

# *Watching the Board's Back*

MCCA Summer Workshop  
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# Governance and Accountability Issues

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- Legal responsibilities
- Transparency
- Conflicts of interest
- Fiduciary responsibilities



# Legal responsibilities

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- Community College Act
- Open Meetings Act
- Freedom of Information Act
- Election Law
- Incompatible Public Offices Act
- Conflicts of Interest, Contracts

# Community College Act

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- Part I, Organization
- Part II, Powers and Duties
  - Tuition and fees
  - Budget
  - Tax levies
  - Audits
  - Hiring a President
  - Programs and buildings

# Delegation to President

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- 1997 Amendment re delegation
- Powers which may be delegated
  - Select and employ personnel
  - Pay claims and demands
  - Purchase, lease, acquire personal property
  - Invest
  - Accept gifts and contributions

# Powers not delegated

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Include:

- Adopt budget
- Set tuition and fees
- Levy taxes
- Audit
- Acquire real estate, build
- Borrow money
- Establish programs of study

# Implied powers

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“In addition to the powers expressly stated in this act, a community college district and its board of trustees may exercise a power implied by or incident to any of its powers expressly stated...”



# Power is collective

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Power is exercised collectively, by a quorum of the board members elect.

# Open Meetings Act

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- Meetings are open to the public
- Noticed not less than 18 hours earlier
- Public may speak, video tape, audio tape, broadcast live on radio or TV
- Board may not require registration, name, or address as condition to attend
- BUT reasonable regulation OK
- No “smoke-filled rooms”



# Permissible closed meetings

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- Evaluate or discipline employee or student
- Strategy or negotiation of CBA
- Consider real property lease or purchase
- Consult attorney re litigation
- Consider material exempt from disclosure
- Review applications (interviews public)

# Meetings and subcommittees

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- Decisions must be public, not in closed session
- Subcommittees exercising governmental functions
- But not chance, informational, social



# OMA Minutes Rules

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- Available to public
- Draft available within 8 days
- Approved available within 5 days
- Minutes of closed meetings separate and not available to the public
- Must include date, time, place, members present/absent, decisions, purpose of closed session, roll calls

# Freedom of Information Act

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- FOIA Coordinator
- Written request
- Response within 5 business days
- 1 notice of extension 10 business days
- No requirement to create record
- May charge lowest possible fee

# FOIA Exceptions

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- Invasion of privacy
- Law enforcement
- Exempted by statute
- Trade secrets, confidential information
- Privileged information
- Sealed bids prior to deadline
- Test questions

# More FOIA Exceptions

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- Appraisals of real property
- Medical, counseling, psychological information
- Advisory communications before action
- Archaeological site location
- Security plans, codes, etc.
- Social security numbers
- FERPA

# Incompatible public offices act

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- Breach of duty of a public office
  - Subordination
  - Supervision
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- Abstention not a remedy
  - Must vacate 1 office



# Conflicts of interest, contracts

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- Applies to all public servants except
  - Legislators
  - State officers (directors of departments, commissions, boards) covered by Constitution
  - Employees of community colleges or state colleges or universities
  - Employees working 25 hours/week or less
- Applies to all public entities

# Contracting prohibitions

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- Can't be party to contract
- Can't solicit, negotiate, renegotiate, amend or approve the contract
- Can't represent either party
- Can't be an indirect participant
  - Via firm partnership, membership, employment
  - Stockholder
  - Trust beneficiary or trustee

# Common law obligations

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- Duty to act with due care
  - Be familiar with Bylaws
  - Be prepared for, attend, participate in board and subcommittee meetings
- Fiduciary duty to act in good faith and in the best interests of the college
  - No conflicts of interest or self-dealing
  - Obligation to exercise independent judgment

# Compliance environment

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“At the 2009 Compliance and Ethics Institute, Judge Castillo told attendees in no uncertain terms: don’t cut back on compliance spending. His words were echoed by the Department of Justice.”

*Daniel Roach*

*10<sup>th</sup> Annual Program Committee Chair,  
and Society of Corporate Compliance  
and Ethics (SCCE) Advisory Board Chair*

# Compliance environment

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- National Association of College and University Attorneys (NACUA)
  - 40 attorneys, 1960
  - 3,600 attorneys, 2010

Number one concern: compliance.

“Just keeping up with all the new regulations is a challenge, let alone taking steps to help my client understand and comply.”

# Help for college leadership

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- Business judgment rule: presumption of informed, honest, good faith decisions
- Indemnification
- Insurance
- Audits
- Code of ethics and annual disclosure



# Pro-active risk management

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- Enterprise risk management
- Policy leadership

