

PUBLIC HOSPITAL DISTRICT LAWS

Opportunities and Restrictions

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Chelan, Washington
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Agenda and Learning Objectives

- Constitutional and statutory provisions that govern PHDs;
- Roles and responsibilities of PHD commissioners and officers;
- Conflict of interest rules for PHD officers;
- Use of public facilities for candidates and ballot measures.



PHDs are Limited Purpose Districts



- Public hospital districts are special purpose districts. Other examples of special districts include fire districts, port districts, etc.
- Special purpose districts = limited purpose;
- Special purpose districts are limited to powers granted by the legislature;
- Contrast with cities and counties, which have general powers.
- For more, see [AWPHD Legal Manual](#), pp. 12-13.

Purpose of PHDs—Health Services



Health services are defined broadly:

- Deliver hospital and health services to folks in the district.
- Services can include nursing homes, extended and long-term care, outpatient, rehabilitative, health maintenance, and ambulance services.
- Expanded in 2018 to include health and wellness facilities and services—AWPHD lobbied for this.
- Source: [RCW 70.44.003](#) (purpose) and [RCW 70.44.007](#) (definitions).

Limited Purpose—Question One



Question: Can a PHD operate a program designed to assist families facing food insecurity?

Answer: Maybe. There are several issues to consider.

- Gift of public funds. How would a PHD go about ensuring aid recipients met the criteria of “poor and infirm”?
- PHD Purpose. Providing aid to the low income is a public purpose, but is it in the scope of a PHDs limited authority?
- Proper limits on use of funds: ensuring they are used for program purposes.

Limited Purpose—Question Two



Question: Can a PHD purchase health insurance for uninsured patients in its district instead of or in addition to providing direct financial support to medical practices?

Answer: Probably not. There are two issues.

- First, it could be a gift of public funds if the eligibility criteria encompass more than individuals with low income;
- Second, there is not a statutory provision that authorizes a PHD to provide health insurance to residents of the district. Providing health insurance is probably beyond the scope of a PHD's authority under current law.



Powers of a PHD

[RCW 70.44.060](#) sets forth PHD powers, including:

- Power to acquire and develop real property for health facilities and services;
- Power to assess property taxes;
- Power to hire and employ and enter into contracts;
- Power to solicit and accept gifts;
- Power to borrow money;

And so on. There are limits however!

For more, please see [AWPHD Legal Manual](#), pp. 12-13.



Powers of a PHD—Question One

Question: Can a PHD sell necessary supplies to the local police department for their Automated External Defibrillators?

Answer: Probably not.

- Selling medical supplies is not one of the powers granted to PHDs under [RCW 70.44.060](#).
- Absent exigent circumstances, is there a good reason for a PHD to sell supplies to the police department?
- If not, this should be left with the private sector and the transaction would not serve a public purpose.
- See also [RCW 43.09.210](#), the State Accountancy Act, which requires agencies to account for goods and services provided to other agencies.



Powers of a PHD Question Two

Question: RCW 70.44.060(3) authorizes a PHD to provide services outside its boundaries. Does that mean a PHD may offer services in a neighboring PHD?

Answer: No.

Although the statutes are not specific, a court in 2013 concluded that “based on statutes governing PHDs and a statement of legislative intent, we find it unlikely that the legislature meant to allow one rural PHD to raid the territory of another.

Skagit County PHD No. 304 v. Skagit County PHD No. 1, 177 Wn.2d 718, 726, 305 P.3d 1079, 1083 (2013).

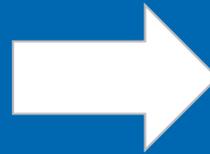
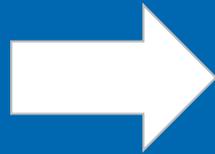
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How Does a District Exercise its Powers?





Purpose of the PHD Board of Commissioners

- Acts as the governing body of the district
- Sets policy for the district
- Adopts bylaws
- Takes action at open meetings by motion or resolution
- Hires the superintendent (i.e., the CEO)
- Day-to-day operations should be delegated to the superintendent
- Source: [RCW 70.44.040](#)
- For more, see [AWPHD Legal Manual](#), pp. 22-26.

Powers of the Board of Commissioners



- Commissioners only have authority when meeting as a board;
- Generally, it takes at least a majority of commissioners to take action—meeting rules ensure everyone is on the same page.
- The board’s primary contact—and only employee—is the CEO.
- The Bylaws are a place where the Commissioners and CEO can sort out the details of their roles and responsibilities.
- Contract authority is a good example of this.

PHD Commissioners—Question



Question: Can an individual commissioner arrange or contract for work to be performed for the district without prior authorization from the Board?

Answer: Contracting authority resides with the PHD Board, so an individual commissioner should not attempt to financially bind a PHD. Expenses incurred by a commissioner PHD business should be in accordance with the PHD's reimbursement policies (such as travel expenses under [RCW 70.44.050](#)).

PHD CEO



- The Board hires the CEO pursuant to [RCW 70.44.070](#).
- The CEO is the “chief administrative officer” of the PHD and “shall have control of administrative functions of the district.” [RCW 70.44.080](#).
- “The superintendent shall be responsible to the commission for the efficient administration of all affairs of the district.”
- “The superintendent shall be entitled to attend all meetings of the commission ... and to take part in the discussion of any matters pertaining to the district, but shall have no vote.”
- For more on specific duties, see [AWPHD Legal Manual](#), pp. 42-44.



PHD CEO—Question One

Question: Is the appointment of a CEO/superintendent required to occur over the course of more than one PHD Board meeting?

Answer: No!

This requirement was removed from RCW 70.44.070 by the legislature at the urging of AWPHD. The CEO can now be appointed in the course of a single meeting.



PHD CEO—Question Two

Question: Can the CEO enter into contracts and bind the PHD without a prior specific authorization from the Board?

Answer: It depends.

Contracting authority resides with the Board, but Boards commonly delegate contracting authority to the CEO for certain types of contracts, or for contracts below a certain dollar amount. Delegating authority to enter into certain types of contracts to PHD staff allows the Board to focus on the big picture.

PHD Treasurer and Auditor



- Under [RCW 70.44.171](#), the PHD treasurer will be the county treasurer unless the PHD appoints its own treasurer.
- The primary duty of a PHD treasurer is to establish, maintain, and control the PHD “general” fund and any special funds.
- If the PHD appoints its own treasurer, a bond is required.
- All PHD funds should be paid to the treasurer, and the treasurer makes disbursements “only on warrants issued by an auditor appointed by the commission.”



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Ethics and Conflicts of Interest

- Ethics and conflicts of interest [chapter 42.23 RCW](#). This includes elected and appointed PHD officers.
- Some PHD have local ethics codes.
- See MRSC [ethics and conflict of interest](#) webpage and [Knowing the Territory](#) publication. Also see [AWPHD Legal Guide](#), pp. 29-34.
- Chapter 42.23 RCW addresses two things: “prohibited contract interests” and “prohibited acts.”



Prohibited Contract Interests

- “No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer...” [RCW 42.23.030](#).
- The prohibition applies broadly to PHD commissioners, regardless of whether they voted on the contract or not.
- There are numerous exceptions in RCW 42.23.030, a few of which are specific to PHDs.
- See also exceptions for “remote interests” in RCW [42.23.040](#).



Contracts—Question

Question: Can a PHD Commissioner who has historically donated money to a non-profit vote on a contract between the non-profit and the PHD?

Answer: Yes, provided he or she does not have a financial interest in the contract.

Follow-up Question: Can the PHD commissioner vote on the contract if he or she is an officer of the non-profit?

Answer: If the non-profit board position is non-salaried, then it is a remote interest under RCW 42.30.040(1). Even then, the commissioner must disclose the interest and should refrain from voting under the language of RCW 42.30.040.

Prohibited Acts



Prohibited acts are listed in [RCW 42.23.070](#) and include:

- Securing special privileges or exemptions for yourself or others;
- Receiving a gift for a matter connected with or related to your service as a municipal officer;
- Accepting employment or engaging in business activity that induces you to disclose confidential information;
- Disclosing confidential information gained by reason of your position, or using such information for personal gain.

Prohibited Acts—Question One



Question: Is it a conflict of interest under state law for family members (non-spouse) to serve on the same PHD Board?

Answer: No. State law for the most part does not address nepotism, and there is no prohibition on this.

Follow-up Question: Can spouses serve as commissioners on the same PHD Board?

Answer: Yes. PHD commissioners are elected by the voters—they are not hired and supervised by the PHD Board. Conflicts of interest issues do arise when one spouse is a commissioner and the other is considered for PHD Board vacancy.



Prohibited Acts—Question Two

Question: Can PHD officers receive “swag” at a conference?

Answer: Probably.

RCW 42.23.070 prohibits acceptance of gifts for a matter related to an officer’s PHD responsibilities.

Accepting swag or entering a drawing at a conference is typically not intended to influence performance of official duties.



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Use of Public Facilities--Campaigns



- [RCW 42.17A.555](#) prohibits the use of public funds or facilities for political campaigns.
- It applies to campaigns at all levels of government--local, state and federal. Both candidate races and ballot measures.
- "Public facilities" includes computers, letterhead, postage, equipment, employee working hours, vehicles and office space.
- PHD officers and employees may not work to support or oppose a ballot proposition during work time or allow public facilities to be used for that purpose.

Use of Public Facilities--Campaigns



There are three exceptions to the prohibition:

- A governing body may express support or opposition to a ballot proposition if there is notice and the public is given an equal opportunity to express an opposing view;
- An elected official may make a statement at an open press conference in response to a specific inquiry;
- Activity that is part of the normal and regular conduct of the agency.

Flip side: Remember that PHD officers and staff have the right to “express their opinions on all political subjects and candidates...” on their own time under [RCW 41.06.250](#).

For more information, see our [Use of Public Facilities and Initiative Measure](#) webpages. Also [AWPHD Legal Manual](#), pp. 37-38.



Public Facilities—Question

Question: Does it violate RCW 42.17A.555 for a citizen to express support or opposition with respect to a candidate or ballot measure during the public comment portion of a meeting?

Answer: The Public Disclosure Commission says yes. This is a tough one because speakers have free speech rights, but they are using public facilities (time during a public meeting) to support or oppose a candidate or ballot measure. A governing body should consider adopting rules that prohibit these types of comments.

Questions?



Thank you!



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Or email Oskar Rey at orey@mrsc.org