

GUIDEPOSTS AND GUARDRAILS FOR THE TRUSTEE ROLE



Northern Illinois University



SESSION OVERVIEW

- Powers, Duties, and Guide Posts
- Transparency
- Ethics Guard Rails
- Higher Ed Procurement Road Map

LEADERSHIP TRAINING

- Every voting member of the governing board of a public university appointed for a term beginning after January 1, 2016 must complete a minimum of 4 hours of professional development leadership training, within 2 years of beginning service and every 2 years thereafter. (Board of Higher Education Act 110 ILCS 205/13)
- Training may be provided by the Illinois Board of Higher Education (IBHE) or qualified providers approved by IBHE

LEADERSHIP TRAINING

- Universities must maintain on their websites the names of Trustees who have completed training
- Each year the Board of Trustees' chair must certify to IBHE the number of hours of training that each voting member received during the preceding fiscal year. If a member has not completed the required training, IBHE has to notify the Governor and four legislative leaders and the respective Board is to suspend the member, who has 45 days to complete training.
- Failure of the board member to complete the training during the within the 45 day probationary period "constitutes a resignation from and creates a vacancy in the governing board..."

FROM WHERE POWER DERIVES

Each public university in Illinois has an “enabling” statute that creates their respective Board of Trustees- i.e. establishes each university. These statutes delineate the powers and duties of the Board of Trustee.

ATTORNEY-CLIENT PRIVILEGE

"The attorney-client privilege protects communications made in confidence by a client and a client's employees to an attorney, acting as an attorney, for the purpose of obtaining legal advice."

Upjohn Co. v. United States, 449 U.S. 383 (1981).

FIDUCIARY DUTY

- Fiduciary- one who must act in good faith with a high standard of care, trust, confidence, and candor for the benefit and best interests of another on all matters within the scope of their relationship.
- Duty of Care and Duty of Loyalty

REVOLVING DOOR PROHIBITION

Trustees may not within a period of one year immediately after termination of membership on the Board knowingly accept employment or receive compensation or fees for services from a person or entity having State contracts with a cumulative value of \$25,000 during the year immediately preceding termination of Board membership. (State Officials and Employees Ethics Act 5 ILCS 430/5-45)

CONFLICT OF INTEREST

....Each Trustee has a fiduciary responsibility to the University, that each member is a steward of the public trust, that each member has a legal obligation to comply with relevant laws and regulations, and that each member has an ethical obligation to uphold the highest ethical standards in the conduct and discharge of the University business, academic, and service affairs. Further, each member of the Board acknowledges that each member should take reasonable steps to avoid even the appearance of a conflict of interest or something that might be perceived as improper or inappropriate.

-Excerpt from SIU BOT Conflict of Interest Policy

CONFLICT OF INTEREST

Prohibited Activities

- Conflicts of interest are not just about contracting, which we'll address a little later.
- Not just financial but also personal, political, or other interest that impairs or might reasonably appear to impair a trustee's objectivity or judgment

CONFLICT OF INTEREST (CONT.)

- Consult with your own university's policies
- It's not just about identifying the conflict of course, but also consider action may be required of you- e.g. recusal from discussion, abstention from voting
- Again, consider not only yourself, but family members/those who reside in your household

ILLINOIS FREEDOM OF INFORMATION ACT

The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act. (5 ILCS 140/1)

FOIA

All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.
(5 ILCS 140/1.2)

FOIA

- Illinois courts have found personal emails, texts, subject to FOIA if conducting business
- The Illinois Attorney General, via the Public Access Counselor has held that a public body responding to a FOIA request must conduct an adequate search of personal email accounts and personal devices when communications concern the business of the public agency.

FOIA EXEMPTIONS

- Private information (e.g. SSN, driver's license number, employee ID number, home or personal telephone numbers, and personal email addresses)
- Preliminary drafts, notes, memoranda in which opinions are expressed, policies are formulated
- Trade secrets and commercial or financial information
- Proposals and bids for contract or grant
- Minutes of meetings closed to public
- Records relating to collective negotiating matters between public bodies and their employees

OPEN MEETINGS ACT

In order that the people shall be informed, the General Assembly finds and declares that it is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly. (5 ILCS 120/1)

OPEN MEETINGS ACT (CONT.)

"Meeting" means any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body.... 5 ILCS 120/1.02

OPEN MEETINGS ACT (CONT.)

General rules

- At meetings of public bodies all issues of public import must be discussed in public.
- 48 hour notice required, except in cases of an emergency, posted in physical location of meeting and on website.
- This year, executive orders and disaster declarations have altered the requirement for in-person meetings and OMA itself has been amended to accommodate for remote participation in times of declared disasters and the like
- Trustees must complete online training within 90 days of appointment.

OPEN MEETINGS ACT CLOSURE EXCEPTIONS

OMA allows for the Boards to enter into closed session but they must declare and cite the subject matter for which entering closed and vote on the same. Common reasons include:

1. Appointment, employment, compensation, discipline, performance, or dismissal of specific employees.
2. Litigation.
3. Collective negotiating matters.
4. Student disciplinary cases.
5. Discussion of minutes of meetings lawfully closed under th[e] Act

OPEN MEETINGS ACT CLOSURE EXCEPTIONS

-Consider exceptions very narrowly and stay on topic

“The exceptions....are in derogation of the requirement that public bodies meet in the open, and therefore, the exceptions are to be strictly construed, extending only to subjects clearly within their scope.” (5 ILCS 120/2(b))

STATE OFFICIALS AND EMPLOYEES ETHICS ACT

5 ILCS 430/5-10
"SOEAA" OR "ETHICS ACT"

- The State of Illinois passed the Ethics Act in an effort to promote honesty, integrity and impartiality in the business and operations of State employees and State agencies.
- It requires university employees to complete Ethics training within 30 days after commencement of his or her office or employment and annually thereafter.

STATE OF ILLINOIS EXECUTIVE ETHICS COMMISSION

- The EEC promotes ethics in public service and ensures that the State's business is conducted with efficiency, transparency, fairness, and integrity. The Commission's activities range from overseeing annual ethics training to enforcing the Ethics Act for all employees of the executive branch of State government. The EEC also provides independent oversight of the procurement process.
- The EEC is a nine-member commission. Five commissioners are appointed by the Governor, and one commissioner each is appointed from the Attorney General, Secretary of State, Comptroller, and Treasurer.

THE DEFINITION OF "STATE AGENCY" UNDER THE ETHICS ACT IS:

- "State agency" includes all officers, boards, commissions and agencies created by the Constitution, whether in the executive or legislative branch; all officers, departments, boards, commissions, agencies, institutions, authorities, public institutions of higher learning as defined in Section 2 of the Higher Education Cooperation Act (except community colleges), and bodies politic and corporate of the State; and administrative units or corporate outgrowths of the State government which are created by or pursuant to statute, other than units of local government (including community college districts) and their officers, school districts, and boards of election commissioners; and all administrative units and corporate outgrowths of the above and as may be created by executive order of the Governor. "State agency" includes the General Assembly, the Senate, the House of Representatives, the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House of Representatives, the Senate Operations Commission, and the legislative support services agencies. "State agency" includes the Office of the Auditor General. "State agency" does not include the judicial branch.

DEFINITION OF STATE EMPLOYEE

- For the purposes of Ethics training, employees are defined as individuals who receive a paycheck from the university as well as members of the Board of Trustees.
- Employees who do not complete the training as directed may be subject to disciplinary action and those who fail to do so in compliance with the law may face administrative fines by the Illinois Executive Ethics Commission (EEC).

STATEMENTS OF ECONOMIC INTEREST

- In addition to various trainings required under the Ethics Act, certain individuals, including Trustees, are required to file a Statement of Economic Interest form with the Office of the Secretary of State.
- Under Illinois Executive Order 15-09, certain individuals, including Trustees must also submit a Supplemental Statement of Economic Interest (SSEI) form online with the Executive Ethics Commission.

STATE GIFT BAN

- Article 10 of the Ethics Act requires employees of the university or any state agency, as well as their immediate family members living with them, to not accept or solicit gifts from prohibited sources, unless the gift meets one of the exceptions defined in the law and is not further restricted by Illinois Executive Order 15-09 (EO 15-09), which is more restrictive than the Ethics Act.
- The University voluntarily adopted the restrictions of EO 15-09. Employees may no longer accept any gifts from a prohibited source, and the acceptance of meals has been restricted to only accepting meals that are of de minimis value served at a business meeting or reception attended by the employee as part of their official duties as an employee.

DEFINITIONS

- Prohibited Sources:
 - Current vendors, along with their spouses and immediate family members living with those vendors, are considered prohibited sources. Further, a prohibited source is any individual or entity that conducts or seeks to conduct business with the university or any other state agency. Those seeking official action or who have interests that may be substantially affected by the performance or non-performance of the official duties of a university employee or the university are considered prohibited sources.
- Gifts
 - Gifts are defined as gratuities, discounts, entertainment, hospitality, loans, forbearance, items with monetary value, and honoraria received in connection with university employment.

ACTIONS TO TAKE

- To avoid violating the gift ban, employees who unintentionally accept a gift from a prohibited source that does not fall within an exception should promptly take one of the following actions:
 - Return the gift to the prohibited source
 - Make a monetary contribution to a 501(c)3 charitable organization equal to the market value of the gift and keep the gift
 - Donate the gift itself to a 501(c)3 charitable organization
 - Though it is not required to provide proof of compliance with the law, it is a good business practice to maintain a copy of the donation receipt, cancelled check, or other form of support in the event your compliance ever comes into question.

THERE ARE EXCEPTIONS TO THE GIFT BAN THAT ALLOW ACCEPTANCE OF GIFTS FROM A PROHIBITED SOURCE

- For a full list, consult your Ethics office or training materials
- Some common exceptions include:
 - Travel expenses for meetings to discuss State or University business
 - Food, refreshments, lodging, transportation, and other benefits resulting from outside business or employment activities of the employee or his/her spouse
 - Educational materials and missions (Per EO 15-09, this exception must be approved in advance by the Executive Director of the EEC, unless such approval authority has been delegated back to the university Ethics Officer. Check with your university Ethics Officer regarding the approval process.)

PROHIBITED POLITICAL ACTIVITY

- The list of prohibited political activities that employees may not engage in while on State time or State property or using State property includes for example:
 - Campaigning or working on a campaign
 - Preparing or distributing campaign literature
 - Making or soliciting contributions
 - Attending or organizing political events
 - Preparing or circulating petitions

See 5 ILCS 430/1-5 for a complete list of prohibited political activity or contact your agency's Ethics Officer.

COMMON INSTANCES OF IMPROPER POLITICAL ACTIVITY RELATE TO MISUSE OF STATE EMAIL

- You should not use your University email address or other University resources to send or receive political email in your role as a Trustee
- If you receive a political email in your University email account, you should not forward it to anyone.
- If you have questions regarding any political activity/emails sent to your University email account, please contact your University Ethics Officer

OTHER EXAMPLES OF IMPROPER USE OF UNIVERSITY RESOURCES RELATING TO PROHIBITED POLITICAL ACTIVITY

- Use of University technology, e.g. meeting and video conference technology and software licenses
- Use of University communication resources, e.g. address lists, donor lists, social media presence(s)
- Use of University physical property, e.g. meeting space (unless rented privately)
- Use of University events/event planning resources

HARASSMENT AND DISCRIMINATION TRAINING

- The Office of Executive Inspector General (OEIG) and Executive Ethics Commission (EEC) oversee harassment and discrimination prevention training.

BOARD MEMBER TRAINING

Beginning in 2020, each officer, member, and employee must complete, at least annually, a harassment and discrimination prevention training program. A person who fills a vacancy in an elective or appointed position that requires training under this subsection must complete his or her initial harassment and discrimination prevention training program within 30 days after commencement of his or her office or employment.

TRAINING

- Ethics Commission approves each institution of higher education's training annually.
- Board members receive the same training as other University employees
- Training includes:
 - The definition, and a description, of sexual harassment utilizing examples
 - Details on how an individual can report an allegation of sexual harassment, including options for making a confidential report
 - Definition, and description of, retaliation for reporting sexual harassment
 - Consequences of a violation of the prohibition on sexual harassment and the consequences for knowingly making a false report

HOW TO REPORT HARASSMENT OR DISCRIMINATION ALLEGATIONS AS A BOARD MEMBER

- Use your University reporting mechanisms
 - Office of Equal Opportunity
 - Ethics Office
- To the Office of Executive Inspector General directly

ILLINOIS HIGHER ED PROCUREMENT REGULATORY FRAMEWORK

- Oversight Bodies:
 - Independent Chief Procurement Office Public Institutions of Higher Education
 - New CPO for Higher Education: John Donato, started July 1, 2020
 - State Purchasing Officers & Procurement Compliance Monitors
 - Procurement Policy Board:
 - 5 member board with rule/policy function, contract review function, procurement communication and clearinghouse function.
 - Executive Ethics Commission & Office of Executive Inspector General
 - BEP Council
 - Capital Development Board
- State Agency & University Purchasing Directors

BUSINESS ENTERPRISE PROGRAM FOR MINORITIES, FEMALES AND PERSONS WITH DISABILITIES (BEP)

- The Illinois Business Enterprise Program for Minorities, Females, and Persons with Disabilities (also known as MAFBE) promotes the economic development of businesses owned by minorities, females, and persons with disabilities.
- Illinois public universities purchase goods and services from businesses in accordance with the *Business Enterprise for Minorities, Females, and Persons with Disabilities Act*, which went into effect August 28, 1994.

BUSINESS ENTERPRISE PROGRAM FOR MINORITIES, FEMALES AND PERSONS WITH DISABILITIES (BEP)

- 20% of the total dollar value of state contracts to be awarded to businesses owned by minorities, women and persons with disabilities
 - 11% to businesses owned by minorities
 - 7% to women-owned businesses
 - 2% to businesses with disabilities
- FY2019
 - Statewide:
 - Dollars Subject to Goal - \$ 3,047,580,411
 - Statutory 20% Goal \$ 609,516,082
 - Total Achievement \$ 649,423,044
 - 21.3%

FY2019 ANNUAL BEP REPORT – UNIVERSITY BREAKDOWN

Institution	BEP Goal Based on \$ Subject to Goal	BEP Achievement	BEP Percent Achieved (excluding sheltered workshop spend)
Chicago State University	\$3,169,033	\$154,567	1.0%
Eastern Illinois University	\$3,020,520	\$529,685	3.6%
Governors State University	\$435,406	\$1,938,774	89.1%
Northeastern Illinois University	\$336,980	\$1,386,044	82.3%
Western Illinois University	\$7,285,336	\$757,757	2.1%
Illinois State University	\$5,050,381	\$3,219,916	12.8%
Northern Illinois University	\$14,006,881	\$6,868,029	9.8%
Southern Illinois University	\$10,072,964	\$9,959,057	19.8%
University of Illinois	\$261,164,476	\$79,883,809	6.7%

PROCUREMENT CODE REQUIREMENTS THAT MAY IMPACT BOT MEMBERS

- Procurement Code applies to all state agencies, including public universities.
- State Employees who have involvement, approval, or oversight of procurements have specific obligations under the Code.
- BOT members have typically been treated as state employees with respect to Code obligations.
 - State employee includes “any appointed or elected commissioner, trustee, director or board member of a board of a State agency” 2 Illinois Administrative Code 1620.825(e).

COMMON PROCUREMENT ISSUES THAT MAY IMPACT BOT MEMBERS

- Procurement communications
- Confidentiality
- Conflict of Interest

PROCUREMENT COMMUNICATIONS

- State employees who have material knowledge concerning a procurement matter will be ethically charged to report procurement communications with a vendor or prospective vendor that a reasonable person would believe was made for the purpose of influencing a procurement decision under consideration or to be considered in the near future. Communications reported to PPB.
- Contact your University's Ethics Officer with questions.

Examples of Reportable Communications (not exhaustive)	Examples of Exempt Communications (not exhaustive)
<ul style="list-style-type: none">• Establishing or defining a procurement need or method of selection.• Drafting or preparing specification or solicitation documents.• Evaluating bid/responses.	<ul style="list-style-type: none">• Unsolicited from potential vendors that are not further disseminated or used by the receiving employees in a procurement decision• Made in a public forum and/or during a meeting subject to the Open Meetings Act• Regarding the administration and implementation of an existing contract

CONFIDENTIALITY AND CONFLICTS

- Persons having access to confidential procurement information or participating in the procurement process may be required to execute a confidentiality and conflict of interest form.
- Until an award recommendation is made, no university personnel or contractual agents, other than the evaluation committee and assigned staff, may review the bids or offers, except with justification from the purchasing director and approved by the SPO.
- While the procurement is on-going, a university shall not disclose any information related to the procurement to any other person other than information that was recorded, read and made publicly available at the opening of the bids or offers. *After completion of the evaluation and award recommendation, the university may conduct discussions with management and the board of trustees if necessary to obtain approval for award prior to publishing the award in the Bulletin.*

CONFLICT OF INTEREST

- Any bid, proposal, offer of acceptance, or proposed contract must be reviewed for conflicts of interest pursuant to Section 50-13 of the Code. If a potential conflict exists, no contract will be executed unless the CPO-HE requests and is granted an exemption.
- Statutory Conflicts:
 - *Appointee or state employee whose compensation is excess of 60% of Governor's salary.*
 - *Appointee or state employee with direct financial interest entitled to receive more than 7½% of the total distributable income or an amount in excess of the salary of the Governor.*
 - *It is unlawful for any firm, partnership, association, or corporation, in which any person listed in subsection (a) (appointee or state employee) together with his or her spouse or minor children is entitled to receive more than 15%, in the aggregate, of the total distributable income or an amount in excess of 2 times the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein.*

OTHER CONFLICT OF INTEREST

- Except as otherwise specified in the Public Officer Prohibited Activities Act [50 ILCS 105], no State official/member of the university's governing board shall be directly or indirectly interested in any contract to be made by the State official/Board for any purposes whatsoever.
- Any university that has its own policies regarding procurement conflict of interest relative to its own employees must provide notice of any potential conflict to the SPO along with the university's resolution. This information may be used by the SPO when considering whether to award the contract.

CONFLICT OF INTEREST – OEIG FOUNDING INVESTIGATION DECISIONS

- FY 2019
 - In re: OEIG Case #16-02506
 - Coach had role in approving contracts for basketball team. Vendor provided a payment for a basketball camp sponsored by coach. Vendor testified to OEIG that camp payment was in interest of having coach promote vendor's products. Coach testified that payment for camp was sponsorship only.
 - OEIG determined former Basketball Coach a) violated the Ethics Act gift ban by accepting payment from a vendor as sponsor for basketball camp in return for promoting vendor and b) engaged in activities that created a violation of conflict of interest policy.

PRESIDENTIAL/CHANCELLOR CONTRACTUAL RESTRICTIONS

- University enabling statutes require BOT to approve presidential contracts
- University Enabling Statutes
 - Chancellor/president contracts must:
 - Not exceed 4 years, with definite start/end dates.
 - Not include any automatic rollover clauses
 - Board must approve President/Chancellor contract & performance-based or incentive bonus in open-meeting with prior public notice describing action, details on proposed financial compensation structure, and at least 48 hours in advance of meeting time.
 - For any incentive/performance bonus, President's evaluation must be considered in Board's decision to award bonus, raise, severance, etc.

CONTRACTUAL RESTRICTIONS CONT.

- Government Severance Pay Act, 5 ILCS 140
 - Contracts with public university officer, agent, employee that includes severance provision limits severance to:
 - An amount that does not exceed 20 weeks of compensation
 - Severance pay not permitted if officer, agent, employee fired for misconduct.
 - Not limited to president/chancellors contracts
 - Does not apply to employment agreements for intercollegiate athletics if funded by non-appropriated funds
 - Misconduct includes:
 - Deliberate violation or disregard for “reasonable standards of behavior”
 - Carelessness/negligence that shows intentional/substantial disregard of duties
 - Chronic absenteeism
 - Willful/deliberate violation of standard or regulation which would cause an employer to be sanctioned or have certifications suspended.
 - Effective 1/1/2019

Q&A