

# Governance and Legal Issues for Port Commissioners

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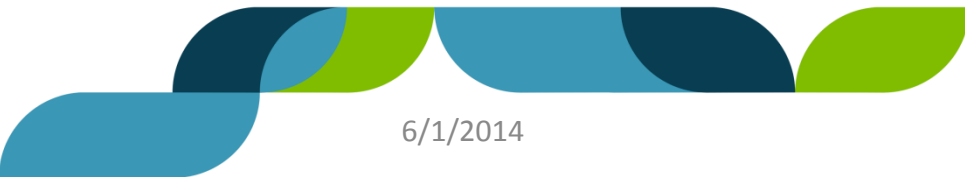
June 3, 2014  
AAPA Commissioners Seminar  
Seattle, WA



# First Principle

## Governing vs. Operating

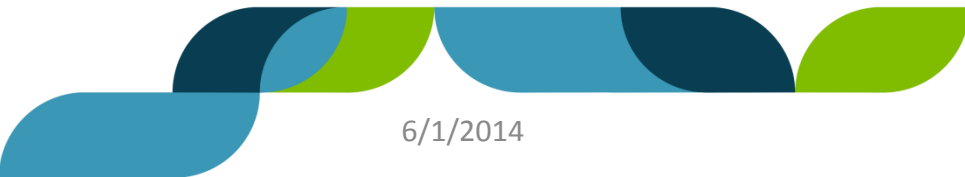
- What does it mean to be a commissioner at a port?
- Think of it as a public version of sitting on the board of directors for a corporation (minus the compensation).



# Governing vs. Operating

Except for very small ports, or unusual circumstances, commissioners only govern.

Commissioners should not get involved in operations.



# Governing vs. Operating

Operating the port:

- Hire and fire staff
- Order supplies
- Negotiate with tenants
- Change the light bulbs
- Empty the trash
- Clean the bathrooms, etc.

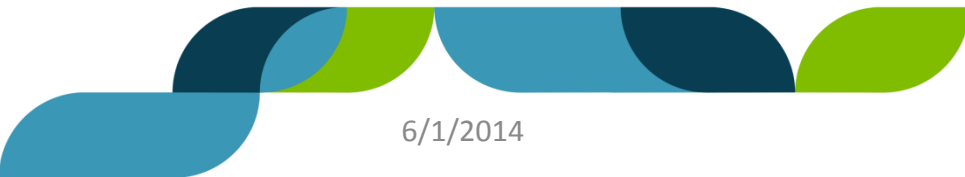
# Governing vs. Operating

## Governing the port--examples

- Establishing the policies under which the port operates, such as
- Should the port expand?
- What tax policies should the port adopt?
- Should the port enter into new lines of business?
- Should the port be willing to accept a lower rate of return on a new lease in exchange for job creation?

# Governing vs. Operating

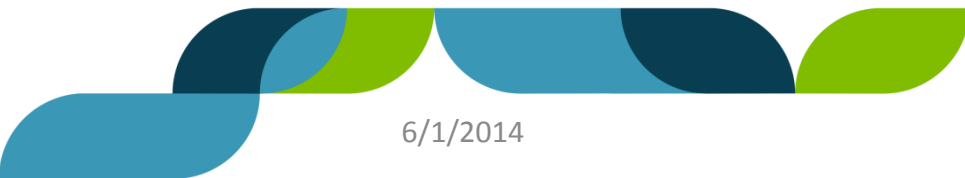
In most ports, the only hiring and firing decision made by the commission is in regards to the Managing/Executive Director.



# Governing vs. Operating

Do you believe you know more about the operations at the port than your professional staff?

How much time do you spend on port business and how much time does your staff?

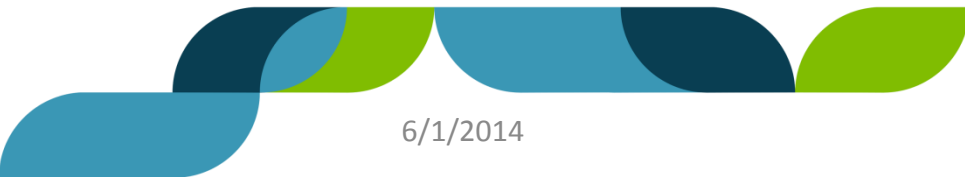


# Governing vs. Operating

The average worker at a port is paid for around 2,000 hours per year of work at the office.

Commissions spend anywhere from 25 to 250 hours per year on official business.

You cannot possibly be an expert on everything that goes on at your port and you're not supposed to be. Rely on your professional staff and let them do their work.



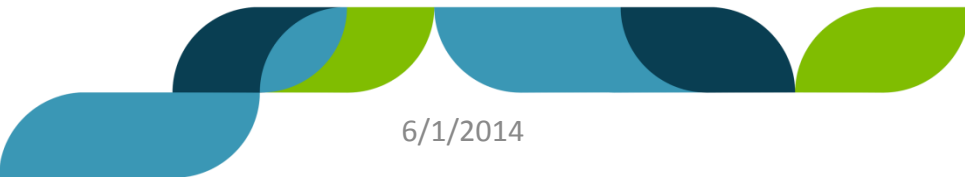


# Governing vs. Operating

It doesn't matter how much time you spend being a commissioner.  
What's far more important is how you spend the time.

Just because your meetings are really long or you're reading numerous memos doesn't mean you're accomplishing a lot.

Don't confuse effort with effectiveness.

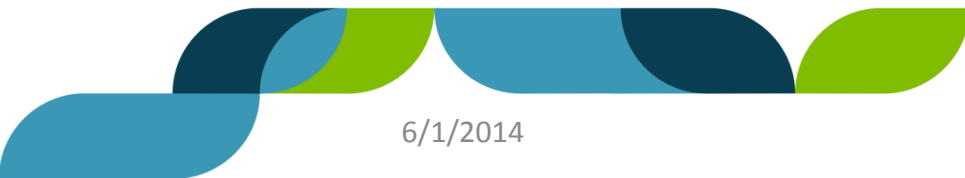


# Governing vs. Operating

Think of the calories and energy a novice swimmer uses to swim for 60 seconds. How far does that person go?

An Olympic swimmer can cover a much longer distance in the same amount of time.

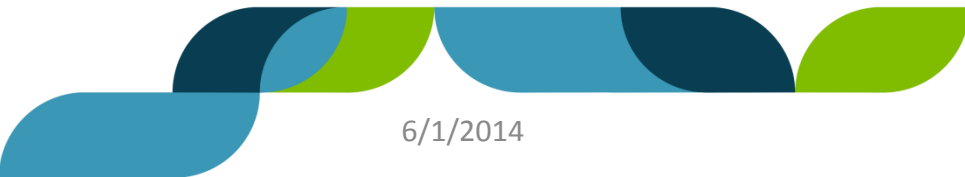
Efficiency and no wasted motion.



# Governing vs. Operating

Your time acting in an official capacity as a commissioner is limited and therefore incredibly precious. Don't waste time on the small things.

Keep your eye on the big picture.

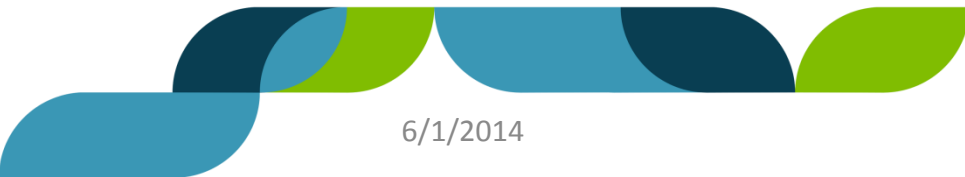


# Duty of Loyalty

As a commissioner, whom do you represent and serve?

- The public?
- Shipping lines?
- The Chamber of Commerce?
- Labor?
- The officials who appointed you?
- Campaign supporters/donors?

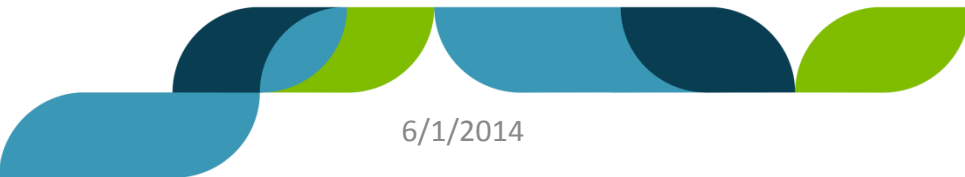
Answer: All of the above, by serving the port's interest first and foremost.



# Duty of Loyalty

Your paramount duty is to serve the organization, i.e. the port, on which you serve.

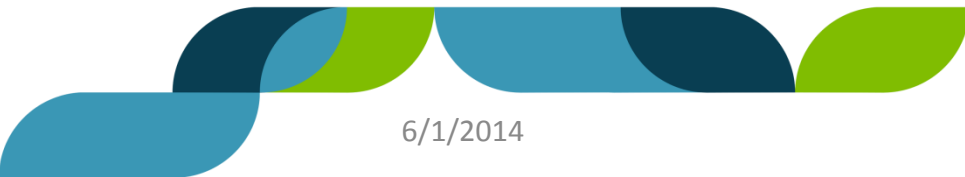
- As a commissioner, you have a fiduciary obligation to the organization and not to any particular interests outside of it.
- If your goal as a commissioner is to do things that only benefit you or your supporters/friends, you are not serving the interests of the port.



# Duty of Loyalty

There are public officials who never understand this.

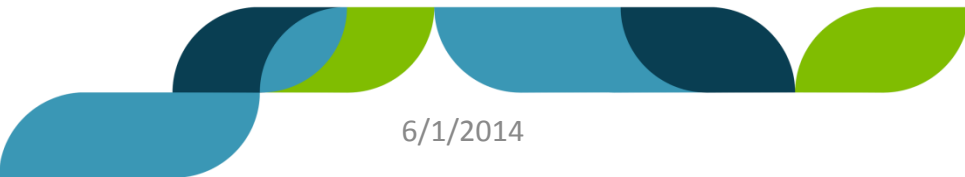
They sincerely believe that their loyalty to their supporters takes precedence over their loyalty to the public organization which they serve.



# Duty of Loyalty

Everyone agrees that public officials should serve the public interest.

The problem is who determines what is the “public interest?”

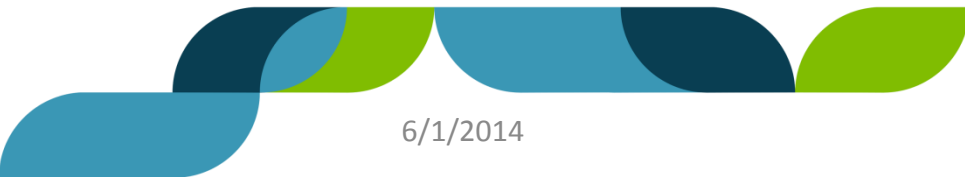


# Duty of Loyalty

Note the distinction between serving the public interest and serving the public entity.

Where public officials, elected and non-elected, get into trouble is when they believe they are the ones who get to determine what is the public interest.

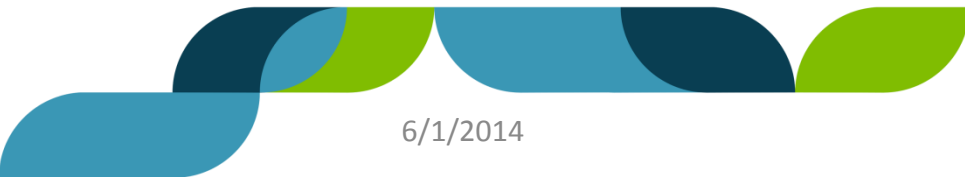
This line of thought is an exercise in self-deception because they're not serving the public but only themselves.





# Duty of Loyalty

The best way of serving the public interest when you serve in a public organization is to serve the best interests of the organization.



# Duty of Loyalty

As a public official, you are certainly free to disagree with a decision that is taken by the port commission as a whole.

But your duty of loyalty to the port requires you to still work in the best interest of the port and not your own sense of what constitutes the public interest.

# Living in a Glass House

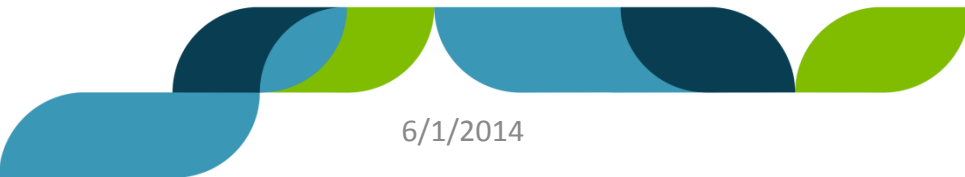
You, as commissioners of public port authorities, live in glass houses when conducting port business..



# Living in a Glass House

What does this mean?

Your official actions and statements in meetings (and elsewhere) are recorded and analyzed by the public and the media.



# Living in a Glass House

## Writings:

- Everything you turn in for reimbursement is available and subject to inspection (and misinterpretation) by anyone.
- Your correspondence with the outside world regarding port business is subject to public disclosure.
- Your financial records are an open book through campaign disclosure laws.

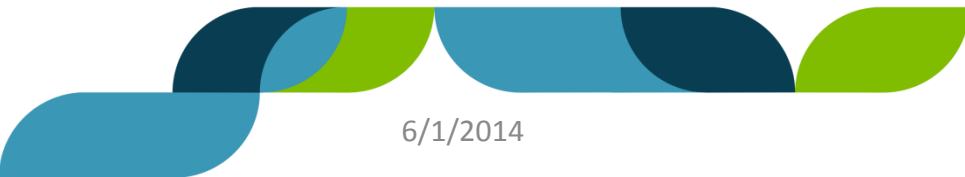
# Living in a Glass House

Some try to be clever and send messages on non-official email services like gmail.

Remember this message?

“Time for some traffic problems in Fort Lee.”

“Got it.”



# Living in a Glass House

12/13/13

Gmail - Rec



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**Re:**

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David Wildstein <david.wildstein@gmail.com>  
To: Bridget Anne Kelly <bridgetannekelly@yahoo.com>

Tue, Aug 13, 2013 at 7:35 AM

Got it

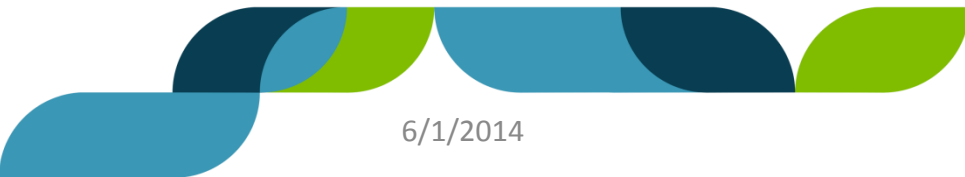
On Aug 13, 2013, at 7:34 AM, Bridget Anne Kelly <bridgetannekelly@yahoo.com> wrote:

> Time for some traffic problems in Fort Lee.

# Living in a Glass House

Using “off-record” means of communicating creates a sense of invulnerability and the temptation to be more “real”.

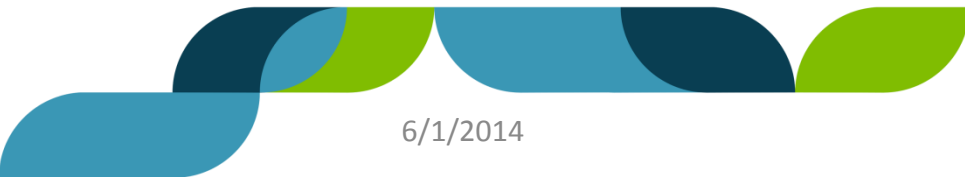
When something comes out, however, it carries a double impact: embarrassment over the way the message reads and also the perception that the participants are less than trustworthy.





# Living in a Glass House

You may be able to get away with these back-channel communications, but there is no assurance that such messages will stay out of the public view.



# Living in a Glass House

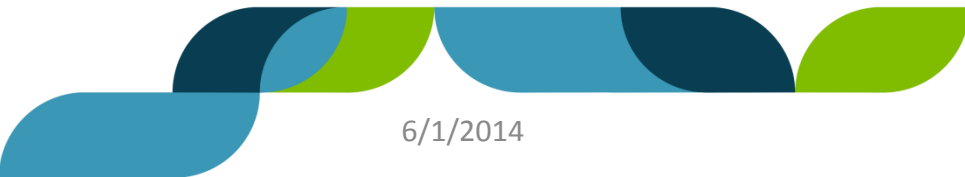
If you think this is hyperbole, ask this man if he agrees:



# Living in a Glass House

The moral of all of this is that privacy as we used to know it may no longer exist.

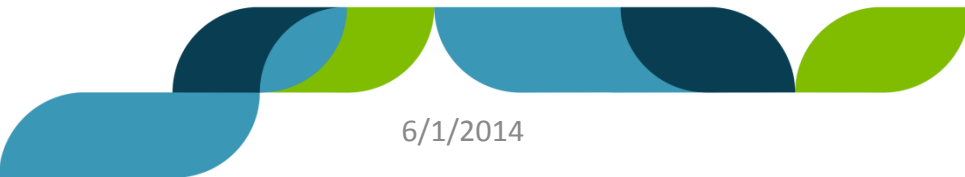
A guiding principle: Never put anything in writing that you would hate to see in your local newspaper.



# Living in a Glass House

And as the soon-to-be former owner of the Los Angeles Clippers found out, even something said in private can get out.

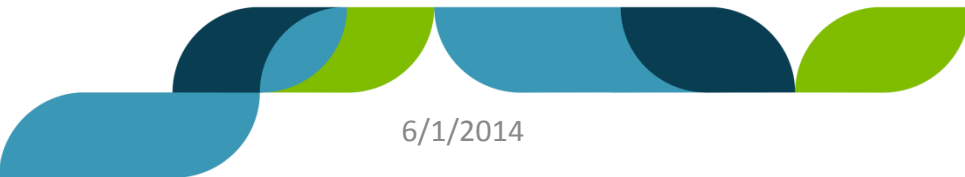
We live in a time when anyone with a smart phone can be a reporter and circulate a recording around the world on YouTube within minutes of the words being uttered.



# Open Public Meetings

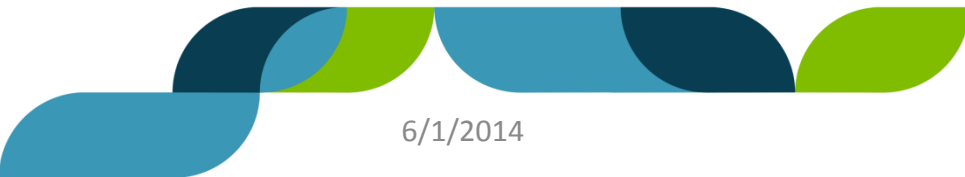
Most states have a general requirement that all public business has to be conducted in meetings open to the public with adequate notice in advance.

These laws are usually strictly enforced. The laws are implementing a legislative policy that favors allowing the public the chance to see what its government is doing.



# Open Public Meetings

Most states have exceptions for executive sessions, but they tend to be narrow. In other words, if the item proposed for an executive session discussion doesn't fit within the exact requirement under the statute, then it isn't proper.



# Open Public Meetings

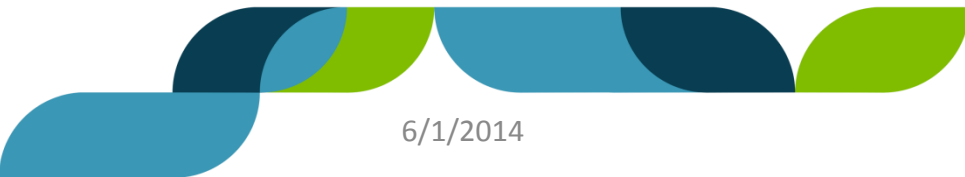
Examples of executive session items (varies by state):

- Discussion with legal counsel on litigation or matters relating to legal risks;
- National security issues;
- Labor negotiation strategy;
- Employee disciplinary actions.

# Open Public Meetings

Pop quiz—is there a violation?

1. 3 out of 5 members of a port commission attend a conference and go out to dinner
2. 2 out of the 5 sit down to discuss port business.





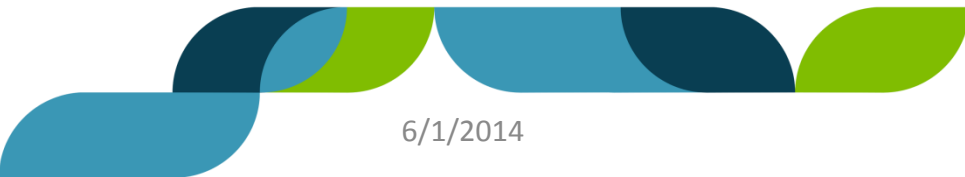
# Open Public Meetings

3. One commissioner sends out an email to fellow commissioners on a port project and gets feedback.
4. A commissioner has a Facebook account and posts comments regarding port business. Other commissioners are “Facebook friends” and start commenting.

# Public Records and Disclosure

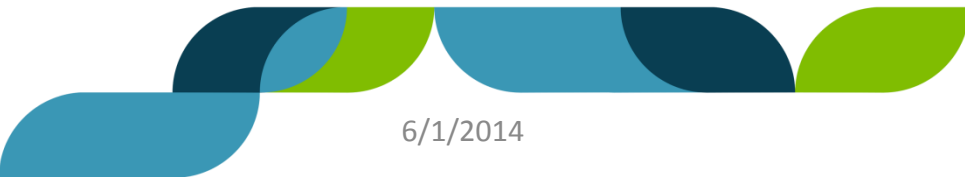
There's a distinction between the laws on public records and public disclosure.

- Public records laws state what records must be preserved.
- Public disclosure identifies the types of records that must be disclosed upon a request from the public.



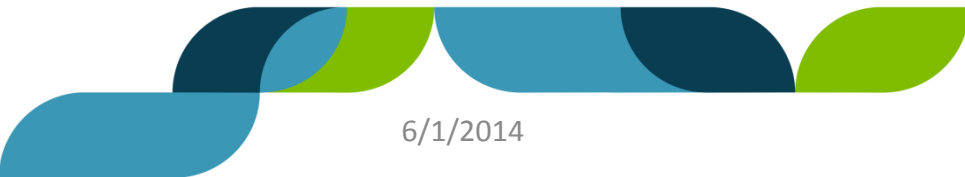
# Public Records and Disclosure

Documents that are subject to disclosure go far beyond mere paper. Any medium containing information (including digital information of any sort, photos, etc.) that is in the port's possession or control, may be subject to disclosure.



# Public Records and Disclosure

Metadata is the hidden digital bits of information that is stored on every electronic document (including email, word processing documents, spread sheets, slides, etc.) produced on a computer and that indicates time and date of creation, tracking of edits, identity of the people who have worked on the document.



# Public Records and Disclosure

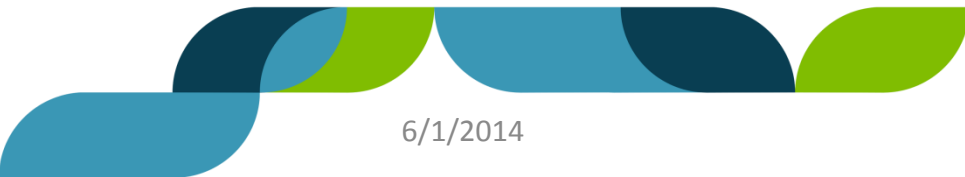
In Washington state, metadata is considered part of a document and is required to be maintained as part of document preservation (for those documents that are kept).

There was a case recently in Washington where a city was held to have violated the state records act by failing to maintain the original of an email involving city business.

# Public Records and Disclosure

Those of you at ports that use Windows Outlook and have an internet based phone system (VOIP) should be aware that voice mails could be backed up on the port's system.

What that means is that they become official documents subject to public disclosure.



# Public Records and Disclosure

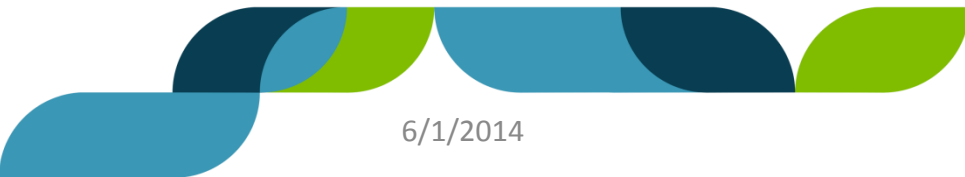
So the next time you want to leave an angry voice mail on someone's phone at the port (or anywhere, for that matter), think how it would sound on the 5:00 news.



# Public Records and Disclosure

Discussing port business on Facebook, Twitter, blogs, and private email accounts could involve public records requirements.

Be careful about engaging in public comment in these forums where other members of your commission may be participating.

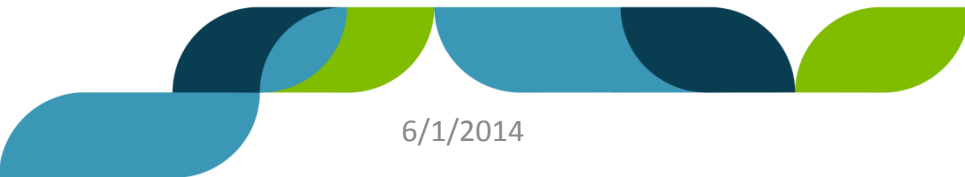




# Integrity

As public officials, the public perception of your honesty and integrity are critical not only to your ability to get re-elected or re-appointed, but also to carry out your jobs as public officials.

Appearances do matter.



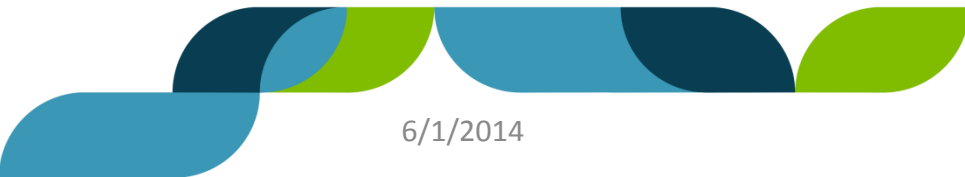
# Integrity



# Integrity

You cannot do (or remain in) your job as a public official if the public believes you have neither credibility or integrity.

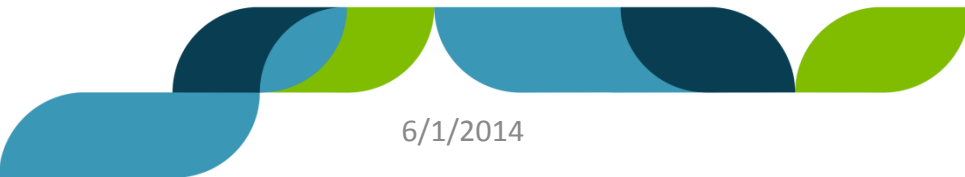
Because it is critical to your ability to function, don't engage in behavior that could damage your integrity.



# Integrity

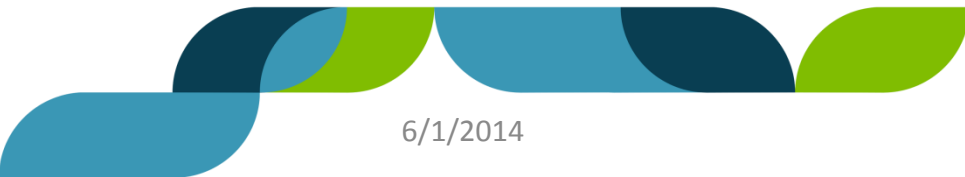
Avoid conflicts of interest.

How to determine if there is one? – if you, any member of your family, or an entity in which you have a legal relationship, stand to gain an economic benefit by an action of your port commission, then you have a conflict of interest.



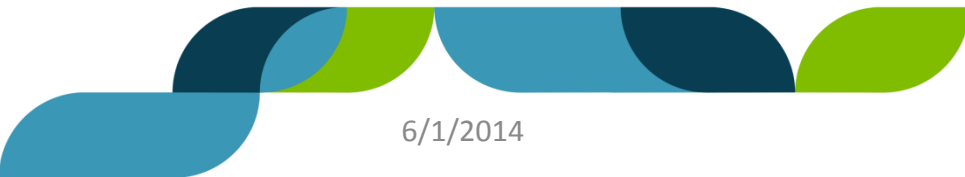
# Integrity

The fact that a conflict exists is not inherently a problem. In smaller communities, situations can regularly arise where conflicts of interest appear because of the smaller population base. The problem arises if you, as a commissioner, are involved in any process or decision that leads to the port making a decision directly affecting you, your family, or your business.



# Integrity

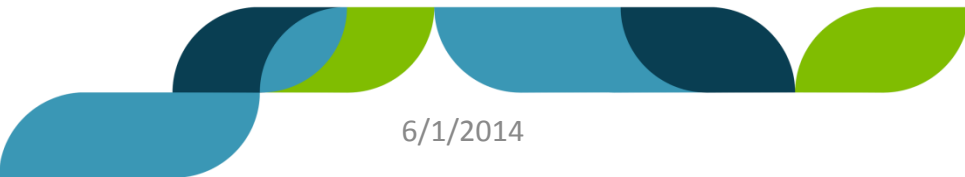
If there is a conflict, recuse yourself from any deliberations or vote on the matter.



# Integrity

## Political campaigns

- You cannot use or authorize the use of port facilities for the purpose of assisting any political campaigns.
- “Facilities” include the use of port stationary, postage, machines (including computers and copiers), vehicles, office space, or employees during office hours.



# Integrity

## Special privileges

- You cannot use your position to obtain any special privileges or exemptions for yourself, your friends, or your family that are not otherwise available to the general public or port employees, unless it's in the conduct of your duties for the port.



# Integrity

## Gifts

- You can accept a gift on behalf of the port, but you cannot keep it.
- Do not ever solicit or accept for yourself or your family any item of economic value if it could reasonably be expected that the item could influence your vote, action, or judgment or be considered a reward for you action or inaction.

# Questions?

