

# BOARD OF TOURISM NEW MEMBER TRAINING

DECEMBER 2015

1

# THE GOED BOARD OF TOURISM DEVELOPMENT

Created by Statute: 63N-7-101

- **13 members** appointed by the governor to **four-year terms** of office with the consent of the Senate.
- **7 members of the board constitute a quorum for conducting board business and exercising Board powers.**
  - Not more than seven members of the board may be from one political party.
- **2 Terms:** The members may not serve more than two full consecutive terms except where the governor determines that an additional term is in the best interest of the state.
- **Statewide:** The members shall be representative of all areas of the state.

# BOARD DUTIES V. OFFICE DUTIES

## The **Board** shall advise the Office on the Office's planning, policies and strategies

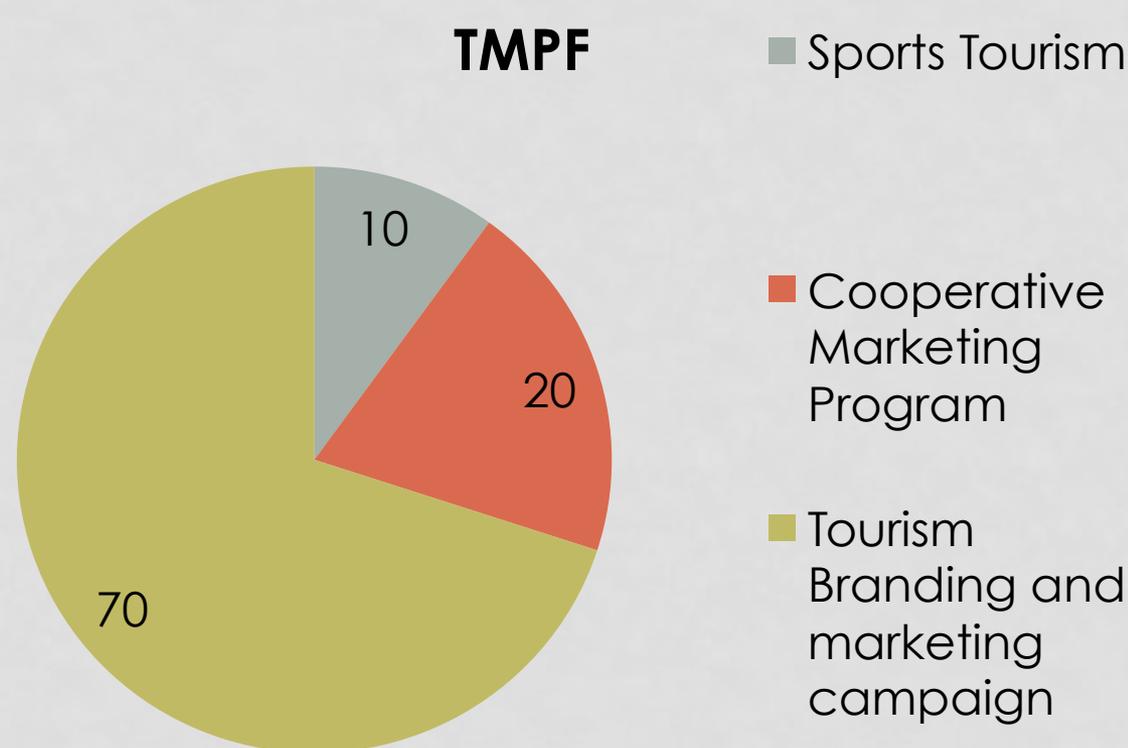
- **Advise** the office on trends and opportunities for tourism development that may exist throughout the state;
- has authority to **approve** a tourism program of out-of-state advertising, marketing, and branding, taking into account the long-term strategic plan and economic trends;
- **Review** office programs to coordinate and integrate advertising and branding themes, which may include recreational, scenic, historic, and tourist attractions of the state;
- **Encourage and assist** in coordinating activities of persons, firms, associations, corporations, civic groups, and governmental agencies that are engaged in publicizing, developing, and promoting the scenic attractions and tourist advantages of the state; and
- **Advise** the office in establishing a cooperative program using funds from the Tourism Marketing Performance Account created in Section 63N-7-301.

## The **Office** shall be the tourism development authority of the state

- **Develop** a tourism advertising, marketing, and branding program for the state;
- **receive approval from the Board of Tourism Development** before implementing the out-of-state advertising, marketing, and branding campaign;
- **Develop** a plan to increase the economic contribution by tourists visiting the state;
- **Plan and conduct** a program of information, advertising, and publicity relating to the recreational, scenic, historic, and tourist advantages and attractions of the state
- **Encourage and assist** in the coordination of the activities of entities engaged in publicizing, developing, and promoting the scenic attractions and tourist advantages of the state.
- **Conduct** a regular and ongoing research program to identify statewide economic trends and conditions in the tourism sector of the economy; and
- **Prepare** an annual report that includes a report on the economic efficiency of the advertising and branding campaigns conducted under this part.

# TOURISM MARKETING PERFORMANCE FUND

- The Tourism Marketing Performance Fund (TMPF) is a restricted account used by Tourism to pay for the State's Tourism functions.



# GOVERNMENT LAWS THAT BOARD MEMBERS NEED TO KNOW

- Certain Government laws are important for Tourism Board members to know and understand:
  - Open and Public Meetings Act (OPMA)
  - Government Records Access and Management Act (GRAMA)
  - Public Officer's Ethics Act (and Tourism Conflicts law)
  - Criminal Code (re public officers)
  - Procurement Code (mostly for government employees)



# OPEN AND PUBLIC MEETINGS ACT (OPMA)

- TOURISM BOARD is required to conduct its meetings in PUBLIC—whenever quorum is present (7 people)
  - WORKSHOPS and EXECUTIVE SESSIONS are considered public meetings
  - OPMA NOTICE AND AGENDA must be posted at least 24 hours in advance
    - Agenda must be sufficiently specific to reasonably inform the public as to ALL items that will be discussed and acted upon
    - Board CAN'T discuss or act on items that are not on the agenda.
    - PUBLIC can raise issues not on the agenda, but no final decisions can be made if not on the agenda
      - Not required to take public comment

# OPEN AND PUBLIC MEETINGS (CONTINUED)

- Electronic Meetings are OK—GOED has a Rule that allows electronic meetings
  - Must have “anchor location” and meaningful opportunity for public to participate
- Meetings must be OPEN unless there is a statutory reason to close the meeting
  - 2/3 vote must be taken to close the meeting—Roll Call Vote.
  - Can't make final decisions in a closed meeting

# CLOSING A MEETING

A closed meeting may only be held for:

(1) discussion of the character, professional competence, or physical or mental health of **an individual**;

(2) strategy sessions to discuss pending or reasonably imminent litigation;

(3) strategy sessions to discuss the purchase, sale, exchange, or lease of real property (with exceptions)

...and a few other reasons that don't apply to Tourism Board.

Very Few Tourism Board meetings

Will end up being closed.



# MINUTES OF MEETINGS

OPMA requires Minutes and a recording at BOTH open and closed meetings (in most cases)—and minutes of open meetings must be posted **in draft form** within 30 days of the meeting.

- When the minutes are finalized, they are also posted, within 3 days.
- **If someone presents at a Tourism public board meeting—the presentation has to be posted with the meeting minutes**

OPMA does allow “emergency meetings”—Body must give best practical notice.

OPMA does allow site visits and relaxes rules for minutes, as long as nothing final is decided.

OPMA requires annual training

# PENALTIES

There are both civil and criminal penalties for violating the Open and Public Meetings Act.

A court can VOID any action taken in a meeting that violates OPMA (DELAY)

\*AG's office can file suit to force compliance

\*There can be a civil lawsuit if meeting is improperly closed (COST: Attorneys fees)

\***CLASS B MISDEMEANOR** for knowingly or intentionally closing a meeting without proper cause

# GOVERNMENT RECORDS (GRAMA)

- Utah has a very broad “sunshine law” that requires most records “prepared, owned, received or retained by a governmental entity” to be public.
  - This includes Emails and text messages.
- Government Records law is very technical—two main points
  - The “privacy” portions of GRAMA are meant to protect the clients of governmental entities
  - There is VERY LITTLE in GRAMA that would protect the privacy of records created by Government Board Members
    - And even less to protect government employees or Board members from their own embarrassing gaffes.



# GRAMA CONTINUED:

- GRAMA also governs how records are maintained and when they can be destroyed.
  - Destroying a government record outside of its retention schedule is a class B misdemeanor.
- DISCUSSION:
  - GRAMA looks at the CONTENT, not the FORM of the record to determine its value
    - Even sticky notes can be and have been considered government records
  - Email, Text messages, etc..
  - Other discussion

# CONFLICTS OF INTEREST

- Board of Tourism Development Members have **specific statutory requirement to disclose conflicts:**
- “Members of the Board of Tourism Development who may have a potential conflict of interest in consideration of fund allocation decisions shall identify the potential conflict prior to voting on the issue.”
  - So, you need to know—
    - What is a conflict of interest? AND
    - What is a proper disclosure.
      - In some cases—a written disclosure is required
  - There is some guidance in Public Officers Ethics Act.

# PUBLIC EMPLOYEES AND OFFICERS ETHICS ACT

\*The Ethics Act governs Board Members, and identifies

## **Four Major kinds of Conflicts**

- 1. IMPROPER USE OF INFORMATION OR POSITION
- 2. ACCEPTING GIFTS AND LOANS
- 3. IMPROPERLY INFLUENCING GOVERNMENT TRANSACTIONS
- 4. The “CATCH-ALL:” CONFLICT OF INTEREST



# IMPROPER USE OF INFORMATION OR POSITION

- It is an offense for a Board member to:
  - accept employment or engage in any business or professional activity that he might reasonably expect would require or induce him to **improperly disclose** information that he has gained by reason of his official position; OR
  - **disclose or improperly use** controlled, private, or protected information acquired...in the course of official duties in order to further substantially the officer's personal economic interest or to secure special privileges or exemptions for **himself or others**;
- **It is an offense for a public officer or public employee to use or attempt to use his official position to:**
  - further substantially the officer's or employee's personal economic interest; or
  - secure special privileges or exemptions for himself or others;
- **It is an offense for a public officer or employee to:**
  - accept other employment that he might expect would impair his independence of judgment in the performance of his public duties; or
  - accept other employment that he might expect would interfere with the ethical performance of his public duties.

# ACCEPTING GIFTS & LOANS



- It is an offense for a Board member to knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself or another a **gift of substantial value or a substantial economic benefit tantamount to a gift:**
  - that would tend improperly to influence a **reasonable person** in to depart from the faithful and impartial discharge of the person's public duties;
  - that the public officer knows or that a **reasonable person** should know is primarily for the purpose of rewarding the public officer for official action taken.
- **Economic Benefit tantamount to a gift =**
  - Loan at a lower interest rate than the prevalent commercial rate; or
  - Compensation for services that substantially exceeds FMV.

# GIFTS AND LOANS CONTINUED



- It is an offense for a public officer to knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself or another a **gift of substantial value** or a substantial economic benefit tantamount to a gift IF:
  - The public officer or public employee recently has been, is now, or in the near future may be involved in any governmental action directly affecting the donor or lender, **unless a disclosure of the gift, compensation, or loan and other relevant information has been made.**
    - “Governmental action” means any action on the part of the state, a political subdivision, or an agency, including: any decision, determination, finding, ruling, or order; and any grant, payment, award, license, contract, subcontract, transaction, decision, sanction, or approval, or the denial thereof, or the failure to act in respect to.
    - Disclosure means a public sworn statement.

# TAKING GIFTS, CONTINUED

- What Gifts are Okay under Ethics Act?
  - An occasional non-pecuniary gift
  - A gift having a value of \$50.00 or less (with exceptions)
  - An award publicly presented in recognition of public service;
  - Any bona fide loan made in the ordinary course of business; or
  - A campaign contribution.



NOTE: THERE  
ARE MORE  
RESTRICTIONS  
UNDER OTHER  
LAWS...Stay  
Tuned



# INFLUENCING GOVERNMENT TRANSACTIONS

- It is an offense for a Board member to demand that a person donate personal property, money or services to the agency as a condition of granting any application or request.
- ---And Vice Versa---
- It is an offense for a person to donate or offer to donate property, money or services on the condition that the agency approve any application or request or other authorization.

# INFLUENCING TRANSACTIONS

- It is an offense for a Board member or public employee to **receive or agree to receive compensation** for **assisting any person** or business entity in any transaction involving an agency unless the public officer or public employee files a **sworn, written statement**.
  - “Assist” means: to act, offer, or agree to act, in such as way as to help, represent, aid, advise, furnish information to or otherwise provide assistance to a person or business entity believing that such action is of help, aid, advice, or assistance to such person or business entity and with the intent to assist such person or business entity

# DISCLOSURE OF SUBSTANTIAL INTEREST

- Every public officer who is an officer, director, agent, employee, or owner of a **substantial interest** in any business entity which is subject to the **regulation of the agency** by which the officer is employed, shall disclose any such position held and the precise nature and value of the public officer's or public employee's interest....
- **Substantial Interest**=10% interest or greater, and includes your interest and spouse, or minor children...
- **Disclose = a public, sworn written statement**
  - Disclosure required when you start your government position and whenever there is a change or increase in your interest.
  - **If voting on fund allocation—Tourism Board must identify PRIOR TO VOTING**

# SUBSTANTIAL INTEREST, CONT.

- **No Board Member shall participate in his official capacity or receive compensation in any transaction between Tourism/GOED and any business entity where the person is also an officer, director, or employee or owns a substantial interest, unless disclosure has been made as provided..**
- **This is a written disclosure.**

# PROHIBITED CONDUCT 4: THE “CATCH-ALL”



- “No public officer shall have personal investments in any business entity which will create a “substantial conflict” between his private interests and his public duties.
  - “substantial conflict” is NOT defined in this statute.
- Opinions referencing public employees ethics act
  - A few case Highlights:
    - NOT OK for county commissioner to vote on land sale, when commissioner is potential purchaser of the land...

# DISCUSSION: ETHICS ACT



Ethics Act allows disclosure and participation. When is this a good idea? When is this a bad idea?

Ethics Act doesn't define "conflict of interest" under catch-all. Should Agency define? How?

Other Ethics Act questions and comments?

# GOVERNOR'S EXECUTIVE ORDER

- In addition to the statutory provisions reviewed above, the Governor, by executive order, has additional conditions that apply to “all executive branch department or agency employees”
- Only applies to “employees”—not specifically to Boards and Commissions...although they may adopt them.
- 3 prohibited types of conduct
  - Receipt of Gifts
  - Nepotism in Hiring and Contracting
  - Lobbying

# CRIMINAL CODE

- **76-8-201. Official misconduct -- Unauthorized acts or failure of duty:** A public servant is guilty of a class B misdemeanor if, with an intent to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.



Let's Be Honest<sup>26</sup>

# CRIMINAL CODE

- **76-8-202. Official misconduct --** A public servant is guilty of a class A misdemeanor if, knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public servant, which information has not been made public, he:
  - acquires or divests himself of a pecuniary interest in any property, transaction, or enterprise which may be affected by such action or information;
  - speculates or wagers on the basis of such action or information; or
  - knowingly aids another to do any of the foregoing.

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# PROCUREMENT ETHICS

- For the GOED employees whose primary responsibility is procurement (buying goods, services, etc.), there are very strict ethics rules.
- Procurement Professionals cannot accept **ANYTHING** from entities who are in the contract negotiation process or for whom they are monitoring a contract.
- Board members are **NOT** procurement professionals —but just be aware that those GOED employees will be very careful.

# DISCUSSION



VS



The letter of the law

The Court of public opinion

# THE END

