

## Inappropriate Board Member Conduct

If you feel that another board member has acted inappropriately in their role as a board member is it ok to discuss that in executive session or does that discussion need to take place in open meeting? Are board members considered public officers under Idaho Code?

There are two possible answers to this question. 1. Whether or not the inappropriate behavior rises to the level of a complaint or charge; and 2. If there is inappropriate behavior but no complaint or charge is filed.

If there is a complaint or charge:

Executive session is one of those areas that is used in a far broader context than that which is intended by the statutes. The only possible applicable provision of the executive session statute is the following:

Pursuant to Idaho Code Section 67-2345(1), an executive session may be held:

(b) to consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent or public school student.

In the case of a school board member who is alleged to have acted inappropriately in their role as a school board member, that is certainly going to be a complaint or a charge. The question then becomes whether or not the board member is a public officer, employee, staff member or individual agent of the school district. The executive session and open meetings statutes do not define what a public office is. Thus, one must look to the meaning in a broader sense. A public officer is going to be someone who holds a public office; typically this is going to be an office with some level of authority or position, with authority conferred by law, a fixed tenure in office and power to exercise functions of government. Given this general legal definition, I do believe a school board member is a public officer and a complaint or charge could be brought against such individual during an executive session. However, we can also look at this a bit further and review who qualifies as a public employee. In the context of the Tort Claims Act (applicable to school districts), an "employee" means "an officer, board member, employee or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity, in any official capacity . . . with or without compensation. Thus, there is also an argument that this provision and definition would also put this type of a situation into an executive session discussion. Additionally, I believe that a school board member, acting in their capacity as a school board member is an individual agent of the District.

Accordingly, even if for some reason a board member is not considered a public officer, there are other additional arguments which could put this complaint or charge into an executive session context.

Inappropriate behavior without a complaint or charge:

ISBA recommends that you consider advising the board chair and the superintendent to visit privately with the board member with whom they feel has acted inappropriately before it is opened up in a regular board meeting. Often times, board members do not understand their offense, and do not mean for their actions to be interpreted a certain way. A conversation with both parties (the one offended and the offender) often clears the air making comments at a public meeting unnecessary. As a board, you may want to review the Board Self-Assessment and Board Code of Ethics offered by ISBA. (You can download these documents from the ISBA website by selecting this link: <http://www.idsba.org/index.php?id=4>) A work session around these two documents might prove helpful in clearing up the air and reinforcing the roles of trustees.