



Statutory Duties and Significant Legal Issues

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VMI Statutory Authority

Va. Code Sec. 23.1-2500 – 23.1-2511

- Board composition and operation.
- Power to receive gifts, grants, and bequests.
- Appointment and removal of faculty.
- Prescribe the course of cadet instruction.
- Approve military scholarships.
- Confer degrees.





VMI Statutory Authority

General Powers of Boards of Visitors

Va. Code Sec. 23.1-1301

- Enact VMI regulations and policies, including policies regarding cadet conduct.
- Manage VMI funds and approve VMI's budget.
- Appoint the chief executive (Superintendent).
- Fix tuition rates and mandatory fees.
- Grant easements.
- ETC.





BOV Responsibilities

Va. Code Sec. 23.1-1301, 23.1-1303, 23.1-1306

- BOV Bylaws must address transparency and FOIA.
- Annual evaluation of the Superintendent; changes to contract only by majority vote.
- Provide annual executive summary of work to Governor & General Assembly.
- Mandatory SCHEV training for new BOV members within 2 years (Va. Code Sec. 23.1-1304) and training every two years after.





BOV Responsibilities

Va. Code Sec. 23.1-1301, 23.1-1303, 23.1-1306

Duties of executive committee:

- Can act on behalf of the Board between meetings when necessary.
- Organizes the working processes of the Board.
- Recommends Board best practices.
- Develops and recommends a statement of governance.
- Periodically review the Board's bylaws and recommend amendments.





BOV Responsibilities

Va. Code Sec. 23.1-1301, 23.1-1303, 23.1-1306

Duties of executive committee (Cont.):

- Provides advice to the Board on committee structure, appointments, and meetings.
- Develops an orientation and continuing education process for Board members.
- Creates, monitors, oversees, and reviews compliance with a code of ethics for Board members.
- Develops a set of qualifications and competencies for membership on the Board for approval by the Board and recommendation to the Governor.





Board of Visitor Bylaws

In addition to restating statutory duties . . .

- Delegates execution of documents to the Superintendent or his designee.
- Members are expected to attend all meetings and participate in the activities of the board.
- Rules for meetings, officers, and committees.





Virginia Freedom of Information Act

Va. Code Sec. 2.2-3700 et seq.

- Why does FOIA matter?
- Highly scrutinized by many groups: press, public, General Assembly.
- First time violations can result in civil penalties from \$500 - \$2,000.
- Negative publicity for VMI.





Virginia Freedom of Information Act

There are two main categories relating to FOIA: 1) BOV meeting requirements and 2) document requests.

- 1) FOIA's meeting requirements are triggered any time three or more board members gather (in person, by telephone, over e-mail, on social media, etc.) and discuss VMI business.
- 2) FOIA requests for public records - include all documents used in VMI business that are in a board member's possession regardless of whether the records were part of meeting materials or notes. **This includes text messages about VMI business to another Board member or to VMI staff from your personal phone.**





Virginia Freedom of Information Act

Meeting requirements

- All meetings must be open to the public.
- No discussion of VMI business among three or more members outside of noticed meetings. This includes **emails** among three or more members. **PLEASE DO NOT** “REPLY ALL” when receiving an email from VMI.
- Notice of a meeting typically must be posted at least three workdays in advance of the meeting.





Virginia Freedom of Information Act

Meeting requirements (Cont.)

- Board members may attend events without triggering FOIA requirements and may engage in one-on-one discussions about VMI business. If another board member walks in on the conversation regarding VMI business, please switch immediately to a topic unrelated to VMI business.
- Three or more board members jointly discussing VMI business creates an unlawful meeting.





Virginia Freedom of Information Act

Electronic Meetings

- The BOV may conduct two all-virtual meetings per year (usually reserved for committee meetings).
- Individual BOV members may participate in a BOV meeting by phone or other electronic means from remote locations if:
- A quorum is physically assembled in one location; **AND**
- Proper notice to the public, and members of the public are provided a substantially equivalent electronic communication means through which to listen to the meeting; **AND**





Virginia Freedom of Information Act

Electronic Meetings (Cont.)

- The BOV member notifies the President or Committee Chair and the Board Secretary that he/she has a temporary or permanent medical condition (unlimited per year) or personal matter (two times per year) that prevents his/her physical attendance at the meeting, and the President or Chair approves the participation. There are several other requirements, so please consult the Board Secretary or me if this issue arises.
- Special rules after Governor state of emergency declaration.





Virginia Freedom of Information Act

Closed Meeting Exceptions

More than 40 exceptions, including:

- Personnel – Discussion of specific employees.
- Scholastic records – Discussion of specific cadets.
- Legal advice – Consultation with legal counsel for advice on specific legal matters.





Virginia Freedom of Information Act

Closed Meeting Procedures

- A detailed motion to go into closed session that identifies (1) the statutory cite for the exemption; (2) the general topic (e.g. personnel); and (3) the specific subject to be discussed (e.g. the evaluation of the Superintendent).
- Only matters identified in the motion to enter closed session may be discussed.
- The Board must reconvene in open session and vote to certify that only those matters identified in the motion to close the meeting were discussed.





Virginia Freedom of Information Act

Closed Meeting Procedures

- Action (votes) as a result of discussions in closed session must be taken once the Board has reconvened in an open meeting.
- The Board can take a non-binding vote, or straw-poll, to get a sense for how a public vote might result; however, members are not bound to vote in the open meeting as they indicated they would in the closed session straw-poll.





Virginia Conflict of Interests Act

Va. Code Sec. 2.2-3100 et seq.

Why does COIA matter?

- A knowing violation constitutes malfeasance subject to forfeiture of the office and may result in invalidation of contracts improperly awarded and forfeiture of anything of value improperly derived. A knowing violation is a Class 1 Misdemeanor.
- The appearance of impropriety can be as damaging as a technical violation.





Virginia Conflict of Interests Act

Gifts

No Board member shall solicit or accept money, service, favor, or other thing of value:

- (1) for services performed within the scope of official duties;
- (2) in exchange for obtaining employment, appointment, or promotion of any person in any governmental agency;
- (3) in exchange for obtaining a contract for any person or corporation with any governmental agency; or
- (4) that reasonably tends to influence the performance of official duties.





Virginia Conflict of Interests Act

Gifts (Cont.)

No Board member shall:

(1) Accept a gift from a person who has interests that may be substantially affected by the performance of the member's official duties under circumstances when the timing and nature of the gift would cause a reasonable person to question the Board member's impartiality.

(2) accept gifts from sources so frequently as to raise an appearance of the use of public office for private gain.





Virginia Conflict of Interests Act

Personal Interests

If a Board member has a personal interest in a matter that is the subject of action by the Board, or if he/she may realize a reasonably foreseeable direct or indirect benefit or detriment as the result of action on the matter . . .

The Board member must disqualify himself/herself from the Board action.





Virginia Conflict of Interests Act

Personal Interests (Cont.)

A “personal interest” is a financial benefit or liability accruing to a Board member or a member of his immediate family, including but not limited to a salary of more than \$5,000 annually, an ownership interest in a business or property that exceeds 3% of the asset value of the business, personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business, etc.





Virginia Conflict of Interests Act

- COIA sets forth the minimum standards of conduct.
- Members of the VMI Board of Visitors must avoid even the appearance of impropriety as required by the VMI Code of Ethics.





Virginia Conflict of Interests Act

Disclosure Form Filing

- Upon taking office, Board members are required to file a disclosure form of personal interests with the Secretary of the Commonwealth.
- Annual updates are required on or before February 1.





Questions?

