments purchased for the personal use of directors, management or other employees, or by persons with whom the authority conducts business (unless prior authorization is received);
- Flowers and gifts for staff, directors or family members;
- Subsidized or free use of authority services for the personal use of current or former board members, staff, or family members of staff;
- Celebrations for special occasions that do not directly relate to the purpose of the authority, such as catering or decorations for summer picnics, office parties or holiday or retirement parties;
- Charitable contributions or sponsorships of events not associated with the authority's mission;
- Purchases of alcohol or tobacco products;
- Membership dues in professional organizations on behalf of employees;
- Renewal of professional licenses for staff;
- Personal use of authority vehicles, unless properly documented for tax purposes;
- Costs to purchase or mail holiday cards, invitations or expressions of sympathy to staff or families of authority staff; or
- Assignment of cell phones or vehicles to non-authority staff.

Absent specific statutory power, public authorities may not use public funds to purchase items considered personal expenses or that are intended to personally benefit an employee or director. Expenses such as those listed above do not advance a public purpose and should be considered personal in nature.

Authorities Budget Office Policy Guidance



No. 10-02

Date Issued: March 1, 2010

Supersedes: New

Subject: Public Authority Mission Statements and Measurement Reports

Statutory Citation: Section 2824-a, Public Authorities Law
Section 2800 of Public Authorities Law

Provisions: Chapter 506 of the Laws of 2009 (“The 2009 Public Authorities Reform Act”) added a new Section 2824-a in Public Authorities Law requiring state and local public authorities to develop and adopt a mission statement. The law also requires public authorities to develop performance measures to assist the authority determine how well it is carrying out its mission. Pursuant to this section, each state authority is to provide a copy of its mission statement and performance measures to the Authorities Budget Office, using the attached form, on or before March 31, 2010. Every local authority is to file a mission statement and performance measures with the ABO using the attached form by March 31, 2011.

For subsequent reporting years the mission statement is to be included as part of the Annual Report required to be filed with the ABO pursuant to Section 2800 of Public Authorities Law. Every public authority is also expected to annually review its mission statement and measures and publish a measurement report.

Public authorities are also required to post and maintain their mission statement and performance report on their web site.

Authorities Budget Office Policy Guidance: The mission statement is the prism through which a public authority’s actions are evaluated and its policy decisions are judged. Given its importance in defining how the public authority will operate, the board, in conjunction with the executive management of the authority, should exercise due diligence when developing and reviewing the authority’s mission statement, and the goals and measures that will be used to evaluate whether the authority is fulfilling its mission. Boards of directors should take time to thoroughly discuss, re-think, and reach agreement on the actual mission of their authority and to draft a mission statement that reflects this agreement. Only after undertaking this process and adopting a new mission statement should the authority submit its mission statement to the ABO and post it to their web site.

As a matter of law, public policy, and sound management, it is imperative that directors define and understand the purpose of the authority and the public interests it serves, and reflect these concepts in a mission statement. A board

member cannot properly execute his or her fiduciary duty without first understanding the mission and interests served by the authority.

A mission statement should capture in a few clear and concise sentences the purpose of the public authority, its goals and its reason for existence. The mission statement should address the intent and purpose for which the public authority was created. It should express the philosophy and guiding principles of the public authority, and provide staff and the public with an understanding of the values and culture of the organization. It should describe generally the services the public authority provides, the community it serves, and the reasonable expectations of its stakeholders. The mission statement should also be specific enough to be able to assess the organization's performance and to measure its success in achieving its intended public purpose.

When drafting an appropriate mission statement and evaluating its effectiveness, it may be helpful to answer the following questions:

- What is the public purpose for which the authority was created?
- How can we best achieve that purpose?
- How do we assess whether an action or decision before the board is consistent with this mission and the public interest?
- Who are the authority's stakeholders?
- What are the authority's goals?
- What are the values of the authority?

Once a public authority defines its mission and the interests and expectations of the community it serves, policies must be implemented to achieve those objectives. Performance measures are a means for the board and management to evaluate and monitor whether the authority's policies and operating practices are in accordance with its mission. Performance measures need not be complex or detailed. Performance measures will also vary depending on the purpose, size, and resources of the authority. They should be designed to answer some fundamental questions:

- How do we know if we are performing our mission?
- How do we know if we are performing that mission well?
- How can we be more effective and efficient?
- How do we know if we are meeting the interests of those we serve?

An authority's board must annually review the authority's mission statement and performance results to ensure that its mission has not changed and that the authority's performance goals continue to support its mission. Authorities are to annually report their performance results and revise their goals as necessary.

Implementation of Statutory Requirements: Authorities should complete the attached form and submit the entire document to the ABO via e-mail (info@abo.state.ny.us).

Authority Mission Statement and Performance Measurements

Name of Public Authority:

Public Authority's Mission Statement:

Date Adopted:

List of Performance Goals (If additional space is needed, please attach):

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Additional questions:

1. Have the board members acknowledged that they have read and understood the mission of the public authority?
2. Who has the power to appoint the management of the public authority?
3. If the Board appoints management, do you have a policy you follow when appointing the management of the public authority?

4. Briefly describe the role of the Board and the role of management in the implementation of the mission.

5. Has the Board acknowledged that they have read and understood the responses to each of these questions?

Authority Budget Office Policy Guidance



No. 09-01

Date Issued: August 1, 2009

Supersedes: New

Subject: Appropriate Use of Executive Session

Statutory Citation: Public Officers Law, Chapter 7

Provisions: Meetings of a public body are to be open to the general public, except when it is appropriate to enter into executive session. The term “executive session” refers to that portion of a public meeting during which the public may be excluded. Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session only for the purposes enumerated below:

- a. matters which will imperil the public safety if disclosed;
- b. any matter which may disclose the identity of a law enforcement agent or informer;
- c. information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
- d. discussions regarding proposed, pending or current litigation;
- e. collective negotiations pursuant to article fourteen of the civil service law;
- f. the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
- g. the preparation, grading or administration of examinations; and
- h. the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

At no time may a public authority vote to appropriate public moneys while in executive session.

The public authority may limit attendance at an executive session to any member of the public body and any other persons authorized by the public body.

Minutes of an executive session must be recorded if any action is taken by formal vote. The minutes serve as the record of the determination of the board, including the date and results of that vote. Minutes of an executive session need not include information that may be withheld under the Freedom of Information Law.

Minutes of meetings of all public bodies are to be available to the public in accordance with the provisions of the Freedom of Information Law within two weeks from the date of such meeting, except that minutes taken in executive session are to be available to the public within one week of the date of the executive session.

Authority Budget Office Policy Guidance: Public authorities should always conduct business in an environment that fosters transparency and public disclosure, and conforms to the intent of the Public Authorities Accountability Act and the Public Officers Law.

The law is clear that a public body may go into executive session only for specific and limited reasons. The board must provide sufficient details on the purpose of the meeting to assure the public that the subject matter meets the statutory test for executive session. While most of these permissible exclusions are self-explanatory, the use of executive session for discussion of personnel issues, audit findings, potential property transactions, and litigation is less clear. The courts have held and opinions and guidance rendered by the Committee on Open Government advise that, when in doubt as to the legality of meeting in executive session, public bodies should honor their fiduciary responsibilities, adopt a narrow interpretation of the statute and conduct business in public. Invoking the use of executive session without providing sufficient justification undermines the public's confidence in the decisions and actions of the board.

When a public body does vote to go into executive session, the motion must include a clear explanation of what will be discussed. For example, a motion that states the board is going into executive session to discuss "personnel" issues is not sufficient. Rather, the board should vote on a motion to discuss "the employment history of an employee", or "potential disciplinary action against an employee". In either case, it is not necessary to identify the individual who is the subject of the executive session. A board may vote to go into executive session to discuss *matters* leading to the hiring or firing of a particular person, and that is what should be reflected in the minutes of the public session.

The use of executive session to discuss the results of an audit is also limited. If the internal auditor appears before the audit committee or the full board to present his or her findings, that discussion must occur in an opening meeting, since the committee and the board are public bodies. A discussion of the audit findings or a

discussion concerning management's cooperation with the auditor (either internal or independent) is not an acceptable justification for adjourning to executive session.

The presentation of the annual independent audit to the audit committee and any general discussion of its findings with the committee or the board must be done in a public meeting. The independent audit report is a public document. An executive session can only be convened to discuss a finding that is consistent with the exceptions articulated in Public Officers Law. It is appropriate that the details of sensitive or confidential issues be presented to management, rather than to the board. For example, the public audit report can note significant internal control weaknesses with the authority's cash management policies, while the specific weaknesses or implications from the lack of controls can be discussed confidentially with management.

Similarly, a board can vote to go into executive session to discuss a potential property transaction only in limited circumstances. A public body can only convene an executive session if a public discussion of the property transaction would "substantially affect the value of the property." Discussing the merits of selling a piece of property through public bid, or concern about revealing the fair market value of the property, is insufficient justification to adjourn to executive session. As a general rule, if, as a matter of record, the public is aware of the public authority's interest in acquiring, selling or leasing real property, or if the value of the property has already been appraised, then it is not likely that a public discussion of the transaction would substantially affect the value of that property.

Finally, there may be occasions when litigation warrants a vote to convene an executive session. Again, this justification is limited to a discussion by the board of its legal strategy in litigation involving the board or pending before it. The board may not hold an executive session out of concern that a matter raised in public session may provoke a lawsuit, or fear of the threat of potential legal action. In its motion to convene an executive session, the board must be more expansive than "to discuss litigation". It is advisable that the record specifically state the purpose, such as "to discuss litigation issues in the case of XYZ Company vs. [NAME] public authority."

A public authority is advised to consult the Committee on Open Government if it has questions concerning what is appropriate under Public Officers Law. The Committee may be contacted at (518) 474-2518 or by fax at (518) 474-1927. Its web site address is: www.dos.state.ny.us/coog/.

Authority Budget Office Policy Guidance



No. 07-01

Date Issued: March 1, 2007

Supercedes: New

Subject: Independence of Board Members

Statutory Citation: Section 2825(2) of Public Authorities Law

Provision: Section 2825(2) of the Public Authorities Law requires that “except for members who serve as members by virtue of holding a civil office of the state, the majority of the remaining members of the governing body of every state or local authority shall be independent members.”

This provision applies to the composition of the board following appointments made on or after January 15, 2006.

Authority Budget Office Policy Guidance: The importance of establishing and preserving the independence of board members is to: (a) avoid conflicts of interest or the appearance of conflicts of interest in the actions and decisions of directors; (b) encourage directors to act in accordance with the mission and interests of the authority; and (c) distinguish between the oversight function of board members and the management responsibilities of executive staff. A board member is considered to be independent if all of the following criteria are met:

- The board member is not currently an employee of the public authority in an executive position, nor was an employee of the public authority in an executive position in the past two years.
- The board member is not or has not been in the previous two years, employed by an entity that received a payment valued at more than fifteen thousand dollars for goods and services provided to the public authority, as well as any other form of financial assistance valued at more than fifteen thousand dollars from the public authority.
- The board member is not a relative of an executive officer or employee in an executive position of the public authority or an affiliate.
- The board member is not a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the public authority or affiliate.

In addition, an appointed director may be an employee of a county or local government and have some professional involvement with the public authority and still be independent. However, if a board member (1) is a member of a legislative body, or (2) is the chief executive officer, or (3) holds a policymaking position with a municipal government, that board member would not be independent if the public authority pays the municipal government \$15,000 or more annually for goods and services that are provided to the public authority by the municipal government. As a best practice it is not recommended that a majority of appointed board members have a political or employment relationship to the government for whose purpose the public authority was created.

Ex officio directors, by statute, are considered independent and may sit on the authority's audit or governance committee, although, to the extent practicable, boards are encouraged to select appointed directors who meet the independence criteria to these committees.

Board members may consult with the individuals who appointed them without losing their independence provided the board member's decisions are made in the interests of the public and consistent with the mission of the authority.

The ABO also recognizes that it is not uncommon for board members to have personal or professional relationships with vendors who may do business with the public authority. In such cases, board members must disclose any relationship prior to the authority considering doing business with the vendor and the board member should be recused from any board discussion or decision on such a transaction. Board members also should not discuss any qualities of the vendor with staff of the authority. In all cases, board members are to: avoid situations that could compromise their independence; act with transparency; and exercise their fiduciary duties of loyalty and care. This will require that directors weigh the public's interests and that of their appointing authorities when taking on these duties and be sensitive to potential conflicts of interest or the appearance of a conflict.

If the majority of directors appointed to a public authority do not meet this definition of independence, the official or officials having the authority to appoint or remove board members should take appropriate actions to address this issue.

Authorities Budget Office Policy Guidance



No. 10-04

Date Issued: April 15, 2010

Supersedes: New

Subject: Fiduciary Duty of the Designee of a Voting Ex Officio Board Member

Statutory Citation: Section 2824 of Public Authorities Law

Provisions: Public Authorities Law, as amended in 2005 by the Public Authorities Accountability Act, codified in statute the role and responsibilities of board members of public authorities. The Public Authorities Reform Act of 2009 (Chapter 506) amends the existing law to require every board member to acknowledge that he or she understands his or her role and fiduciary responsibilities as a board member, including the duty of loyalty and care to the organization and commitment to the authority's mission and the public interest.

Authorities Budget Office (ABO) Policy Guidance: The duties and obligations of ex officio voting board members of public authorities extend to their designees. The duties and obligations include, among others, execution of the acknowledgement of fiduciary duty statement (see ABO Public Guidance 10-01: [Acknowledgement of Fiduciary Duty](#) issued March 1, 2010).

An ex officio board member is an individual who serves on a board by virtue of holding an elected or appointed civil position, such as a state agency commissioner, town supervisor or county legislator. The public authority's enabling statute or articles of incorporation stipulate who is to comprise the board of directors, including identifying any ex officio board members by their public positions.

The enabling statute or articles of incorporation should also indicate whether the ex officio board member is a voting or non-voting board member and if the ex officio board member may designate an individual to act as his or her representative on the board of the authority. Such a designation is also permissible if the general powers and duties of the office held by the ex officio, as expressed in statute, authorize the ex officio to delegate any of his or her powers to subordinate staff members. In the absence of such explicit authority, an ex officio voting board member may not delegate his or her board member responsibilities to a designee.

Ex officio board members who are authorized by law to appoint a designee must do so with care to maintain the integrity of the board and the oversight role of its members. To preserve the consistency and cohesion of board operations and decision making, it is beneficial for the ex officio to limit his or her appointment to a single designee who can regularly participate in all scheduled board and

committee meetings, even if the ex officio is permitted to name multiple designees. In no event, does the ex officio board member relinquish his or her responsibility, obligations or power as a board member through the appointment of a designee.

A designee is expected to act in the same capacity as a regular board member and to exercise the same governmental authority as that vested in a board member. He or she must act independently at all times when making decisions or voting on any matter that comes before the board. As with any other board member, the designee may listen to any interested party on any issue or proposed resolution, but ultimately the decision must be that of the designee.

The designee will be expected to attend board and committee meetings, engage fully in the board's and committee's decision-making process, and divulge actual, potential or perceived conflicts of interest. The designee will also be subject to financial disclosure requirements applicable to other board members.

Consistent with the law, designees must sign the acknowledgement of fiduciary duty statement that has been developed by the Authorities Budget Office (see ABO Policy Guidance 10-01: [Acknowledgement of Fiduciary Duty](#)).

In addition to acknowledging his or her fiduciary duty, a designee must attend board member training (see ABO Policy Guidance 06-01: [Board Member Training](#)).

Authorities Budget Office Policy Guidance



No. 11-02

Date Issued: February 10, 2011

Updated: March 21, 2011

Subject: Enforcement Powers of the Authorities Budget Office

Statutory Citation: Section (6)(2)(f) and Section (6)(2)(g) of Title 2 of Public Authorities Law

Provision: This is a public notice of the Authorities Budget Office's intent regarding its powers of enforcement. The 2009 Public Authorities Reform Act grants the Authorities Budget Office (ABO) the power to publicly warn and censure state and local authorities for non-compliance with the provisions of state law. The ABO may also recommend the suspension or dismissal of officers and/or boards of directors of public authorities under certain circumstances.

Authorities Budget Office (ABO) Policy Guidance: Any public warning or censure of a state or local authority will be directed to the board of directors and the chief executive officer, who have the responsibility to establish, oversee and execute the policies and operating practices of the authority and are responsible for the actions of the authority and its employees. The ABO may also directly warn or censure an individual board member, officer or staff member of the authority.

Public authorities have reporting obligations under Public Authorities Law, as well as an obligation to adhere to basic principles of corporate governance. Reporting requirements include filing with the ABO a multi-year budget plan, an annual report, a copy of the authority's annual financial audit, and reports on the authority's investment and procurement policies. Board members have a duty to understand the mission and purpose for which the authority was created, to act in good faith in the best interests of the authority and the citizens of New York State, to act with a duty of loyalty and care to the authority, and to exercise independent judgment free of personal or professional conflicts of interest. The board also has the responsibility to ensure that the professional conduct of officers and staff of the authority is appropriate and consistent with its public purpose.

The chief executive officer has a duty to faithfully carry out the policies adopted by the board of directors, to protect the assets of the authority, to present the board with a complete and accurate picture of the authority's finances, to submit required reports to the board for its review and approval prior to filing with the ABO, to oversee and enforce standards of professional conduct and behavior by officers and staff, and to inform the board of potential risks, transactions, and other decisions that impact on the authority's operations or adherence to state or local law.

The failure of the board or the chief executive officer to properly perform these duties and obligations may result in the ABO exercising its enforcement authority.

1. Public Warning: The Authorities Budget Office reserves the right to publicly warn a board of directors, a member thereof, the chief executive officer, or other officers or staff members for actions such as, but not limited to:

- Non-compliance of the authority with statutory reporting or governance requirements.
- Failure of a board member to execute his/her Acknowledgment of Fiduciary Duty.
- Failure of the board to review and understand financial information or other declarations contained in the reports filed with the ABO.
- A demonstrated lack of understanding of the mission, purpose, or performance objectives of the authority.
- Inadequate oversight of the authority's management or the activities of the authority.
- A failure of the chief executive to bring appropriate matters to the attention of the board.
- Misconduct or other actions inconsistent with the person's duties and obligations, or in violation of accepted legal and ethical standards.

A public warning may take the form of a declarative statement issued by the ABO in a governance and operational report on the authority, written correspondence to the authority that includes an official warning, or the inclusion of the authority in a public document that identifies out of compliance authorities. A warning shall describe the specific act of non-compliance for which the warning is issued, and establish a timeframe within which the authority is expected to take corrective action before additional sanctions are imposed.

2. Censure: A censure is a formal written reprimand or rebuke of the actions, failure to act, or conduct of the board of directors, a member thereof, the chief executive officer or staff of a state or local authority. The Authorities Budget Office reserves the right to censure, with or without a prior Public Warning referenced in paragraph 1, for actions the ABO deems to be inappropriate, such as, but not limited to:

- The failure to take appropriate corrective action if a warning was first issued by the Authorities Budget Office.
- The failure to respond to requests from the ABO for books, records, information, or other documentation.
- Reasonable evidence to suggest that the board, a member thereof, officer or staff person should have been aware of non-compliance, inappropriate actions, or violations of policies but failed to act.
- Conduct or a failure to act that is inconsistent with established law, authority policy or accepted standards of corporate governance.

- Conduct or actions that demonstrate a lack of understanding of the board's, a member thereof, officer's or staff member's role, responsibilities and fiduciary duty or a disregard for statutory requirements.
- The failure of the board to perform its fiduciary duties or to carry out the mission and public purpose of the authority.
- Actions that place the finances or operations of the authority at risk, damage the integrity or reputation of the authority, or fail to protect adequately the authority's assets.

The letter of censure shall be made public by the ABO and may be distributed to other appropriate oversight bodies. The letter of censure shall cite the statutory requirements that the ABO determined were violated, describe the nature of the offense, and provide context as to why the letter of censure is appropriate.

3. Suspension or Dismissal of Board Members and Officers: The Authorities Budget Office has the power to recommend the suspension or dismissal of officers or directors of a public authority. A recommendation relating to the board of directors of a public authority must be made in accordance with Section 2827 of Public Authorities Law. The Authorities Budget Office reserves the right to recommend the suspension or dismissal of an officer or one or more members of a board of directors, with or without a prior Public Warning or Censure referenced in paragraphs 1 or 2, when the officer or board of directors was made aware of inappropriate conduct or activities, or violations of law or policies but failed to take corrective action; where the conduct of the board demonstrated a persistent failure to exercise its fiduciary duty; when the actions or inactions of the officer or board caused damage to the authority's or the state's reputation, finances, or assets; or if the actions or inactions of the officer or board could be considered potential criminal or ethical wrongdoing.

In such circumstances, the ABO shall notify in writing the board of directors, public officer and public body empowered to appoint the involved officer, board members, or staff members of its recommendations and the reasons and justification for such action.

Notwithstanding the imposition of any of the foregoing sanctions, the ABO, in appropriate circumstances, may exercise its statutory authority under Section 6(2)(h) of the Public Authorities Law to refer matters to the office of the Attorney General and/or other prosecutorial agencies.