



Maricopa County Community College District Governing Board Minutes November 13, 2014

A Board Orientation of the Maricopa County Community College District Governing Board was scheduled to be held beginning at 1:00 p.m. at Rio Salado College, Conference Center, 2323 West 14th Street, Tempe, Arizona, pursuant to A.R.S. Section 38-431.02, notice having been duly given.

GOVERNING BOARD

- Dana Saar, President
- Randolph Lumm, Secretary (Absent)
- Doyle Burke, Member
- Alfredo Gutierrez, Member
- Debra Pearson, Member

ADMINISTRATION

Rufus Glasper
Sherri Lewis for Maria Harper-Marinick
Debra Thompson
LaCoya Shelton-Johnson
Lee Combs

INCOMING BOARD MEMBERS

- Johanna Haver
- John Heep (Absent)
- Tracy Livingston
- Jean McGrath (Absent)

CALL TO ORDER

The Orientation was called to order a 12:55 p.m.

ORIENTATION

President Saar introduced the day's facilitator, Ms. Julia Smock, a consultant who formerly worked for the Arizona Attorney General's Office.

Open Meeting Law

Ms. Smock reminded the Board that they would likely be challenged only when someone doesn't like what the Board has done. A "meeting means the gathering, *in person or through technological devices*, of a quorum of members of a public body at which they discuss, propose, or take legal action, including any deliberations by a quorum with respect to such action" (per Arizona Revised Statutes (ARS) §38-431(4)). This would include electronic communication.

- It is allowable to hold a virtual meeting as long as it is in compliance with open meeting laws—but ensuring access to the public is difficult and the use of such technology leaves the Board open to questions regarding secret decision-making.
- It is not allowable to state a position in email proposing legal action.
- Email discussion on proposed agenda items is allowable as long as a proposed action is not presented, merely a request for a discussion.
- It is recommended Board members minimize the use of alternate delivery outside of open meetings. Similar disclaimer for text messaging.
- Board members were also advised not to text to each other during meetings to avoid the appearance of impropriety or doing business out of the public eye and perceived lack of attention to the meeting at hand.
- Calls to the public are not required by OML but if included all participants must be treated equally. The Board needs to decide where it should be on the agenda. If at the beginning, it may eat up a lot of time; if at the end, it gives the appearance that the Board doesn't care about the issues.
- It is recommended that no secret ballots be used since all meetings should be public, including the vote.
- There must be a meeting notice and an agenda posted no less than 24-hours in advance of the meeting.
- How agenda items are set needs to be consistent and open.
- Items need to be specific enough to let the public know what is being proposed and what effects will ensue.

- Items cannot be so general they hide details (i.e., ‘changing bus routes’ could result in ‘no more bus service’ as an outcome).
- Consent agendas are permissible; should not be used for controversial items.
- The Board has the ability to conduct its meetings in an efficient and effective manner; it does not have the ability to control the content of what is said by the public (aside from setting reasonable time, place, and manner restrictions—ARS §38-431.01(H)).
- The Board may call a recess to calm the room; public must be allowed back in the room when meeting is re-called.
- A Board member may respond to a personal criticism at the time of the public presentation; the Board should not respond to other issues until put on an agenda for a later date—unless the item is on the day’s agenda.
- The MCCCCD Board may have an Executive Session, not open to the public, for one of seven reasons: personnel (specific individual), exempt public records, legal advice, contract negotiations, salary negotiations, interstate negotiations, or purchase/sale of real property.
- Executive Session must be included on the agenda and the Board has to have a motion and vote to go into session.
- The Board cannot take action in Executive Session and all decisions must be made in an open meeting.
- The personnel exception was intended for a specific person, not a group of people—the target individual needs to know more than 24-hours in advance to allow them opportunity to determine if the discussion can take place in Executive Session or not. The Board does not have to allow the individual in Executive Session if they allow it but they are entitled to a copy of the Executive Session minutes.
- Additional staff may be in Executive Session if they can provide additional information on the issue(s).

Public Records

“Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours” (ARS §39-121). There is no distinction between ‘public records’ and ‘other matters’ in the courts. A public record is one “made by a public officer in pursuance of a duty, the immediate purpose of which is to disseminate information to the public, or to serve as a memorial of official transactions for public reference” Griffis (quoting *Salt River Pima-Maricopa Indian Community v. Rogers*, 168 Ariz. 531, 815 P.2d 900 (1991)).

- The definition of public record is broad, but not unlimited.
- There must be “substantial nexus” with an entity’s activities.
- Determination is content-driven.
- Court may conduct in-camera review of documents in question.
- Metadata is part of electronically created public record (metadata is defined as information describing the history, tracking, or management of an electronic document and includes file designation, create and edit dates, authorship, comments, and edit history).
- MCCCCD board related emails, text messages, and any other form of electronic communication are public records, even if personal equipment is used (i.e., personal home computer, personal cell phone)
- Board members must know what the District’s public records retention policy is and how it works
- Board members should only use district email and other district equipment for district business
- Mere possession of a document by a public office or agency does not by itself make that document a public record nor does expenditure of public funds in creating the document.
- There is no limit on the number requests an individual or agency can make.

- Costs for retrieving records cannot be charged for; MCCCDC may only charge for copying and postage, unless for commercial use.
- Cannot charge for making documents available for review or if requestor makes own copy (i.e., uses smart phone to take picture of document).
- If commercial use, ARS §39-121.03(A) says it is okay to charge for a portion of cost for obtaining original or copies; a reasonable fee for cost of time, materials, equipment, and personnel in producing reproduction; and the value of reproduction on commercial market
- The content of the item determines if it's a public record; some information may be considered confidential and must be redacted prior to review or release. Having some confidential information in the record does not necessarily deem the entire record confidential.
- Confidentiality is determined by: state or federal law; release may invade personal privacy; or release may compromise ability of public body to do its job (i.e., negotiations re: purchase/sale of real property).
- MCCCDC may not refuse to produce documents just because doing so would result in inconvenience or embarrassment – *Dunwell v. Univ. of Ariz.*, 134 Ariz. 504, 508, 657 P.2d. 917, 921 (App. 1982)
- Access to a public record is deemed denied if a custodian fails to promptly respond to a request for production - ARS §39-121.01(E)
- “ ‘Prompt,’ ...mean[s] ‘quick to act or to do what is required,’ or “done, spoken, etc., at once and without delay.” *W. Valley View, Inc. v. Maricopa County Sheriff's Office*, 216 Ariz. 225, 230, 165 P.3d. 203, 208 (App. 2007)

Statutory Responsibilities

General statutory responsibilities specifically for community colleges appear at ARS §§15-1401 et seq., §§15-1441 et seq., §§15-1461 et seq., §§15-1481 et seq. ARS §15-1444 provides for general powers and duties, both mandatory and discretionary while ARS §15-1445 provides for administrative powers, all of which are mandatory. ARS §§15-1461-1474 deal with finance; ARS §§15-1481-1491 deal with bonds; and ARS §§15-1801-1896 apply to community colleges, universities, and private postsecondary institutions and relate primarily to student tuition classification, admission, student loans, and student rights. Not all of Title 15 is applicable to the MCCCDC Board, only those sections that specifically include community college districts (MCCCDC is defined as a political subdivision of the State rather than a school district.)

Statutes require policies for various matters. MCCCDC Board adopted policies have the same force and effect of statutes: they can be modified, they can be repealed, but they must be followed if they exist.

Conflict of Interest

Statutory conflict of interest statutes appear at ARS §§38-501-511. The purpose of the statutes is “...to remove or limit the possibility of personal influence which might bear upon an official's decision.” *Yetman v. Naumann*, 492 P.2d 1252,1255 (1972); to prevent self-dealing by public officials *Maucher v. City of Eloy*, 701 P.2d 593,596 (1985); and to recognize that personal financial interests and the unbiased performance of public duties cannot coexist. MCCCDC's Board Policy 4.10 - Board Members Code of Conduct states: “Board members must demonstrate unconflicted loyalty to the interests of the entire community of Maricopa County...Board Members are elected to serve on a nonpartisan basis when serving as a steward on behalf of the college district.” If a Board member has a conflict of interest, he/she must: disclose the interest; refrain from participating in the matter; and provide written disclosure of that interest in the special file kept by MCCCDC. It can be either a disclosure statement written by the Board member or a copy of the official minutes which disclose the interest. Further, a “relative” includes “the spouse, child, child's child, parent, grandparent, brother or sister of

the whole or half blood and their spouses and the parent, brother, sister or child of a spouse” (ARS §38-502(9)). “Substantial interest” is defined as “...any pecuniary or proprietary interest, either direct or indirect, other than a remote interest” (ARS §38-502(11)). “Remote interest” includes nine separate definitions appearing at ARS §38-502(10). Board members should ask themselves whether they will gain or lose something by the decision at hand. Additionally, the Board may not employ a member of its board or his/her spouse (ARS §38-503(D)).

If a Board member has a conflict of interest and is not participating in the matter, he/she may not communicate with anyone involved in the decision-making. He/she should consider the appearance of impropriety; consider leaving the room when the matter is being discussed; and do not try to telegraph viewpoint through non-verbal communication.

Asking for or receiving any unauthorized gratuity or reward for doing an official act is a Class 6 felony (ARS §38-444) and knowingly or intentionally violating any provision of the conflict of interest laws is a Class 6 felony (ARS §38-510(A)(1)).

Town Hall Priorities

Ms. Smock attended a recent Arizona Town Hall and noted that community colleges were specifically identified in six proposed actions:

1. Increase education funding for pre-K-12, community colleges, and universities to above pre-recession levels and search for new funding sources, including comprehensive tax reform as needed. The funding method should address issues of equity in source and distribution, educator salaries, and should be sustainable and support long-term planning. (Responsible Agents: Arizona Legislature and the Governor)
2. Support a comprehensive education improvement plan, which would include a robust public pre-K through college educational system (“cradle to career”) and college and career ready standards and that places Arizona in the top tier in educational achievement (Responsible Agents: Arizona Department of Education, individual school districts, the Arizona Board of Regents, and community college boards)
3. Promote career technical education (CTE) opportunities, trade schools, and vocational opportunities to school districts, high schools, parents, those who do not complete high school, and adult workers. (Responsible Agents: Department of Economic Security, workforce investment boards, community colleges, the Superintendent of Public Instruction, and the private sector)
4. Conduct a comprehensive study of the workforce needs of businesses in Arizona to serve as a tool for the development of new curriculum and training programs, including bilingual education, and adult learning. (Responsible Agents: The private sector, the chambers of commerce, the Arizona Workforce Investment Board and other workforce investment boards, the Arizona Commerce Authority, universities, community colleges, and trade and vocational schools)
5. Implement programs to help retain “home-grown talent” within Arizona with a focus on millennials and consider incentives to retain graduates such as loan repayment assistance and loan forgiveness programs. (Responsible Agents: Youth leadership groups, such as student life and leadership, student government associations at community colleges and universities, workforce investment boards, the Arizona Board of Regents, and the Arizona Society of Human Resources Management (AZ SHRM))
6. Ensure that liberal arts curriculum and critical thinking skills are a substantial component of the education system across the entire age spectrum. This includes an emphasis on teaching the skill of engaging in respectful civil dialogue with people of different perspectives.

(Responsible Agents: Arizona Department of Education, individual school districts, the Arizona Board of Regents, and community college boards)

A copy of the presentation is included in the appendix. For more information or to have specific questions answered, please contact Ms. Julia Smock directly (jzsmock@aol.com).

ADJOURNMENT

Orientation was adjourned at 3:45 p.m.

Randolph Lumm
Governing Board Secretary

Appendix

MCCCD Study Session facilitated by Ms. Julia Z. Smock

November 13, 2014
Study Session

Maricopa County Community College District Board

About Me

Julia Smock, ASBA Leadership Consultant
Peoria School Board – 1989 – 2000
President, Arizona School Boards Association – 1996
All Arizona School Board – 1995
Lou Ella Kleinz Board Award - 1997
Assistant Attorney General – 1980 – 2010
Attorney General Open Meeting Law Enforcement Team – 1983 - 2010

Open Meetings

Electronic Communication

- “Meeting” means the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action.”
A.R.S. § 38-431(4)

Open Meetings

- Ariz. Att’y Gen. Op. 105-004 (e-mail opinion) – “When members of the public body are parties to an exchange of e-mail communications that involve discussions, deliberation or taking legal action by a quorum of the public body concerning a matter that may foreseeably come before the public body for action, the communications constitute a meeting through technological devices under the OML.”

Open Meetings

- Ariz. Att’y Gen. Op. 108-008 (virtual meeting opinion) – “Additionally, the statute [A.R.S. § 38-431(4)] allows the Board to meet through serial communications to discuss and deliberate about Board business if accomplished in compliance with the terms of the Open Meeting Law.” Emphasis added
- **Note:** The process outlined in the opinion for holding a virtual meeting is detailed, complicated and fraught with danger...

Open Meetings

Text messaging outside of a meeting

- Gilbert School Board was accused of violating the OML because Board President texted other board members about calling a “last-minute special meeting.” A.G.’s Office found no violation since e-mail opinion permits one board member to contact others to propose putting an item on an agenda.

Open Meetings

- Letter from Ass't A.G. said "In light of the significant public interest in the business before the board and the concerns of secret decision-making raised by the public, I recommend that the board minimize the amount of e-mail and telephonic communications regarding official business among themselves outside of a public meeting."

Open Meetings

E-mails outside of public meetings

- Glendale City Council currently is under investigation because of an OML complaint from the Mayor who believes a majority of council members violated the law by discussing the deal that kept the Coyotes hockey team in Glendale. Council member A sent an e-mail to D stating that A, B and C had been discussing the deal the night before and they were all "on board." Deal with Coyotes could be deemed void and require a re-vote if A.G.'s Office finds a violation of the OML

Open Meetings

Text messaging during meetings

- No concern re: OML if not texting to a quorum
- But...be mindful of the appearance of impropriety/doing business out of the public eye and perceived lack of attention to meeting at hand by members of public present at meeting

Open Meetings

- Peoria City Council recently adopted policy which "bans members from using any electronic device capable of sending messages during executive session or a public meeting." *The Arizona Republic, Community News*, 01.10.14 (article written by Jackee Coe)

Open Meetings

"Airing" public comments

- Call to the public – to broadcast or not to broadcast?
 - OML does not require public participation – "A public body may make an open call to the public during a public meeting..." - A.R.S. § 38-431(1)(H)

Open Meetings

- Where is it on your agenda?
 - Beginning – eats up lots of time before agenda items are discussed
 - End – raises questions about how interested the board really is about hearing public concerns and whether having it at the end is a veiled "hope" that most who wanted to speak will have gone home

Open Meetings

- If meetings are video-taped or streamed, should "Call to the Public" segment be included?
 - Phoenix City Council voted unanimously in January to televise public comments which occur at the end of each meeting. Previously, although the council meetings were televised, the cameras were turned off when public comments began. It was not uncommon for some council members to leave the meeting before all members of the public had been heard.

Open Meetings

- Tempe followed suit in March, reinstating an earlier policy. It had broadcast public comments until 2011 but stopped the practice because of what it referred to as a need "to protect city employees from slander." This came as a result of one member of the public appearing at every meeting and "lambasting" the council. This "reflects the tensions between government transparency and the sometimes messy practice of giving every resident a say." *The Arizona Republic, Valley and State*, 03.05.14 (article written by Dianna M. Nanez)

Open Meetings

Secret ballots

- "All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting." A.R.S. § 38-431.01(A)
- Peoria City Council members voted in December and again in May to make their final decision on who should fill a vacancy created by the resignation of a member by secret ballot arguing that voting in general is a private matter

Open Meetings

- Council reversed its decision after a OML complaint was filed with the A.G.'s office
 - Clearly not a process that reflects the spirit of the law or the statement that the public should be permitted to observe and listen to deliberations and proceedings at public meetings
 - Argument that voting as a private citizen and voting as a member of a public body are the same ignores the fact that voting as a member of a public body is "final action" under the OML

Open Meetings

- Peoria City Attorney advised Council that the A.G.'s Office would likely have challenged the process if it had not been reversed
- Other cities have similar process – City of Surprise used secret ballot when filling a vacancy in August 2013 but no one challenged the process

Open Meetings

Setting the agenda

- OML requires that there be an agenda but does not provide any process for setting it
- Your policy (4.4 Board Planning and Agenda Preparation) provides for you to have an annual planning calendar and requires the President to present a suggested work plan for the year's meetings
- President determines agenda for each meeting; Board Members and Chancellor may request items to be included at least 14 days before a meeting

Open Meetings

- How many people have to agree to include an matter on an agenda?
- If less than a quorum, no problem
 - If more than a quorum, decision to include matter on agenda must take place at a public meeting as an agenda item – e.g., “Future agenda items”

Open Meetings

- No discussion may be had concerning the merits of item – “I don’t want to discuss this matter again – we just talked about this 6 months ago and you lost” or “we cannot address this item now for A, B and C reasons”

Open Meetings

- Is the agenda item specific enough to advise the public of what is being discussed?
- Is the language so general – “changing bus routes” – that the public would not guess a possible outcome – “no more bus service” - could be the result?
- Are board members reviewing agendas far enough in advance to allow for an amended agenda?
- Is someone in the organization responsible for making sure that all posting locations get an amended agenda?

Open Meetings

- Use of consent agenda (Policy 4.4(3)(D))
 - Permissible
 - May streamline meetings
 - Typically items on such agenda are “administrative” or “routine” and not discussion items
 - Should not be used for controversial items
 - What is the procedure for removing an item from the consent agenda for discussion?

Open Meetings

From the chronicles of “truth is stranger than fiction”:

- “Phoenix resident Dianne “DD” Barker is fighting for her rights – specifically, the right to perform cartwheels at public meetings. Barker, 65, has received a letter from an attorney for the Maricopa Association of Governments demanding that she ‘immediately cease performing cartwheels at MAG meetings.’ She has been know to show off her gymnastic skills at the planning agency’s regular gatherings. ‘You have from time to time suggested that MAG cannot prevent you from performing cartwheels during your comments,’ the letter states. ‘That position is incorrect.’” *The Arizona Republic, Valley and State*, 06.04.14 (article by Dustin Gardiner)

Open Meetings

Controlling Your Meeting

- You have the ability to conduct your meetings in an efficient, effective manner
- You may not control the content of what is said by members of the public, but you may control with “reasonable time, place and manner restrictions...” A.R.S. 38-431.01(H) See Policy 4.5 (5)
- The A.G.’s office support removing a disruptive person if the public body can show attempts to control the situation prior to removal – e.g., asking the person not to yell, not to use foul language, etc.

Open Meetings

- Calling for a recess for folks to calm down may work
- Clearing the room may work as well, but remember to let folks know when you are back in session – MCSO cleared the room at a meeting of the Maricopa County Board of Supervisors several years ago. When the meeting resumed, the Supervisors did not know that the door had been locked and assumed that everyone went home. The meeting had to be done over...

Public Records

"Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours."
A.R.S. § 39-121

Note: Courts do not distinguish "public records" and "other matters." *Griffis v. Pinal County*, 215 Ariz. 1, 4 n.5, 156 P.3d 418, 421n. 5 (2007) (citing *Carlson v. Pima County*, 141 Ariz. 487, 490, 687 P.2d 1242, 1245 (1984))

Public Records

"Any person may request to examine or be furnished copies, printouts or photographs of any public record during regular office hours or may request that the custodian mail a copy of any public record not otherwise available on the public body's website to the requesting person."

A.R.S. § 39-121.01(D)(1)

Public Records

What is a public record?

Griffis (quoting *Salt River Pima-Maricopa Indian Community v. Rogers*, 168 Ariz. 531, 815 P.2d 900 (1991)) says a public record is one:

"made by a public officer in pursuance of a duty, the immediate purpose of which is to disseminate information to the public, or to serve as a memorial of official transactions for public reference";

Public Records

A record that is "required to be kept, or necessary to be kept in the discharge of a duty imposed by law or directed by law to serve as a memorial and evidence of something written, said or done";

Or any "written record of transactions of a public officer in his office, which is a convenient and appropriate method of discharging his duties, and is kept by him a such, whether required by...law or not."

Public Records

Keep in mind that

- The definition of public record is broad, but not unlimited
- There must be a "substantial nexus" with an entity's activities
- Determination is content-driven
- Court may conduct in-camera review of documents in question
- Metadata is part of electronically created public record

Public Records

- Metadata must be provided for electronically created public records
 - “When a public officer uses a computer to make public record, the metadata forms part of the document as much as the words on the page.” *Lake v. City of Phoenix*, 220 Ariz. 472, 484-85, 203 P.3d 725, 737-38 (App. 2008)

Public Records

- Metadata is defined as “information describing the history, tracking, or management of an electronic document” and includes “file designation, create and edit dates, authorship, comments, and edit history.” *Lake, n.1*

Public Records

- MCCC board related e-mails, text messages, and any other form of electronic communication are public records, even if you use your personal equipment at home or in your car...
- The district must have a public records retention policy, and you must know what it is and how it works
- Consider using only district e-mail and other district equipment for district business

Public Records

Keep in mind that

- Mere possession of a document by a public office or agency does not by itself make that document a public record
- Nor does expenditure of public funds in creating the document

Public Records

- “We reject [the] argument that all e-mails generated or maintained on a government-owned computer system are automatically public records...On the other hand, many e-mails generated or retained on a government computer system are public records because they relate to government business.” *Griffis*

Public Records

How much is too much?

In *Congress Elementary Sch. Dist. v. Warren*, 227 Ariz. 16, 251 P.3d 395 (App. 2011), the District claimed prior records requests required review of nearly 9,000 pages of documents and response time of more than 417 hours:

- “In sum, the district has not shown why the simple fact that defendants have made previous requests permitted by statute justifies an order denying possible future requests.”
- Records requests are not a “public nuisance.”

Public Records

Charging copying fees – Ariz. Att’y Gen. Op. 113-012

- Private or commercial use?
- If commercial use, A.R.S. § 39-121.03(A) says it is okay to charge for
 - A portion of cost for obtaining original or copies
 - A reasonable fee for cost of time, materials, equipment and personnel in producing reproduction
 - The value of reproduction on commercial market

Public Records

- If for private use, A.R.S. § 39-121.01(D) says public entity may charge only for copying and postage
- Copying cost does not include cost for making document available for review only – i.e., requesting party does not want a copy, only a “view”
- Copying cost does not include cost for making document available so that requestor can make own copy – i.e., requestor using smart phone to take picture of document

Public Records

- Copying cost does not include the cost of locating and preparing record for inspection including time required to review and redact if necessary – *Hanania v. City of Tucson*, 128 Ariz. 135, 136, 624 P.2d 332, 333 (App. 1980) and Ariz. Att’y Gen. Op. 186-090
- Recent legislative attempts to permit charging for labor costs even in extreme circumstances have failed

Public Records

Refusal to produce/Redaction

- Refusal to produce public records under some circumstances requires balancing of interests
 - Documents are confidential under state or federal law – *Berry v. State*, 145 Ariz. 12, 699 P.2d 387 (App. 1985)
 - Release may invade personal privacy – *Scottsdale Unified Sch. Dist. v. KPNX Broadcasting Co.*, 197 Ariz. 297, 955 P.2d 534 (1998)
 - Release of documents will compromise ability of public body to do its job – e.g., negotiations re: purchase/sale of real estate

Public Records

- You may be permitted/required to redact information before producing records
 - Release of documents may invade personal privacy – *Scottsdale Unified Sch. Dist.* – teachers’ privacy interest in birthdates outweighed disclosure
 - But you may not refuse to produce documents in full just because there are portions that require redaction and

Public Records

- You may not refuse to produce documents just because doing so would result in inconvenience or embarrassment – *Dunwell v. Univ. of Ariz.*, 134 Ariz. 504, 508, 657 P.2d. 917, 921 (App. 1982)

Public Records

How quickly must records be produced?

- Access to a public record is deemed denied if a custodian fails to promptly respond to a request for production - A.R.S. § 39-121.01(E)
- “ ‘Prompt,’ ...mean[s] ‘quick to act or to do what is required,’ or “done, spoken, etc., at once and without delay.” *W. Valley View, Inc. v. Maricopa County Sheriff's Office*, 216 Ariz. 225, 230, 165 P.3d. 203, 208 (App. 2007)

Public Records

- *Lake*, 220 Ariz. at 484-85, 203 P.3d at 737-38
 - “Arizona law does not require that public records be furnished within a specific number of days after receipt of the request. Rather, in this context we have interpreted the word ‘prompt’ to mean ‘quick to act’ or to produce the requested records ‘without delay;’ We have also recognized, however, that whether a government agency’s response to a wide variety of public records requests was sufficiently prompt will ultimately be dependent upon the facts and circumstances of each request.”

Public Records

- *Phoenix New Times v. Arpaio*, 217 Ariz. 533, 177 P.3d 275 (App. 2008)
 - Although a request for voluminous documents that are not all located in the same place might justify some delay in responding to a request... similar delays have been upheld only with some form of prompt notification or response, as is required by A.R.S. § 39-121.01(D)(1) and (E).”
 - Agency cannot justify failure to provide records by claiming that it assumed that the person requesting the records would no longer be interested in them...at least without asking the person making the request.

Public Records

Consequences of failure to promptly provide documents

- *McKee v. Peoria Unified School District*, 1CA-CV 13-0374, Maricopa County Superior Court Case No. CV2010-096000 – attorney’s fees in the amount of \$67,500 ordered to be paid by district; district has appealed
- Court found that neither inattention nor mistake nor unintentionally withholding records excused the district’s conduct in failing to promptly produce records – district’s conduct was found to be “at best evasive and at worst bad faith.”

Public Records

- Case is on appeal
 - District is arguing
 - Court’s analysis of what is “prompt” is incorrect – in this case, records were produced in 11, 13 and 16 business days
 - Public records law does not require inquiry into reasons for request for records except commercial vs. private purposes
 - If public body does not have requested records in its possession, it is not required to direct requesting party to another agency that might have the records
 - Public records law and discovery rules during litigation are different and should be treated as such

Statutory Responsibilities

- General statutory responsibilities specifically for community colleges appear at A.R.S. sections 15-1401 *et seq.*, 15-1441 *et seq.*, 15-1461 *et seq.*, 15-1481 *et seq.*
- 15-1444 provides for general powers and duties, both mandatory and discretionary
- 15-1445 provides for administrative powers, all of which are mandatory

Statutory Responsibilities

- Sections at 15-1461-1474 deal with finance
- Sections at 15-1481-1491 deal with bonds
- A.R.S. sections 1801-1896 apply to community colleges, universities and private postsecondary institutions and relate primarily to student tuition classification, admission, student loans and student rights

Statutory Responsibilities

- Statutes require policies for various matters
- Board adopted policies have the same force and effect of statutes
 - They can be modified
 - They can be repealed
 - But they must be followed if they exist

Statutory Responsibilities

- Mandatory general powers and duties – 15-1444 – include:
 - Adopt policies... to offer programs that meet the educational needs of the population served..."
 - Employ personnel, determine salaries, remove personnel
 - Employ police officers w/ peace officer status
 - Enforce courses of study and award degrees, certificates and diplomas

Statutory Responsibilities

- 15-1444 Mandatory responsibilities continued...
 - "Exclude from each community college all books, publications or papers of a sectarian, partisan or denominational character intended for use as text books." 15-1444(A)(5)

Statutory Responsibilities

- Discretionary general powers and duties – 15-1444 – include:
 - Lease property
 - Sue and be sued
 - Contract
 - Construct, remodel, repair buildings
 - Establish policies for procurement of goods and services with other districts

Statutory Responsibilities

- Provide plans for employee benefits
- Accept grants or donations of monies from the U.S.
- Enter into IGAs with JTEDs

Statutory Responsibilities

- Mandatory administrative powers – A.R.S. §15-1445
 - Adopt policies for governance (Policy 4.o)
 - Set standards for the establishment, development, administration, operation and accreditation of community colleges in the district
 - Fix tuitions and fees
 - Establish curriculums
 - Establish qualifications of instructional staff

Statutory Responsibilities

- Mandatory administrative powers...
 - Regarding vocational and technological education, deal with issues including programs, staffing, transferability and standards
 - Also appears at A.R.S. § 38-1452 - 5 year evaluation of vocational and technological education
 - Self-evaluation, planning, funding priorities

Statutory Responsibilities

- A.R.S. §§ 15-1801-1896 include:
 - You must adopt policies that ensure uniform criteria to aid in determining tuition status. 15-1805
 - You must provide a tuition waiver for the child or spouse of a police officer, firefighter, correctional officer, emergency paramedic, national guard member or member of the Armed forces killed in action. 15-1808

Statutory Responsibilities

- You may not grant a tuition waiver, scholarship, financial aid or any type of financial assistance to a person who is not a citizen of the U.S. or does not have lawful immigration status. 15-1825
- You may not give financial aid to a person who has not registered with Selective Service if required to do so. 15-1841
- You may not discriminate against any student on the basis of religious belief. 15-1862

Statutory Responsibilities

- You may not discriminate against any student organization on the basis of religious, political, philosophical or other content of the group's speech including worship if you grant recognition to any student organization. 15-1863
- You may not restrict a student's right to speak in a public forum unless you can establish that it is in furtherance of a compelling governmental interest and that it is the least restrictive means of furthering the interest. 15-1864

Statutory Responsibilities

- You must, in consultation with the recognized student government at colleges under your jurisdiction, adopt a plan to increase student voter registration and voting in elections that includes 10 specific requirements. 15-1895
- You may not make decisions about faculty employment on the basis of the faculty member's political or religious beliefs. 15-1896

Vision

- A Community of Colleges...Colleges for the Community...working collectively and responsibly to meet the life-long learning needs of our diverse students and communities

Mission

- The Maricopa Community Colleges provide access to higher education for diverse students and communities. We focus on learning through:
 - University Transfer Education
 - General Education
 - Developmental Education
 - Workforce Development
 - Student Development Services

Mission

- Continuing Education
- Community Education
- Civic Responsibility
- Global Engagement

Values

- The Maricopa Community Colleges are committed to:
 - Community
 - Excellence
 - Honesty and Integrity
 - Inclusiveness
 - Innovation
 - Learning
 - Responsibility
 - Stewardship

Goals and Outcomes

- Indicators for benefits identified by the Board and prioritized in the budget:
 - University Transfer Education and General Education
 - Developmental Education
 - Workforce Development
 - Student Development
 - Continuing/Community Education

Strategic Directions

- Directions to be used in the district wide strategic planning process to advance the mission, vision and values:
 - Maximize stakeholder access
 - Promote and support opportunities for students
 - Enhance internal collaboration and increase external partnerships
 - Identify revenue sources/promote cost effectiveness

Strategic Directions

- Recruit, develop and retain quality diverse workforce
- Maintain a strong identity that reflects its role in and value to the community

Board Policies

- Outcomes
- Chancellor Limitations
- Board-Staff Relations
- Governance Process

Conflict of Interest

- Statutory conflict of interest statutes appear at A.R.S. §§38-501-511
- Purpose of statutes is
 - "...to remove or limit the possibility of personal influence which might bear upon an official's decision." *Yetman v. Naumann*, 492 P.2d 1252,1255 (1972); and
 - To prevent self-dealing by public officials *Maucher v. City of Eloy*, 701 P.2d 593,596 (1985)
 - To recognize that personal financial interests and the unbiased performance of public duties cannot coexist

Conflict of Interest

- Board Policy 4.10 - Board Members Code of Conduct
 - "1. Board members must demonstrate unconflicted loyalty to the interests of the entire community of Maricopa County...Board Members are elected to serve on a nonpartisan basis when serving as a steward on behalf of the college district."

Conflict of Interest

- If you have a conflict of interest, you must
 - Disclose the interest and
 - Refrain from participating in the matter and
 - Provide written disclosure of that interest in the special file kept by MCCCDD; it can be either
 - A disclosure statement written by you or
 - A copy of the official minutes which disclose the interest

Conflict of Interest

- Definitions
 - "Relative" includes "the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse." A.R.S. §38-502(9)
 - "Substantial interest" is defined as "...any pecuniary or proprietary interest, either direct or indirect, other than a remote interest." A.R.S. §38-502(11)

Conflict of Interest

- "Remote interest" includes nine separate definitions appearing at A.R.S. § 38-502(10)
- Ask yourself whether you will gain or lose something by the decision at hand
 - If your employer is a public utility that supplies natural gas to areas within the district, you may not participate in a decision concerning the choice of power being supplied to the district. Ariz. Att'y Gen. Op. 103-005

Conflict of Interest

- But if you are a school board member, you may vote on a district unification issue that could result in the loss of your position as a board member because you have no pecuniary or proprietary interest in retaining your elected position. Ariz. Att'y Gen. Op. 101-009
- Your board may not employ a member of your board or his/her spouse. A.R.S. § 38-503(D)

Conflict of Interest

- If you have a conflict of interest and are not participating in the matter, you may not communicate with anyone involved in the decision-making
- Consider the appearance of impropriety
- Consider leaving the room when the matter in which you may not participate is being discussed
- Do not try to telegraph your viewpoint through non-verbal communication

Conflict of Interest

- Criminal sanctions
 - Asking for or receiving any unauthorized gratuity or reward for doing an official act is a Class 6 felony. A.R.S. § 38-444
 - Knowingly or intentionally violating any provision of the conflict of interest laws is a Class 6 felony. A.R.S. § 38-510(A)(1)

Resources

- Open Meetings – A.R.S. §§ 38-431-439; Public Records A.R.S. §§ 39-101-161 www.azleg.gov/ArizonaRevisedStatutes
- Arizona Agency Handbook, chapters 6, 7 and 8 www.azag.gov (type "Agency Handbook" in search bar)
- Arizona Ombudsman's Office www.azleg.gov/ombudsman
- Arizona State Library, Archives and Public Records – www.azlibrary.gov

Resources

- Community colleges - A.R.S. §§ 15-1401 *et seq.*, 15-1441 *et seq.*, 15-1461 *et seq.*, 15-1481 *et seq.* A.R.S. §§ 15-1801-1896

Thank you!

- Julia Z. Smock
Consultant
jzsmock@aol.com