

# Legally (Relevant



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## Boards, Councils, Meetings and Voting – Chairmen and Mayors Should Not Be Caught by Surprise

**T**here is nothing more routine than meetings of water district boards and participating members, and city council meetings. Yet each has its own unique set of rules and procedures, and continues to be a constant source of questions. This article will try to answer some of the more common questions and misconceptions.

There are some preliminary matters that bear mentioning. First, this is not an article about Open Meetings. Every member of the governing body of a city or rural water district board needs to be aware of the rules contained in the Kansas Open Meetings Act, K.S.A. 75-4317. Severe penalties may be imposed for violations of the Act, and ignorance of the requirements is no excuse. Governing body members who lack a general understanding of this Act and its application to meetings need to make their becoming informed about these rules a top priority.

Secondly, there are many differences that exist across the state in the way meetings are conducted. With regard to many of these things, it is a matter of style and custom that may or may not be found in any code or by-laws. There is no “right” or “wrong” way to conduct a meeting, but that does not mean that care should not be given to how meetings are conducted to ensure that they are efficient and constructive. Practices that do not contribute to these goals should be changed or eliminated.

All rural water districts have by-laws. The majority of these follow closely form by-laws that were offered by the USDA to districts as they were formed, often now referred to as “standard form by-laws”. Reference here to “standard by-laws” refers to this form. RWD board members and staff need to be familiar with their particular district’s by-laws because there are variations.

Finally, guides for parliamentary procedure, such as the popular “Roberts Rules of Order”, are often relied upon in greater or lesser degree in the conduct of meetings. In some instances, these may have been adopted by ordinance. In cities where that has occurred, compliance with the ordinance would be required. In other situations, the rules may simply serve as a guide, to be followed as dictated by custom or by the presiding officer. Whenever state law, ordinance or by-law requires, such law or by-law will override any conflicting provisions in the rules of parliamentary procedure.



**I know Roberts Rules of Order didn't always meet our water boards needs, but I'm not so sure about Carl's method for solving conflicts either!**

### **RWD board meetings**

A frequent question concerns the role of the chairman of a RWD in the conduct of board meetings. This is an example where Roberts Rules of Order and state law/by-laws are at odds with each other.

Roberts Rules of Order dictate that a chairman chair the meeting, but not make motions, not vote (unless the chairman's vote would affect the outcome of the motion) and not even participate in the discussion of business. This does not fit with the role of a board member serving as a chairman of a RWD.

As will be discussed in further detail later, state law makes the board of directors the governing body of the district. Standard by-laws provide specific duties for directors as well as for the election of a chairman and other officers. Unlike the state law governing small cities, there is no limitation placed on the duties or responsibilities of the board member elected as chairman to vote on matters that come before the board. As a result, in spite of the general rules governing the chairman contained in Roberts Rules of Order, rural water district board chairmen are entitled to make motions, discuss and vote on matters that come before the board in the same manner as any other board member.

### **Meetings of cities' governing bodies**

Cities are much more complicated than RWDs when it comes to rules governing voting. The complication stems from the fact that there are three classes of cities, and within those classes there are varying forms of government authorized. In addition

to that, cities have the constitutional authority to charter out from under non-uniform statutes, such as those authorizing procedures for varying classes of cities, and so there are essentially an endless number of variations possible within cities in Kansas; there certainly are too many for complete coverage in this article.

A common form of government for small cities (third class) is that of mayor/council. In this form, the mayor is not a member of the council, but presides at

meetings and is allowed to vote only as necessary to break a tie in the council. In the mayor's absence, the president of the council presides at the meeting, but as a member of the council, the council president is entitled to vote on all matters, including those that come to a vote when the mayor is absent and the council president is presiding.

Although the mayor is not a member of the council, the mayor is a member of the "governing

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body” of the city. Some statutes (and perhaps most importantly, charter ordinances passed under authority of Constitutional Home Rule) require action be approved by the vote of a majority of all of the members of the governing body of the city, in which case the mayor’s vote would count.

### Annual meetings of participating members of RWDs

Frequently there are questions about who is entitled to vote at the annual meetings of participating members of RWDs. Standard form by-laws provide that only participating members have the right to vote. Participating members are defined as: 1) owners of land located within the district; 2) who have subscribed to one or more benefit units; 3) with payments on at least one of those units being current.

The first of these requirements, being an owner of land located within the district, sounds simple enough, but it is not. For reasons described in a previous KRWA Lifeline article, RWDs should not be serving land that is not located within the territory of the district. However, because this is not an uncommon occurrence, one of the consequences is that the owner of land being so served is not eligible to vote at meetings and is not eligible to serve on the board of directors of the district.

The second problem occurs in defining “owner”. What about land that has been sold on an installment contract or contract for deed arrangement? The law generally regards both the seller and buyer in these situations to be “owners”, the seller having bare legal title, the buyer having equitable title. In 1993 the Kansas Attorney General issued an opinion that ignored the ownership interest of the equitable buyer, concluding that the seller was the owner for purposes of the definition of participating member and therefore the only party entitled to vote. However, this opinion produces an impractical result, where the seller, who has often moved from the district and who has little interest in the future of the district has the right to vote while the buyer, who is likely occupying the property and has a vested interest in the district’s future is not permitted to vote. Many districts have rejected the Attorney

You can always tell when there’s a hot topic on the agenda, Gladys tries to soften the blow with frosted doughnuts.



General’s opinion, and deem the buyer in these situations to be the “owner/participating member” entitled to vote.

Other complications with the definition of “owner” frequently occur. For example, what if the land is in trust, the trustee for which is a large bank administering the trust from its offices in Delaware? Or the previous owner is deceased and the co-executors of the estate are located in distant cities? Or as all too frequently the case today, the house is in foreclosure, perhaps even sold at sheriff’s sale, and a bank owns it but has never applied for a transfer of the benefit unit? What if the owner is a corporation or a church – who is entitled to vote?

There are no easy answers to these above questions. As a practical matter, the district will rely on its customer file to determine ownership and this file is typically updated only when a request is made for change of service or transfer of the benefit unit. Many situations such as those outlined above will not come to the attention of the district. Standard RWD by-laws lack the sort of provisions found in corporate by-laws that entitle the corporation to rely on its records for these answers, but as a practical matter that is what will typically happen.

Other rules concerning meetings of participating members come in to play. Standard by-laws prohibit proxy voting. This is commonly used to mean that in order for the participating member’s vote to be counted, such member must be present at the meeting in person, not allowing ones friend or neighbor to vote on his behalf. This would not appear to prohibit a more general representative, such as a court appointed conservator or person having power of attorney from voting that member’s interest.

A final matter concerning the conduct of meetings of participating members concerns business that is appropriate to be acted upon by the participating members. As discussed earlier, state law makes the board of directors the governing body of the district. Form by-laws contain a broad description of this authority, providing that the board "shall exercise all the powers of the district" and expressly grants authority for specific matters including hiring of employees, setting rates and adopting budgets.

So what is the effect of action taken by participating members at the annual meeting to terminate the manager and reduce water rates? The answer is it is void for invading the authority of the board of directors. The recourse for unhappy participating members is to elect qualified directors who share their views or to otherwise attempt to influence board action by making their wishes known. The participating members are not authorized to enact

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direct action contrary to that taken by the board, in effect seizing the control of the district from the board.

A number of these matters discussed above can arise at the meeting. The chairman of the board should preside at that meeting, and be prepared to rule on matters of order including authorization to vote and business items appropriate for action. Rulings may vary

somewhat from one district to another, but the chairman should strive for consistency.

**Conclusion**

By and large, cities and rural water districts conduct effective, meaningful meetings. Some of the rules governing the conduct of these meetings are more problematic than they may first appear. Chairmen and mayors would be well advised to think in advance about some of the problems that may face them at meetings in order not to be caught by surprise.

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