



# ORANGE WATER AND SEWER AUTHORITY

*A public, non-profit agency providing water, sewer and reclaimed water services  
to the Carrboro-Chapel Hill community.*

## **AGENDA**

### **WORK SESSION OF THE OWASA BOARD OF DIRECTORS**

**THURSDAY, FEBRUARY 9, 2012, 4:30 - 7:30 P.M.**

**OWASA BOARDROOM, JONES FERRY ROAD, CARRBORO, NC**

**Attendees:** OWASA Board of Directors, OWASA Executive Director, OWASA Attorney, SOG Facilitators Lydian Altman and Margaret Henderson

### **Retreat Objectives:**

1. Greater clarity on and agreement about board members' responsibilities to each other and the organization versus other interests.
2. Communicating that message within the group and beyond.

**4:30 Welcome, Overview** (Board Chair, SOG Facilitator)

**Review of Effective Discussion Guidelines** (SOG Facilitator)

**Legal Presentation** (OWASA Attorney)

-appointment/removal authority

-application of open meetings law to OWASA

**5:30 Facilitated Discussion of the Questions below** (dinner break included)

- A. How does this legal summary influence how the board wants to approach decisions that may not align with others' viewpoints?
- B. How do we expect to present our decisions to the public when we may not have unanimous agreement amongst ourselves?
- C. Do we need to involve others in these discussions, i.e., area local government managers and/or boards?
- D. How do we resolve disagreements within the constraints of open meetings law?
- E. How do we use email within the constraints of open meetings law?
- F. How do we validate decisions before they are implemented to ensure everyone is on the same page?

**7:00 Next Steps**

**Evaluation**

**7:30 Adjourn**

## GUIDELINES FOR PRODUCTIVE MEETINGS

The following ground rules have helped make meetings more productive:

1. **Participate fully.** It's alright to disagree. Everyone should have the opportunity to state his or her own views, regardless of rank or other differences.
  2. **Work on the problem.** Put other issues aside, including personalities, offices, or other differences. Show respect for each other.
  3. **Focus on interests, not positions.** Explain why you favor a particular course of action. Invite questions so you can explain your reasons fully. Balance advocacy and inquiry.
  4. **Share all relevant information.** Be specific. Agree on what important words mean. Discuss "undiscussable" issues.
  5. **Stay focused.** Discuss a topic long enough for everybody to be clear about it.
  6. **Decide how the group will make decisions.** Strive for consensus.
- Do you have any questions or reservations about these ground rules?
  - Will you try to follow them in our meeting today?
  - Do you have any other ground rules to suggest?

Adapted from *The Skilled Facilitator: Practical Wisdom for Developing Effective Groups* by Roger Schwarz. Published by Jossey-Bass, Inc., 1994.

The values that underlie these ground rules should include:

- ❖ Developing and sharing valid information
- ❖ Making free and informed choices
- ❖ Developing internal commitment to carrying out those choices

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March 17, 1992

Mrs. Lois Herring, Chairman  
Board of Directors  
Orange Water and Sewer Authority  
P.O. Box 366  
Carrboro, NC 27510

Re: Nature and Function of Orange Water and Sewer Authority;  
Fiduciary Duties of Members of Board of Directors

Dear Mrs. Herring:

I am glad to respond to your request for a memorandum describing the legal nature and function of the Orange Water and Sewer Authority, as well as the nature and duties of the office of Members of the Board of Directors of the Authority.

The Orange Water and Sewer Authority, along with numerous other water and sewer authorities in North Carolina, are created and operate pursuant to the provisions of Chapter 162A of the North Carolina General Statutes.

That statute provides that:

Each authority created hereunder shall be deemed a public instrumentality exercising public and essentially governmental functions to provide for the public health and welfare." 162A-6.

Moreover, 162A-3.1(c) makes clear that a water and sewer authority is "a public body, politic and corporate of the State of North Carolina."

Thus, OWASA is an independent public body, politic and corporate, of the State, established to exercise governmental functions to provide for the public health and welfare.

The governmental functions exercised by water and sewer authorities are those described in 162A-6, primarily:

"To own and operate any water or sewer system ... within or without the participating political subdivisions; (5)

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To fix, revise, and collect rates, fees and charges for such water or sewer services; (9)

To enter into contracts and agreements as necessary or incidental to the performance of its duties and powers under the statutes, and to do all acts necessary or convenient to carry out the powers granted by the statutes." (14a, 15)

Though the appointing political subdivisions are permitted by statute to remove their appointees "with or without cause," (162A-5), the statutes contemplate and require certain independence of water and sewer authorities from the political subdivisions which appoint their members. Perhaps the most specific direction given in this regard by the statute is that:

"Each authority shall fix, and may revise from time to time, reasonable rates, fees and other charges for the use of and for the services furnished... Such rates, fees and charges shall not be subject to supervision or regulation by any bureau, board, commission, or other agency of the state or of any political subdivision." (162A-9)

The Authority's duty to set rates is thus separated from the supervision or regulation of the appointing political subdivisions and underscores the independent character of the Authority as a (separate) public instrumentality whose Board members have duties independent of their appointing political subdivisions. The Authority Board's duty to set rates is not undirected however, as the statute prescribes the Board's duty as follows:

"Rates, fees and charges shall be fixed and revised so that the revenues of the Authority, together with any other available funds, will be sufficient at all times:

- 1) To pay the cost of maintaining, repairing and operating the systems... including reserves for such purposes, and including provision for the payment of indebtedness of the local political subdivisions assumed by the Authority..., and
- 2) To pay all of the principal and interest on all bonds issued by the Authority.

Fees established as provided in this subsection shall be made applicable throughout the service area." (162A-9)

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An authority board's duty to fix rates is thus concurrent with and to be exercised depending upon the members' judgment as to what is necessary to provide for and assure the maintenance, repair and operation of the water and sewer system, in order to provide for the public health and welfare.

In my judgment, therefore, the fiduciary responsibility undertaken by each OWASA Board member upon the oath prescribed by the statute "to discharge faithfully the duties of his office..." (162A-5), is to exercise his or her best judgment as a member of the Board of Directors of OWASA to determine and provide for the operation of the water and sewer systems as necessary to provide for the public health and welfare. Board members are not bound first to differentiate, then to support, the needs or interests of their separate appointing political jurisdictions.

Along with this fiduciary duty comes every Board member's potential liability to bond holders, rate payers, and others alleging injury from improvident fiscal management or negligent failure to direct the operation of the Authority in accordance with law and regulation, and prudent standards of care. Few persons would subject themselves to such liability as a Board member without the ultimate authority to control the fiscal and operational affairs of the Authority. Of course, the statute's imposition of nondelegable fiscal duties upon Authority Board members, to be kept in light of their determination of the reasonable requirements of the system, grants that authority.

As General Counsel, I have been inspired by the efforts of Authority Board members to identify and serve water and sewer needs of all the customers of the Authority as a public health serving system, and to respect the political judgment and prerogative of the appointing elected bodies with respect to planning, zoning and politically sensitive interests within the political domain of those boards. Of course, from time to time over the years Board members have respectfully disagreed, but in latter years with lessening regard for each others' addresses.

I am mindful that recalling the independence of OWASA as a public, corporate entity risks fueling the concern of those who might insist, regardless of the Authority Board's nondelegable, statutory duties, that the statutory power of the political subdivisions to remove their appointees without cause is tantamount to the power to direct their appointees' judgment respecting OWASA's operations. Clearly that power is reserved to the elected bodies as a safety cord which, not insignificantly, assures certain

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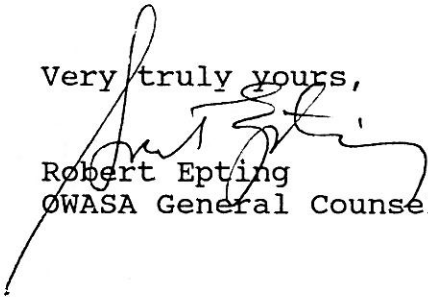
democratic control over Board members as they go about their tasks.

Yet, the statute's reservation of rate-making authority to Authority Board members, and its direction that rates be set in order to provide sufficient funds for operation and maintenance of the systems, establishes in the OWASA Board of Directors certain responsibility for the operation and the fiscal integrity of the water and sewer system as they in their combined judgment deem appropriate to serve the public health and welfare.

In practice, that judgment has been exercised, as it should be, in balance with and recognition of the natural political considerations reserved by the elected political Boards.

With kind regards, I remain

Very truly yours,



Robert Epting  
OWASA General Counsel

cc: OWASA Board Members  
Mr. Everett Billingsley