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**ALABAMA ASSOCIATION OF SCHOOL BUSINESS OFFICIALS
AASBO WINTER CONFERENCE**

**Bryant Conference Center, University of Alabama
Tuscaloosa, Alabama**

CSFO Responsibilities and Laws You Need to Know

I. YOUR PROTECTION

- A. Consultations with the board attorney, who does not represent you.
- B. AASBO
- C. CLAS Legal Defense Fund, NEA/AEA membership, other professional organizations
- D. Most board of education policy manuals allow the superintendent to consult (and pay for) a subject matter expert. For example, your special education coordinator may consult with experts (upon your approval) to determine what services and/or to provide services to students. You can have the superintendent authorize you to consult an experienced education attorney in the same manner. Obtain a written opinion.

II. THE RELATIONSHIP BETWEEN THE CSFO, SUPERINTENDENT AND BOARD

- A. Who Are You Employed By?
Every CSFO is clearly employed only by the board of education.
- B. Who Hires You?
You can only be hired by the Board "in consultation with the local superintendent of education."

Alabama Code Section 16-13A-4(a)

But if the Board does not fill a vacant position after 30 days, the State Superintendent can designate a CSFO for up to one year, which may be extended from year to year, until the Board appoints somebody.

Alabama Code Section 16-13A-4(b)(1)

- C. Who Can Fire You?
Only the Board can fire you, unless the State Superintendent appointed you.
"[A] local board of education, upon a majority vote of its members, shall have unilateral authority to remove the chief school financial officer."

D. Who Is Your Supervisor?

You work under the direct supervision of the Superintendent, but your fiduciary responsibility is to the Board of Education.

Alabama Code Section 16-13A-5(a)

You can only make payments only on “written order” of the Superintendent.

Alabama Code Section 16-13A-5(b)(2)

E. Your Duties Include:

You must “keep an accurate record of all receipts and expenditures, and provide such information to the local superintendent and the local board.”

Alabama Code Section 16-13A-5(b)(3)

You are obligated to “[p]ersonally notify, in writing, each board member and the local superintendent of education of any financial transaction of the local board of education which the chief school financial officer deems to be non-routine, unusual, without legal authorization, or not in compliance with the fiscal management policies of the board.”

Alabama Code Section 16-13A-5(b)(5)

Any such notification “shall be recorded in the minutes of the board of education by the president of the local board of education.”

Alabama Code Section 16-13A-5(b)(5)

F. Financial Report Submitted to ALSDE

Your system is required to provide, and submit it electronically or in writing, to the state’s Chief Education Financial Officer by the 15th day of the month following its presentation to the local board of education.

Alabama Code Section 16-13A-6

This information is supposed to be prepared at the direction of the local superintendent of education, not you.

Alabama Code Section 16-13A-6(a)

However, the Alabama Code does not say who is the one who must submit it in writing or electronically to the Chief Education Financial Officer by the 15th of the month.

Alabama Code Section 16-13A-6(b)

G. How Funds Are Extended

The Board of Education does not have to expressly approve all spending, although it is good for you to have it approved.

Alabama Code Section 16-13A-8

The *Alabama Code* says that every board of education shall adopt procedures relating to expenditure of funds and that the superintendent, subject to those rules, “may expend funds without prior approval of the board.”

Alabama Code Section 16-13A-8

All expenditures made in this manner “shall be included in the monthly report to the board

of expenditures.”

Alabama Code Section 16-13A-8

The superintendent does not need to recommend the Board adopt the financial report.

H. Audits

The Board of Education can, at any time, by majority vote, request an audit by the Department of Examiners of Public Accounts.

Alabama Code Section 16-13A-7(d)

The Board may also request an audit from the Department of Examiners of Public Accounts “whenever there is a permanent change in the position of local superintendent of education or chief school financial officer.”

Alabama Code Section 16-13A-7(c)

These two previous audits are done by the Examiners, not, for a city board of education, by the CPA firm.

I. Criminal Penalties

It is a Class A misdemeanor if “an employee or official of a local board of education deliberately, willfully, or wantonly fails to provide the local board, the state board, the state superintendent, or the state chief education financial officer with accurate information.”

Alabama Code Section 16-13A-10

A Class A misdemeanor carries penalties of up to one year of imprisonment and/or a fine of up to \$6,000.

III. SUITS WHERE THE BOARD AND CSFO ARE SUED

A. You may be protected by the Educator Liability Trust Fund

B. Civil Rights Act of 1871 (The Ku Klux Klan Act): Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory of the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, sued in equity, or other proper proceeding for redress.

United States Code, Title 42, Section 1983

C. The CSFO and the board may have different interests.

IV. CONTROLLING ROGUE BOARD MEMBERS

A. AASB Certificate of Affirmation

B. Action by the state superintendent is not likely under the School Board Governance Improvement Act of 2012.

1. The process.

(a) The state superintendent will investigate only “serious and substantial allegations of neglect of duty, misconduct, or breach of duty” by the board

member.

- (b) The process starts with either a written complaint from a majority of the board or when the state superintendent decides on his/her own to do so.
- (c) The superintendent investigates.
- (d) After the investigation, the state superintendent has two choices:
 - (i) Decline to pursue formal sanctions, or
 - (ii) Issue written notice stating the contemplated sanction, what the board member did wrong.
- (e) The board member has 30 days to explain either in person or in writing why he/she should not be subject to the sanction.
- (f) The board member can request a hearing before the state superintendent.
- (g) After the hearing, the state superintendent may recommend to the state board of education:
 - (i) A formal censure or reprimand
 - (ii) If the board member failed training and attendance requirements, the board member may be disqualified from future appointments, reappointment, or election to the board.
 - (iii) If the state superintendent finds the board member is guilty of duty or wilful misconduct, the board member may be disqualified from future appointments, reappointment, or election to the board.
- (h) The state superintendent's sanction must be approved by a majority vote of the State Board of Education.

C. Censure of rogue board members under the School Board Governance Improvement Act of 2012.

- 1. Requires a majority of the board to vote in favor
- 2. The member must be provided 30 days written notice of the proposed censure or reprimand from you, as secretary of the local board of education. (County superintendents are designated by statute as the "secretary of the county board of education." *Alabama Code Section 16-9-1*. City superintendents are also generally considered the secretary of the board, but the statutory authority is different. *Alabama Code Section 16-12-3(e)* says: "The city board of education shall appoint as its executive officer a superintendent of schools, who may also be secretary of the board of education.")
- 3. The notice must contain:
 - the reasons for the proposed action;
 - that the rogue member shall be afforded an opportunity to respond orally or in writing, and
 - that a vote of the board will be taken on the proposed action.
- 4. Requires a chair who will enforce the rules passed by the majority
- 5. Problems with establishing a quorum

D. The School Board Governance Improvement Act specifically says that no sanction shall be imposed "on the basis of the exercise of personal, political, or other rights."

E. Censure not under the School Board Governance Improvement Act: Any organized body has inherent power to censure its members. The censure may not include removing an elected representative's ability to vote, as that deprives the district electorate of its voice. Censure must be done by a majority vote of the members and, like censure of rogue board members under the School Board Governance Improvement Act, requires a chair who will enforce the

rules. Censure could include taking away speaking privileges.

A motion for censure needs to be placed on the agenda, unless the censure occurs for misconduct or dereliction of duty at the meeting. Failure to place the motion on the agenda will require a two-thirds vote to amend the agenda to a motion to censure to the agenda for censure of actions outside of the meeting. If during the meeting the body intends to censure an individual for conduct which occurs at the meeting, the matter first comes up as a point of order. If the rogue member does not cease the misconduct or dereliction of duty, then a motion to censure is appropriate. See for example, Roberts Rules of Order, Newly Revised (10th Edition), Chapter XX, Section 61 Disciplinary Procedures.

V. YOUR CONTRACT/RESOLUTION

- A.** CSFOs should negotiate elements in their contract with the assistance of an attorney. After all, the board has an attorney; why should you not have one? If you are a CLAS member, the CLAS Legal Defense Fund may pay for your attorney. Please avoid the feeling that “hiring an attorney” sends the wrong message to the board of education.
- B.** Troublesome Provisions in Contracts:
 - 1. Termination provisions
 - 2. “Full-time” provisions

VI. ALABAMA ETHICS ACT

Under the Alabama’s Ethics Act, you are a public official; the same basic rules that apply to the governor and state legislators apply to you.

Public Employee: Any person employed at the state, county, or other municipal level of government or their instrumentalities...

Alabama Code § 36-25-1(26)

Public Official: Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities...

Alabama Code § 36-25-1(27)

Family Member of the Public Employee: The spouse or a dependent of the public employee.

Alabama Code §36-25-1(14)

Family Member of the Public Official: The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse’s parents, a sibling and his or her spouse, of the public official.

Alabama Code §36-25-1(15)

No person shall offer or give to a public official or public employee or a member of the household of a public employee or a member of the household of the public official and none of the aforementioned shall solicit or receive anything for the purpose of corruptly influencing official action, regardless of whether or not the thing solicited or received is a thing of value.

Alabama Code § 36-25-7(a)

No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.

Alabama Code § 36-25-5(a)

No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy.

Alabama Code § 36-25-5(c)

No person shall solicit a public official or public employee to use or cause to be used equipment, facilities, time, materials, human labor, or other public property for such person's private benefit or business benefit, which would materially affect his or her financial interest, except as otherwise provided by law.

Alabama Code § 36-25-5(d)

No public official or public employee shall, other than in the ordinary course of business, solicit a thing of value from a subordinate or person or business with whom he or she directly inspects, regulates, or supervises in his or her official capacity.

Alabama Code § 36-25-5(e)

A. Watch the Video.

“All public employees required to file the Statement of Economic Interests required by Section 36-25-14, no later than May 1, 2011, shall participate in an online educational review of the Alabama Ethics Law provided on the official website of the commission. Employees hired after January 1, 2011, shall have 90 days to comply with this subsection. Evidence of completion of the educational review shall be provided to the commission via an electronic reporting system provided on the official website.”

Alabama Code § 36-25-4.2(e)

B. Do not approve jewelry, clothing, or other “parties” where an employee uses school facilities. Doing so violates the Alabama Ethics Act:

- “No public official or public employee shall use or cause to be used equipment, facilities, time, material, human labor, or other public property under his or her discretion or control for the private benefit or business of the public official, public employee, any other person. . . .”

Alabama Code § 36-25-5(c)

VII. BOARD OF EDUCATION MEETINGS

- 1. The SSA/AASB booklet “School Boards & Superintendents & Roles and Responsibilities” gives boards of education eight responsibilities and superintendents six responsibilities.**

The Board:

1. Meets in accordance with state laws to transact system business.
2. Ensures actions comply with state ethics, nepotism and other laws.
3. Acts only during official, properly noticed public meetings and only with the recommendation of the superintendent.
4. Holds all meetings with the superintendent or his/her designee present unless the superintendent is the subject of the meeting.
5. Studies the agenda packet prior to meetings and asks the superintendent questions as needed.
6. Establishes board operating procedures.
7. Ensures the superintendent develops the meeting agenda in consultation with the board president.
8. Has clear protocols for placing items on the meeting agenda.

The Superintendent:

1. Serves as the system CEO, secretary to the board and a member of the governance team.
2. Assures compliance with state law regarding meeting notices and maintenance of meeting records.
3. Identifies topics the board must address at meetings and consults with the board president on development of the agenda.
4. Provides the agenda packet to board members in advance of meetings to allow members sufficient time to review and ask questions.
5. Notifies staff of board actions relevant to them.
6. Assures the board meets for legally required sessions.

2. **The Alabama Open Meetings Act** prohibits “reply all” deliberations and serial meetings. *Alabama Code Section 36-25A-1* says “Serial meetings or electronic communication shall not be utilized to circumvent any provisions of this chapter.”
 - (a) Electronic Communications: An email “reply all” to discuss a matter coming before the board of education is an electronic communication which circumvents the Open Meetings Act. Emails between less than a quorum of board members are not violations of the Act. A “reply all” for scheduling a meeting is not a violation, either, because it does not discuss matters to be deliberated.
 - (b) Serial meetings are meetings of less than a quorum followed by other meetings of less than a quorum on the same issue with one of those meetings being within seven days of a vote at a regular meeting. *Alabama Code Section 36-25A-2(13)*.

3. **The Alabama Open Records Act**

Currently, arguably, the Alabama Open Records Act does not include every one of your communications with your board members. The key will turn on whether your communications amount to a “public writing.” *Alabama Code Section 36-12-40*. Under current law, communications on private devices (texts and private email addresses) are not necessarily public records, either.

Be careful: Look what happened to Hugh Freeze.

Should you have any questions about any of the above, you can reach me at (205) 678-8000, or via email at mboardman@boardmancarr.com.

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