

Major Laws Affecting RTD Board of Directors (Summary Sheet)

As elected officials, the RTD Board of Directors are subject to a number of laws and state requirements pertaining to how they conduct business in the process of carrying out their responsibilities for the District. These laws include:

- The Regional Transportation District Act
C.R.S. 32-9-101, et seq.
- Colorado Public Official Disclosure Law
C.R.S. 24-6-201, et seq.
- Colorado Open Meetings Law
C.R.S. 24-6-401, et seq.
- Colorado Open Records Act
C.R.S. 24-72-201, et seq.
- Colorado Standards of Conduct
C.R.S. 24-18-101, et seq.

A full copy of the Regional Transportation District Act and the RTD Bylaws are included in this governance manual. Provided below is a synopsis of each of these laws. This synopsis is not intended in any way to replace the complete laws. Board members are encouraged to review the complete laws or to consult with legal counsel regarding any questions pertaining to your responsibilities or obligations.

The Regional Transportation District Act

- RTD is authorized to operate a mass transit system (C.R.S. 32-9-102)
- RTD can act through 8 votes of its Board of Directors (C.R.S. 32-9-116(3))
- RTD is a political subdivision of the state (C.R.S. 32-9-119)
 - Created by the legislature
 - Changes in RTD Act require vote of the legislature
- RTD has the powers of a corporation:
 - Contracting
 - Buying and selling property
 - Hiring employees
- RTD collects a 1% sales and use tax (C.R.S. 32-9-119(2))
- RTD tax is administered by the Department of Revenue
- RTD is required to privatize 50% of its non-rail service (C.R.S. 32-9-119.5)

Colorado Open Meetings Law

- RTD is a local public body (C.R.S. 24-6-402(1)(a))
- Open meetings law applies only for a discussion of public business – purely social gatherings are allowed (§402(c))
- Meetings of a quorum or three or more members of a local public body are open meetings
- If two members of a committee form a quorum and are present the committee meeting is an open meeting (§402(2)(b))
- Public meetings must be noticed to the public - 24 hours in advance (§402(2)(e))
- Notices should include a specific agenda (§402(2)(e))
- Minutes must be taken, recorded and made available to the public (§402(2)(d)(II))
- Minutes of meeting where there was an executive session must state the topic
- E-mail discussions (chatroom) are subject to Open Meetings requirements
- (§402(2)(d)(III))

- Executive (closed) sessions can be held at meetings, on notice of the specific purpose, with vote of 2/3 of the quorum present but not less than eight votes for discussion of (§402(4)):
 - property acquisition, lease or disposal
 - conferences with an attorney regarding specific legal questions
 - matters required to be kept confidential under state or federal law (must cite law)
 - security arrangements and/or investigations including ongoing or possible prosecutions
 - contract negotiations/strategy discussions
 - personnel matters
 - consideration of documents protected by mandatory non-disclosure under law
 - No formal action permitted in executive session
 - Executive session recorded in same method as public meeting (402(2)(d.5)(II)(A))
 - Record must reflect citation to the provision of law that authorized executive session.
 - If a court finds executive session improper, record shall be open to public inspection (§402(d.5)(II)(C)).
 - If there is a citizen enforcement suit and citizen prevails, court shall award costs and reasonable attorney fees (§402(9)).

Colorado Open Records Act (CORA)

- Public Records open to inspection

- Public records includes correspondence of elected officials except work product (202(6)(b) & (6.5))
- Work product is advisory or deliberative materials prepared for elected officials for purpose of assisting elected officials in reaching a decision within their scope of authority.
- Public records do not allow inspection of the following records (§204):
 - Contrary to state or federal law (1)
 - Real estate appraisals relative to property acquisitions until property acquired (2(a)(IV))
 - Test questions (2(a)(II))
 - E mail addresses provided by persons for communication with RTD (2(a)(VII))
 - Medical, mental health, sociological and scholastic achievement data (3(a)(I))
 - Personnel records (3(a)(II))
 - Letters of reference (3(a)(III))
 - Trade secrets and confidential data obtained from or furnished by any person (3(a)(IV))
 - Addresses and phone numbers of customers (3(a)(IX))
 - Records of sexual harassment complaints and investigations except where part of public court proceedings (3(a)(X))
 - Records submitted by applicant for executive positions except finalists (3(a)(XI))
 - Records protected under common law governmental deliberative process privilege (3(a)(XIII))
 - Specialized details of security arrangements or investigations (3(a)(XVII))
- Public records may be copied for reasonable fee not more than 25cents per page unless actual costs exceed that amount (205(1))
- If manipulation of data required, reasonable fee may be charged (§205(3))
- Reasonable fee for printing computer record other than word processing may be charged (§205(4))
- Public records should be provided in 3 days unless deadline cannot be met and extenuating circumstances identified – then 7 days allowed (203(b)). Recent case law suggests longer time may be allowed if pursuant to reasonable adopted policy. Case law also allows reasonable fee for gathering records.
- If custodian of records believes release would do substantial injury to public, may apply to court for review (§204(6))

Colorado Public Official Disclosure Law

1. Not more than 30 days after election or reelection written disclosure on forms supplied by Secretary of State of (questions whether this applies to RTD board members (C.R.S.24-6-202):
 - Names of sources of income including capital gains whether or not taxable, and income of spouse and resident minor children
 - Name of each business, insurance policy or trust in which official, spouse and resident minor children have financial interest in excess of \$5000

- Legal description of any real property in which official, spouse or resident minor children have an interest in excess of \$5000
- Identity of all offices, directorships and fiduciary relationships held by official, spouse, and minor resident children
- Name of creditors to whom official, spouse and minor resident children owe in excess of \$1000
- Name of businesses with which official or spouse are associated with that do business with or are regulated by the state
- Statements must be amended no more than 30 days after termination or acquisition of interests for which disclosure is required
- Statement must be updated each year of office on or before January 10
- May file tax return, and tax returns of spouse and resident minor children, if separately filed, with certified statement of investments
- Willful failure to file or filing of false statement is guilty of misdemeanor and subject to fine

2. Statement of gifts and honoraria (C.R.S. 24-6-203):

- Report due on or before January 15 of each year for the previous year. Must contain Information on receipt of the following where due to recipient's public service
 - Money or loan or pledge of \$25 or more
 - Gift of real or personal property of \$50 or more
 - Loan of real or personal property of \$50 or more
 - Payment for speech, appearance or publication
 - Tickets to sporting, recreations, educational or cultural events with a value of \$50 per more for a single event or \$100 or more for series
 - Payment or reimbursement for travel and lodging at conference or other meeting, unless payment is from public funds
 - Gift of a meal to a fund raising event of a political party
- Willful failure to file or filing of a false or incomplete report is a misdemeanor and subject to fine

Colorado Standards of Conduct

- Local government officials are fiduciaries and shall carry out their duties for the benefit of the people of the state (C.R.S. 24-18-103).
- Local government officials who breach their fiduciary duty are liable as trustees of property. District attorneys in the district where a trust is violated may bring appropriate judicial proceedings on behalf of the people. The standard of proof for actions for violations of C.R.S. 24-18-101, et seq. is proof beyond a reasonable doubt.
- Local government officials may not:
 1. Disclose or use confidential information acquired in the course of official duties to further substantially a personal financial interest
 2. Accept a gift of substantial value or economic benefit, including a below market rate loan, which would:

- Tend to improperly influence a reasonable person in the faithful and impartial discharge of public duty which a reasonable person similarly situated would consider a reward for official actions.
3. The following are not considered gifts or economic benefits of substantial value:
- Campaign contributions appropriately reported
 - Insignificant non-monetary gifts
 - Payment or reimbursement for attendance at a convention or meeting where the official is scheduled to participate
 - Reimbursement for or acceptance of an opportunity to participate in a social function no extraordinary in light of the official's position
 - Items of perishable or non-permanent value including meals, lodging, travel expenses, or tickets to sporting, recreational, educational or cultural events
 - Payments for speeches, appearances or publications
 - Payment of salary for employment

Ethical Principles:

- The following are guidelines only under state law:
- Officials should not acquire or hold an interest in any matter which he has reason to believe may be directly and substantially economically benefited by an agency over which the official has authority.
- Officials should not, within 6 months of termination of office or employment, obtain employment in which he take direct advantage, unavailable to others, of matters with which he was involved.
- Officials should not perform an official act directly and substantially affecting a business or other undertaking when he has a substantial financial interest in a competitor.

Rules of Conduct for Local Government Officials and Employees:

1. Local government officials and employees shall not:
 - Engage in a substantial financial transaction for private business purposes with a person he supervises in the course of official duties
 - Perform an official act directly and substantially affecting to its economic benefit a business or undertaking in which he has a substantial financial interest or is engaged to perform services.
2. A local government official who has a personal interest in a matter pending before the government body on which he serves shall disclose the interest and shall not vote on the matter or influence other voting members. An exception can be made if participation is necessary to obtain a quorum and full disclosure is made.

- Disclosure requires advising the secretary of state in writing the nature of the official's private interest. The disclosure must include the amount of financial interest if any, the purpose and duration of services rendered, and compensation received. If an official act is then performed he shall state for the record the fact and summarize the nature of the interest disclosed. Compliance is an affirmative defense to actions for violation.
- 3. It is not a breach of fiduciary duty to use local government facilities or equipment to correspond with constituents, family members, or business associates, or accept or receive benefits as an indirect consequence of transacting government business.

Federal Transit Administration (FTA) and Guidelines:

- Federal Transit Administration (FTA) regulations require grant recipients such as RTD to have a code of ethics, and that they are applied to elected officials as well as staff. FTA guidance circulars provide that no board member may participate in the selection, award or administration of a contract if a conflict, real or apparent would exist. Nothing of more than nominal monetary value may be accepted from contractors. **FTA guidance does not allow for disclosure to excuse a conflict.** (C.42201.E(7)(c)).

RTD Board of Directors Bylaws

- RTD By-laws are in accord with state law. They prohibit personal interest in any contract, or participation in any matter where a board member has a financial or property interest.

Please refer to the RTD Bylaws located in Section 2 of the Governance Manual.

RTD Code of Ethics

- Board Members are subject to Code of Ethics. The Code of Ethics is essentially a more detailed discussion of the provisions of the statutory standards of conduct.

Please refer to the RTD Code of Ethics located in Section 3 of the Governance Manual.