Abstaining from Voting

By Dr. Michael T. Adamson, ISBA Director of Board Services (madamson@isba-ind.org)

Abstaining from a vote typically occurs for a couple of reasons: 1) A board member has a legal conflict of interest, and 2) A board member has an ethical conflict of interest. These can be confusing and definitions for clarity are helpful.

> A public servant commits "conflict of interest" if he or she "knowing or intentionally: (1) has a pecuniary interest in; or (2) derives a profit from; a contract or purchase connected with an action by the governmental entity served by the public servant." "'Pecuniary interest' means an interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of" the public servant or a dependent." Ind. Code Ann. § 35-44.1-1-4. (National Conference of State Legislatures, 2018).

An ethical conflict of interest can exist, without a legal conflict of interest, when there is a perception (or could be a perception) that a board member's ability to objectively make a decision is compromised because of his or her private interests in the outcome.

Board members often abstain from voting in either case but abstention is not a requirement. In the case of a legal conflict, the board member is required to file a conflict of interest statement disclosing that the conflict does exist or could exist. In an ethical conflict, no disclosure is required. So, the real question in either case is, "Should the board member abstain?"

In some circumstances, there may be legitimate reasons a board member should not abstain, such as when the vote is necessary to facilitate the decision-making responsibilities of the board. However, if possible, I do recommend abstention in both cases. Even if a person can objectively weigh the matter under consideration, a perception of intent to further a personal agenda can ultimately do more harm to the character of the board member and to the leadership of the entire board. A board member who removes himself or herself from the decisions that represent a personal conflict of interest protects the board's decision-making and leadership credibility, as well as his or her reputation.

QUESTIONS ON ABSTENTIONS?

Contact Dr. Michael Adamson, Director of Board Services

Public Access Counselor Opinion

by Lisa F. Tanselle, ISBA General Counsel (ltanselle@isba-ind.org)

The Public Access Counselor has issued another advisory opinion interpreting a school corporation's duty to disclose information from an employee's personnel file. At the December School Law Seminar, there was much discussion regarding Counselor Britt's recent conclusions that school corporations, in response to a request for the factual basis for disciplinary action taken against an employee, must create a record that provides enough information that gives the public a reasonable idea as to the basis of the disciplinary action.

Later in December, the Public Access Counselor issued an opinion on whether a school's response to a request for personnel file information was sufficient. In this case, a reporter requested the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, and dates of first and last employment of a named employee. Recognizing that the Access to Public Records Act required the school corporation to release the information, the school corporation responded to the request by providing the information in the form of a summary compilation taken from other public record sources. The reporter filed a complaint with the Public Access Counselor, asserting that the actual records maintained in the personnel file had to be released instead of "an amalgamation extrapolated from original records." The school corporation responded to the complaint by arguing that the law merely required the information to be disclosed and made no mention of disclosing the actual public documents. The school corporation further asserted that if the records themselves had to be disclosed, excessive redaction from the documents would be required.

Thus the Counselor considered whether the creation of a summary document with all of the information required by law was sufficient to meet the disclosure requirement or whether it was necessary for the school corporation to provide copies of actual records with sensitive information redacted.

Counselor Britt noted that typically a public agency is not required to create a record to satisfy a request for public records, but that his office has held that there are limited circumstances when "this is not only convenient, but necessary." He also noted that this particular provision of the law did not mention the words "records," "documents," or "work product" as other subsections did. Based on these statements, the Public Access Counselor then concluded a reasonable inference could be made that the General Assembly did not intend to require the information listed in statute to be the records themselves, but rather information pulled from other sources and combined to create a new record with the required information.

The Public Access Counselor emphasized that the information listed in statute had to be maintained in some shape or form by the public agency in a personnel file, but could be disseminated in an aggregate form as a new record in response to a request for the required information. Thus, the Counselor concluded the school corporation did not violate the public records law by extracting the information from original personnel files and presenting it in summary form.